CHAPTER 513

FRAUDS

STATUTE OF FRAUDS

513.01 NO ACTION ON AGREEMENT, WHEN.

HISTORY. R.S. 1851 c. 63 s. 2; P.S. 1858 c. 50 s. 2; G.S. 1866 c. 41 s. 6; G.S. 1878 c. 41 s. 6; G.S. 1894 s. 4209; R.L. 1905 s. 3483; G.S. 1913 s. 6998; G.S. 1923 s. 8456; M.S. 1927 s. 8456.

1. Generally

A contract made in behalf of a contemplated corporation by its promoters was adopted by the corporation after its creation. It was oral and dates, not from the date of the agreement with the promoter, but from the date of its adoption by the corporation, and is not within the statute of frauds and is valid. McArthur v Times, 48 M 319, 51 NW 216; McGohn v Weaver, Inc., 198 M 328, 269 NW 830.

Defendant and others signed a subscription by which each agreed to pay a certain sum set opposite his name to defray the loss if any in putting on a driving meet. Held, the promisors are not joint promisors and can be sued separately, and the language of the instrument indicates a pro rata apportionment of the loss. Larramee v Tanner, 69 M 156, 71 NW 1028.

The defense of the statute of frauds is not waived if not pleaded; it is sufficient for the defendant to deny the alleged promise, without making any reference to the statute. If the defendant admits the promise, he must also plead the statute, or it is waived. Bean v Lamprey, 82 M 320, 84 NW 1016.

When the amount stipulated in the contract to be paid by one of the parties in case of his failure to comply with the terms thereof is to be treated as liquidated damages or as a penalty is to be determined from the language of the contract, the nature of the breach and extent of the actual damage, and facts and circumstances under which it was made, and the evident intention of the parties. Taylor v Times, 83 M 523, 86 NW 760.

Guaranty of a certain income from stock in consideration of the purchase thereof sufficiently states the consideration and the contract is enforceable. Alger v Minnesota, 135 M 235, 159 NW 765.

As the guaranty was made in Iowa and was in accordance with their law, though the consideration was not expressed as required by our laws, it is valid. Halloran v Schmidt, 137 M 141, 162 NW 1082.

Breach of agreement to repurchase corporate stock vests in the plaintiff a right of action. Matson v Bauman, 139 M 296, 166 NW 343.

Copy of a telegram accepting defendant's written offer of employment for a term of three years may constitute a valid contract. Halstead v Tribune, 147 M 294, 180 NW 556.

Where personal property has been bid in at an auction sale for more than $50.00, and it has not actually been 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. Sargent v Bryan, 153 M 198, 189 NW 935.

A contract void under the statute of frauds is relevant in an action to recover on a quantum meruit for the services rendered, pursuant to such contract as an admission of value. Oxborough v St. Martin, 169 M 72, 210 NW 854; Umbreit v Carley, 202 M 217, 277 NW 549.

Under the circumstances related in the opinion, even if the oral agreement of rental is not to be performed within a year, that would not preclude the tenant from asserting a claim for damages caused by plaintiff's failure to repair a rooming house occupied by the defendant under an oral lease from plaintiff. Theopold v Curtsinger, 170 M 105, 212 NW 18.

The owner of an apartment house placed the exclusive management of the property in the hands of an agent, who undertook to pay the expenses of operating the property and pay the owner a fixed monthly income, in consideration of the owner's agreement that the agent should retain the difference between the amounts so to be paid and the total rents collected. It was held that where the agent leased one of the apartments for more than one year and took in payment a conveyance to himself of an equity in a house and lot, the lease to the tenant was not invalid under the statute of frauds. King v Benham, 172 M 40, 214 NW 759.

An oral contract of present insurance, or an oral contract for insurance effective at a future date, was valid at common law, and as there is no statute of frauds forbidding, the oral contract is valid. Schmidt v Agricultural Assn., 190 M 585, 252 NW 671.

An oral agreement that on consideration of the defendant receiving a chattel mortgage on plaintiff's crop, the defendant would extend the due date of the mortgage, was enforceable. Hawkins v Hayward, 191 M 543, 254 NW 809.

Evidence sustains the finding that the defendant orally agreed to pay plaintiff the costs of the service line constructed by him. The line was built and accepted by defendant and having been fully performed is not within the statute and plaintiff may recover. Bjornstad v Northern States, 195 M 439, 263 NW 289.

Statute of frauds aside, it is not necessary that a party to a contract sign the same if he acquiesces in, accepts, and acts on the writing. Rules laid down as to admission or oral evidence to supplement a written contract. Taylor v More, 195 M 448, 263 NW 537.

An oral agreement between a mother and her nine children by which the children jointly and severally agreed to convey their several interests in and to the father's estate to the mother on condition that upon her death, she leave the estate in equal shares to the children was valid, and where performed on the part of the children was binding on the mother and her estate. Anderson v Anderson, 197 M 252, 266 NW 841.

Where former owners of a homestead remain in possession after the title has been divested by foreclosure, and the holder of the title conveys to the wife of one of such persons upon the promise of husband and wife to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right. Hecht v Anthony, 204 M 432, 283 NW 753.

Agreement for development of and sales rights on vending machines, held not to be within the statute. Foster v Butler, 207 M 286, 291 NW 505.

While ordinarily a signature is placed at the end of an instrument, it may, unless by statute a signature is required to be subscribed, be placed anywhere on the instrument. The rule is one of general application. Where, however, written or printed matter appears below the signature, or on the back of the instrument or elsewhere, a signature authenticates only the matter intended by the parties to be included as part of the instrument. The intention must be manifested either by express reference or by internal evidence in the writings involved from which an inference of such intention follows. Brown v State Insurance, 216 M 337, 12 NW(2d) 712.

Conflict of laws; enforceability of foreign contracts. 10 MLR 269.

Conflict of laws as to contracts. 10 MLR 498.

Statute of frauds relating to contracts. 14 MLR 746.

Effect of the statute. 14 MLR 760.

Necessity for a writing for personal property trusts in Minnesota. 17 MLR 313.

Applicability to an oral agreement to sell. 17 MLR 107.

2. Contracts not to be performed within one year

The complaint disclosed a contract terminable at the pleasure of either party; on trial the contract proved by the plaintiff was by its terms to continue in force for a period longer than one year, and was held a fatal variance. Cowles v Warner, 22 M 449.

A contract to insure, the insurance to commence within a year, is not within the statute of frauds. Wiebeler v Milwaukee, 30 M 464, 16 NW 363.

A finding of fact that on or about the first day of April premises were leased for one year from the first of April does not present the objection that the leasing was an agreement not to be performed within one year from the making thereof. Mackey v Potter, 34 M 510, 26 NW 906.

Plaintiff, a corporation, and defendant entered into a parol contract by the terms of which the defendant was to serve the company as treasurer for a percentage of the profits. The stated term was for five years, but on account of illness defendant resigned at end of two years. Held, that while the oral contract could not be enforced by action, it was not void, and as to the two years it was executed, and as to the unexpired term, evidence of the terms of the contract were admissible to determine the measure of compensation. La Du-King v La Du, 36 M 473, 31 NW 938.

An oral agreement for services not to be performed within one year is not wholly void, though no action can be maintained on it. It will control the rights of the parties with respect to what they have done under it. So where it is for services for a specified time at a specified gross sum, to be paid when they are all rendered, if the party commences to render the services and quits without cause, he cannot recover for what he has done. Kriger v Leppel, 42 M 6, 43 NW 484.

At no time can a parol devise, void under the statute of frauds, be resorted to for the purpose of ascertaining the duration of the term of the tenant. Johnson v Albertson, 51 M 333, 53 NW 642.

An oral contract made in July, 1894, for the rental of a farm during the crop year of 1895 is within the statute of frauds. Engler v Schneider, 66 M 388, 69 NW 139.

Defendant transferred certain notes and mortgage to the plaintiff, and when they were not paid, agreed that plaintiff should foreclose and get title to the land, whereupon the defendant agreed to reimburse the plaintiff for the amount involved, plus costs, and plaintiff was to deed the property to defendant. Held, the oral promise was within the statute and void, and plaintiff cannot recover. Veazie v Morse, 67 M 100, 69 NW 637.

The statute of frauds does not apply to a contract which may be performed by both or by either of the parties within a year. Langan v Iverson, 78 M 299, 80 NW 1051.

Under the statute of frauds no action can be maintained upon an oral 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 a failure of the other to perform. The parol contract is admissible to fix the value of service during the period of performance. Spinney v Hill, 81 M 316, 84 NW 116; Lally v Crookston, 85 M 257, 88 NW 846.

An oral agreement was made for the lease of land for a year to take effect in the future. Under the agreement the lessor was to make and did make certain repairs. On the refusal of the proposed lessee to execute the lease, the lessor leased to another and thereafter sued to recover a loss. Held, the agreement was within the statute and the plaintiff cannot recover. Cram v Thompson, 87 M 172, 91 NW 483; Hanson v Marion, 128 M 468, 151 NW 195.

The contract for the leasing of the premises was oral, and as it could not be executed within a year of the date it was entered into, it was void under the statute of frauds. Brosius v Evans, 90 M 521, 97 NW 373.

A partnership was formed by parol to purchase, improve, and sell a particular piece of property. The defendant with plaintiff's consent purchased the property in its own name. Plaintiff brought an action to impress a trust on the

property to the extent of the partnership interest. Held, that as no definite time was fixed for the continuance of the contract, it was not within the statute, and plaintiff might recover. Stitt v Rat Portage, 98 M 52, 107 NW 824; Kruse v Tripp, 129 M 252, 152 NW 538; Hammel v Feigh, 143 M 115, 173 NW 570; McRae v Feigh, 143 M 241, 173 NW 655.

Application to logging contract. Grand Forks v McClure, 103 M 471, 115 NW 406.

An oral agreement to issue corporate stock at the end of a five-year period of service is within the statute of frauds. Holland v Smith, 155 M 6, 192 NW 355.

Where a lessor endorses and signs on an existing lease: "The lessee is hereby given the option of renewing this lease for a period of five years from the expiration therefor at rate of $250.00 per month for a period of five years upon giving six months' notice before expiration of his intention so to do", it is within the statute of frauds because it does not express the consideration, and it contemplates making a lease for a longer period than one year. Weisman v Cohen, 157 M 161, 195 NW 898.

Rental contract unenforceable under the statute of frauds, did not preclude the defendant from asserting a claim for damages caused by plaintiff's failure to repair a rooming house occupied by defendant under an oral lease. Theopold v Curtsinger, 170 M 105, 212 NW 18.

Although agent operated under a parol agreement, his authority extended to making a valid lease for more than one year and to accepting payment in advance. King v Benham, 172 M 40, 214 NW 759.

Two letters are construed as a contract of employment at will, terminable by either party at any time wtihout cause. Steward v Nutrena, 186 M 606, 244 NW 813.

Holding as to the application of the rules of pleading and waiver of the statute by the conduct of the case, growing out of an action in damage for breach of a rental contract of a barbershop. Vethourlkas v Schloff, 191 M 573, 254 NW 909.

Action for specific performance of an agreement made by parents of a boy six years old, with decedent. The contract was fully performed on the part of the boy, but on the death of decedent and his wife the administrator and heirs opposed the petition. Holding was in favor of the plaintiff. Hanson v Bowman, 199 M 70, 271 NW 127.

A verbal agreement to extend the terms of a lease for the period of one year, such year to commence at a future time, is within the statute of frauds, and as such unenforceable. Atwood v Frye, 199 M 596, 273 NW 85.

Where a person, knowing that testator in giving him a devise or bequest intends it to be applied to the benefit of another, he is in law a trustee ex maleficio, and where a decision rests upon parol evidence to establish that which the statute of frauds of wills requires to be in writing, the oral evidence must be clear, unequivocal and convincing. Ives v Pillsbury, 204 M 142, 283 NW 140.

The statute of frauds has no application where the contract by its terms can be performed within one year though it runs for an indefinite period. The contract of employment of an insurance salesman was not within the statute. Bannitz v Hardware Mutual, 219 M 235, 17 NW(2d) 372.

Effect of full performance by one party. 14 MLR 813.

3. Promises to answer for another

Plaintiff was requested by Fairbanks to carry government goods to Fuller on the latter paying the carriage. Gorman directed plaintiff to deliver the goods to Fuller and promised, verbally, to pay plaintiff for the carriage if Fuller did not. Held to be a collateral promise and within the statute of frauds. Dufolt v Gorman, 1 M 301 (234).

A verbal promise to a landlord, that if he will allow a tenant to stay on the premises, he, the promisor, will be responsible for the rent, is within the statute of frauds and void. Walker v McDonald, 5 M 455 (368).

A complaint upon a promise to pay the debt of another need not allege that it was in writing. A plaintiff may allege and prove as many promises as he may

have to pay the debt sued for, if they are separate, distinct and valid undertakings. Walsh v Kattenburgh, 8 M 127 (99).

To constitute a promise to answer for the debt, default or miscarriage of another person within the meaning of the statute of frauds, the promise must be a collateral one; there must be an original liability upon which the collateral promise is founded, and when the debt, which constitutes the consideration of the agreement, is entirely discharged, the promise is a new and original one. Yale v Edgerton, 14 M 194 (144).

A note being past due, the holder of the note agreed with the maker to extend the time of payment for ten months if Folsom would endorse it, which Folsom did by writing his name on the back of the note appending the date of the endorsement. Held, endorser not liable. Moor v Folsom, 14 M 340 (260).

Plaintiffs had a valid lien on property of Howe, and defendant orally promised that if plaintiff would waive the lien, pay the costs incurred to date, and furnish certain new lumber, he, the defendant, would pay. Held to be an original undertaking and not within the statute of frauds. Hodgins v Heaney, 15 M 185 (142).

Hills sold to Stone a bill of goods on the verbal promise of Stevenson that if Stone did not pay, he would. Later Stone gave his note to Hills and Stevenson endorsed it. Held, the consideration was sufficient. Rogers v Stevenson, 16 M 68 (56).

Written guaranty as to the payment of a note in default of payment by the maker construed as within the statute of frauds and invalid because no consideration stated. Wilson v Schnell, 20 M 40 (33).

An agreement to answer for the debt or default of another, founded on a new and original consideration between the parties thereto, is not within the statute, anad such consideration need not be expressed in writing. Nichols v Allen, 22 M 283, 23 NW 542.

Where a corporation transferred all its property to the defendant, who assumed and agreed to pay the debts, such act constitutes an original undertaking on which a creditor may sue. Sullivan v Murphy, 23 M 6.

A written guaranty of the collection of a note made by a third party is not void as within the statute of frauds, because the consideration thereof is not therein expressed, where such consideration arises solely out of a valid discharge by the guarantee of an obligation in his favor against the guarantor, wholly independent of the note. Sheldon v Butler, 24 M 513; Crane v Wheeler, 48 M 207, 50 NW 1033.

Where one party conveys property to another, and, as a consideration, the grantee agrees to pay a debt to a third party, such promise is an original and not a collateral one, and such third party may maintain an action to recover the debt. Stariha v Greenwood, 28 M 521, 11 NW 151.

Where the holder of a third person's contract to manufacture, transfers it to another person, upon a consideration moving to himself, his guaranty thereof, made simultaneously with the transfer, and as a part of the transaction, is not a special promise to answer for another within the meaning of the statute, and therefore need not be in writing. Wilson v Hentges, 29 M 102, 12 NW 151.

In an action by A against B for the price of goods delivered to C upon B's promise to pay for them, the fact that in A's books of account the goods were charged to C is proper to be considered, but is not decisive of the question at issue. Winslow v Dakota, 32 M 237, 20 NW 145.

Plaintiff advanced $90.00 to pay the passage from the old country of the woman who became defendant's wife. Defendant gave plaintiff his note for the amount. Held to be an original undertaking and not within the statute. Holm v Sandberg, 32 M 427, 21 NW 416.

The promise of the defendant to the plaintiff "to see them paid" for boarding hands in the employ of defendants' subcontractors is an original undertaking and not within the statute. Grant v Wolf, 34 M 32, 24 NW 289.

The expression "for value received" is a sufficient statement of the consideration within the statute of frauds. Osborne v Baker, 34 M 307, 25 NW 606.

Defendant orally told plaintiff that if he would sell goods to Hutchinson, he, the defendant, would pay if H did not. Plaintiff sold the goods to H and took

his note, held, that if there was a promise by defendant it was not an original undertaking but a collateral one and consequently within the statute. Cole v Hutchinson, 34 M 410, 26 NW 319; Schmidt v Murray, 87 M 250, 91 NW 1116.

Where a contract of guaranty in a written lease is entered into contemporaneously with the principal contract, and is either incorporated into, or refers to it in such a way as to show that both agreements are parts of the same transaction, the statute of frauds does not require a consideration expressed in the guaranty distinct from that in the principal contract. Highland v Dresser, 35 M 345, 29 NW 55; Osborne v Gullickson, 64 M 218, 66 NW 965.

Where Nash, the owner of certain land, made a contract with McDonald to erect and furnish materials for certain buildings, and McDonald abandoned the work which was afterwards completed by Nash, and Nash orally made a deal with Abbott by which Nash agreed to accept further goods from Abbott and assume and pay the debt of McDonald for supplies furnished, held to be an original undertaking on the part of Nash and he is consequently liable. Abbott v Nash, 35 M 451, 29 NW 65.

Defendant gave to plaintiff the following verbal instructions: "You give all the goods to H. and R. that they want, and charge directly to them, and every first of the month bring in the bill and I will pay it". Held, this is an original and not a collateral promise, and the defendant is liable. Maurin v Fogelberg, 37 M 23, 32 NW 858.

The guarantee of the debt of another, assigned at the same time by the guarantor, when the purpose is to thereby pay or satisfy a claim of the guarantee against the guarantor, is not within the statute of frauds. Crane v Wheeler, 48 M 207, 50 NW 1033.

Holding that an insurance agent's promise to see a certain contract as to division of insurance carried out was by parol and within the statute of frauds. Linder v Fidelity, 52 M 304, 54 NW 95.

After the death of Hummel, the maker of a note, the widow orally agreed with Haggenmiller that if he would not present the claim for allowance against the estate, she would pay it. She paid interest for many years, and on her death it was held that her original promise was an original one and not within the statute. Eleanor Hummel's Estate, 55 M 315, 56 NW 1064.

It is not necessary that a written memorandum of a "special promise to answer for the debt of another" should expressly state the consideration for the promise. It is sufficient if, from the whole writing, it appears with reasonable clearness what the consideration was. Straight v Wight, 60 M 515, 63 NW 105.

An agreement to extend the time of a debt is sufficient consideration for the execution by a third party of his note to the creditor as collateral security for the payment of such debt; a negotiable promissory note imports consideration. Nichols v Dedrick, 61 M 513, 63 NW 1110; Peterson v Russell, 62 M 220, 64 NW 555.

A promise of A. to indemnify C. against loss by becoming responsible for D.'s faithful performance of his duty to E. is not within the statute of frauds. Fidelity v Lawler, 64 M 144, 66 NW 143.

Plaintiffs executed an undertaking on behalf of Burdic on appeal. On their refusal to justify the attorney for Burdic guaranteed to keep them harmless. Held not a collateral, but an original promise and attorney White was liable to the plaintiffs. Esch v White, 76 M 220, 78 NW 1114.

An agreement to forbear suit against the original debtor at the request of a third person to answer for the debt is a collateral promise, and is within the statute of frauds, and void, unless in writing. Gilles v Mahoney, 79 M 309, 82 NW 583.

The agreement of the defendant to pay plaintiff for the board of certain lumbermen engaged for third parties on their contracts with defendant, held, not to be within the statute of frauds. King v Franklin, 80 M 274, 83 NW 170.

Where a party promises to pay the note of another to satisfy the importunity of the owner of the note, such promise to be valid, must be in writing, unless there be a novation by the substitution of a new debtor and a release of the old one. Hanson v Nelson, 82 M 220, 84 NW 742.

The purchase of cattle held to be an original undertaking, and not a collateral promise. Bennett v Thuet, 98 M 497, 108 NW 1.

Defendant, in consideration that plaintiff would continue in the service of a certain corporation in which defendant was interested, promised to pay her the compensation to become due for her work, in reliance on which plaintiff continued in the employment. Held to be an original undertaking and defendant is liable. Conrad v Clarke, 106 M 430, 119 NW 214, 482.

When one requests another to join him as surety upon a bond and promises such other to save him harmless from loss upon the bond, the promise is an original agreement, and not within the statute of frauds. Noyes v Ostrom, 113 M 111, 129 NW 142.

In settlement of an action in tort against a railway company, the defendant agreed to pay a certain sum plus doctor's bills. The amount was paid to the injured party and the case was dismissed. It was held that the doctor had a right of action for his services. Van Coppellan v Railway, 126 M 251, 148 NW 104; Kubu v Kabes, 142 M 433, 172 NW 496.

In contract for purchase of an interest in a jewelry business and a subsequent dissolution of the copartnership, an agreement of the purchaser to pay a certain debt of the original owner of the store was not within the statute, requiring the consideration be expressed. Klemik v Henricksen, 128 M 490, 151 NW 203.

Where a new corporation is formed to take over the business and assets of an existing corporation, and as part of the consideration assume the debts, there is included in that assumed liability an existing liability arising out of a tort. Geiger v Sanitary Farms, 146 M 235, 178 NW 501.

A promise to pay the debt of another, for the payment of which the promisee is secondarily liable, on the agreement of the promisee to repay the amount, all in parol, is an original undertaking and not within the statute of frauds, Timm v Aiton, 150 M 450, 185 NW 510; Amort v Christofferson, 57 M 234, 59 NW 304.

In sale of tools for logging work, evidence insufficient to show an original undertaking, and defendant cannot be held liable. Askier v Donnelly, 157 M 502, 195 NW 494.

Finding relative to a claim to an interest in timber land not included in a partnership holding in land. Walker v Patterson, 166 M 215, 208 NW 3.

A bank sold a note to the plaintff without recourse, but two of the officers of the bank in writing guaranteed to the plaintiff, the payment of the note. Held, the sale to plaintiff and the agreement of guaranty were all one transaction and there was sufficient consideration. Hall v Oleson, 168 M 308, 210 NW 84.

Liability of endorser on promissory notes; effect of renewals, partial payments, and renewal of guaranty. Bank v Larson, 174 M 383, 219 NW 454.

While a guaranty lacking date of termination, is limited to a time that is reasonable, in this case it was held the time of the extension is not unreasonable as a matter of law and the defendants are liable. Continental v Lanesboro, 180 M 27, 230 NW 121.

Defendant, who intended to secure a deed to certain encumbered real estate from the owner, orally agreed with plaintiff, who had no interest in the properties, to pay the mechanic's lien thereon, held to be within the statute and a verdict was properly directed for the defendant. Bruce v Walters, 180 M 441, 231 NW 16.

The doctrine of part performance properly invoked in behalf of the remedy of specific performance, will not sustain an action at law for damages for breach of a contract within the statute of frauds. Hewitt v Parmenter, 181 M 454, 232 NW 919.

A promise to pay the existing debt of another, which promise arises out of a new transaction between the parties and for which there is a fresh consideration, is an original undertaking and not within the statute of frauds. Marckel v Raven, 186 M 125, 242 NW 471.

Where there was a complete performance of an agreement as to the cutting of pulpwood, and a joint tenant received equally with her cotenant the benefit, the case is not within the statute of frauds, even if she did not actually take part in the making of the contract. Morrow v Bank, 186 M 516, 243 NW 785.

Oral promise by defendant Speranza to pay for a special issue of a paper favoring the election of McMahon held to be an original undertaking. North Central v Speranza, 193 M 120, 258 NW 22.

Defendant sent $700.00 to plaintiff for investment who invested the money in a way unsatisfactory to defendant. Plaintiff in writing made certain promises to guaranty the bonds in which he had invested. Held to be an original undertaking, and not within the statute. Wigdale v Anderson, 193 M 384, 258 NW 726.

Agreement in open court as to extension of date of redemption upheld and the fact that the agreement included a transfer of a mechanical stoker does not vitiate it or place it within the statute. Bassin v District Court, 194 M 32, 259 NW 542.

The evidence supports the conclusion that appellant finance company promised to pay the premium for liability insurance issued in the name of a taxicab association and its individual member. The obligation was an original and primary one. Kenney v Horne, 194 M 357, 260 NW 358.

Acceptance of an order by a contractor drawn on him by a subcontractor and running to a bank which advanced money for a payroll is not an agreement to pay the debt of another, but an agreement by Anderson to pay his own indebtedness to the subcontractor, and was not within the statute. Bank v Anderson, 195 M 475, 263 NW 443.

A third person's verbal promise made to a creditor to pay the preexisting debt of a debtor is not within the statute of frauds when the creditor furnishes a consideration that is at least the equivalent in value to the amount of the preexisting debt. Rolfsmeyer v Rau, 198 M 213, 269 NW 411.

Evidence supported the determination that defendant's agreement to pay for dental services rendered by plaintiff to defendant's sister was an original undertaking and not within the statute of frauds. Wolfson v Kohn, 210 M 12, 297 NW 109.

Where there is no evidence that the daughters, Louise Matthews and Myrtle Hollo, agreed to guarantee the payment of indebtedness to plaintiff other than a statement by them that they intended to pay at their parents' death, and there was no evidence that they assumed such debt at the time they took the conveyance, or that they subsequently agreed to pay, the statute of frauds was a valid defense. Blodgett v Hollo, 210 M 298, 298 NW 249.

In the instant case, the contract in suit was not, as a matter of law, within the statute of frauds as one to answer for the debt or default of another. Smith v Minneapolis Securities, 211 M 537, 1 NW(2d) 841.

Notwithstanding the provisions of section 541.17, that no promise not in writing signed by the party to be charged thereby shall be evidence of a new or continuing contract to take a claim out of the operation of the statute of limitations, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute had run, he would make a new arrangement or settlement of plaintiff's claim and that plaintiff would not lose anything by waiting. Albachten v Bradley, 212 M 359, 3 NW(2d) 783.

Suretyship cases. 12 MLR 716.

4. Agreement upon consideration of marriage

Five separate actions were pending in district court between father and son. During the trial of the first case the father proposed orally that if the son would dismiss all actions, and permit the father to collect certain moneys claimed by both, he the father would deed a certain farm and personal property on it to the son upon his marriage to a certain lady. This being done the son brings action for performance. Slingerland v Slingerland, 39 M 197, 39 NW 146.

The statutory provision is imperative in this state, and no action can be maintained on the writing unless the statute has been complied with. In the writing: "I, the undersigned, herewith promise to pay to the widow Margarethe Gruenenfelder, on the wedding day when she shall become my wife, the sum of $1,000", the word "when" cannot be construed to mean "if", and no consideration has been expressed. Siemers v Siemers, 65 M 104, 67 NW 802.

An oral antenuptial agreement is voidable under the statute of frauds, but not void, and where an oral agreement entered into and reduced to writing before marriage and signed after marriage, held to have effect as an antenuptial contract, upon which an action may be maintained. Haroldson v Knutson, 142 M 110, 171 NW 201.

An agreement between husband and wife as to future testamentary disposal of property was abrogated by a will executed at a later date, and the disposition made by will was absolute. Hanefeld v Fairbrother, 191 M 547, 254 NW 821.

5. Promise discharged in bankruptcy

An action to enforce an obligation barred by a discharge in bankruptcy proceedings, based upon the obligor's subsequent promise to pay, must fail, unless there be strong, positive, and unequivocal proof both as to the identification of the debt and as to a distinct, unconditional, and present promise to pay. Pearsall v Tobour, 98 M 248, 108 NW 808.

Defendant received a discharge from his note through bankruptcy. The payee transferred the note to another. Subsequent to the bankruptcy proceedings, defendant gave a new note taking up the old. Held to be a complete recognition of the debt and defendant is liable. Stanek v White, 172 M 390, 215 NW 784.

513.02 AUCTIONEER'S MEMORANDUM.

HISTORY. R.S. 1851 c. 63 s. 4; P.S. 1858 c. 50 s. 4; G.S. 1866 c. 41 s. 8; G.S. 1878 c. 41 s. 8; G.S. 1894 s. 4211; R.L. 1905 s. 3485; G.S. 1913 s. 7000; G.S. 1923 s. 8457; M.S. 1927 s. 8457.

Modified or superseded by Chapter 512, uniform sales act, Laws 1917, Chapter 465.

Memorandum, entered by clerk of the auction in a sales book at the time the bid was accepted, was properly admitted as compliance with section 513.02 and was not repealed by uniform sales act. Sargeant v Bryan, 153 M 198, 189 NW 935.

513.03 GRANTS OF TRUSTS, WHEN VOID.

HISTORY. R.S. 1851 c. 64 s. 2; P.S. 1858 c. 51 s. 2; G.S. 1866 c. 41 s. 9; G.S. 1878 c. 41 s. 9; G.S. 1894 s. 4212; R.L. 1905 s. 3486; G.S. 1913 s. 7001; G.S. 1923 s. 8458; M.S. 1927 s. 8458.

Prior to the passage of Laws 1876, Chapter 44, an assignment of personal property, in trust for the benefit of creditors, accompanied with such delivery to the assignee as the nature of the property admitted, was not required to be in writing, and parol evidence of the completed verbal agreement is not excluded by the fact that the agreement is subsequently reduced to writing. Conrad v Marcotte, 23 M 55.

Agreement between husband and wife as to testamentary disposition of property held abrogated by subsequent disposition by will. Hanefeld v Fairbrother, 191 M 547, 254 NW 821.

Section 513.03 is not applicable to express oral trusts in personalty where full possession of the property is passed by the trustor to the trustee. In this case legal title passed to the trustee of the trust fund upon delivery thereof to him by Anna Gibson upon the express oral agreement that he was to invest the same and use it for her support during life and turn the balance over to her sister. Salscheider v Holmes, 205 M 459, 286 NW 347.

Necessity of a writing for personal property trusts in Minnesota. 17 MLR 315.

513.04 CONVEYANCE OF ESTATE OR INTEREST IN LAND; CERTAIN LEASES EXCEPTED.

HISTORY. R.S. 1851 c. 62 ss. 6, 7; P.S. 1858 c. 49 ss. 6, 7; G.S. 1866 c. 41 ss. 10, 11; G.S. 1878 c. 41 ss. 10, 11; G.S. 1894 ss. 4213, 4214; R.L. 1905 s. 3487; G.S. 1913 s. 7002; G.S. 1923 s. 8459; M.S. 1927 s. 8459.

1. Generally
2. Contractual phases
3. Leases
4. Trusts

1. Generally

A mortgage upon real estate cannot be created by a deposit of title deeds even though accompanied with a writing stating the object of the deposit. Gardner v McClure, 6 M 250 (167).

A covenant of seisin in a deed of real property is broken where the covenantor has not the possession, the right of possession, and the complete legal title. Allen v Allen, 48 M 462, 51 NW 473.

Defendant guaranteed the collection of certain secured notes. After the notes came due and were dishonored the defendant orally promised plaintiff that, if he would foreclose on and bid in the property, and if redemption was not made he would pay the full amount to plaintiff, the property to be deeded to defendant. Held to be within the statute and not taken out by plaintiff's performance. Veazie v Morse, 67 M 100, 69 NW 637.

An oral contract of employment covering a period in excess of one year is within the statute and non-enforceable, but evidence of its terms are admissible in computing the compensation for the period performed. Spinney v Hill, 81 M 316, 84 NW 116.

When a deed is deposited in escrow to be delivered on compliance with certain conditions; the escrow agreement may be declared orally; the depositor may not withdraw it without consent of the other party; and a party may waive provisions made for his sole benefit. The escrow is not defeated by the death of the proposed grantor, and its provisions may be enforced. Tharaldson v Everts, 87 M 168, 91 NW 467.

A deed absolute on its face may be shown by parol to be a mortgage to secure future advances and the performance of contractual duties. The evidence to have such an effect, must be clear, positive and convincing. A parol agreement for the conveyance of an interest in land, not to be performed within a year, may be taken out of the statute by part performance. Stitt v Rat Portage, 96 M 27, 104 NW 561.

An oral agreement to receive title to land by an absolute conveyance from the owner, and to hold the same as security for money advanced to a purchaser of the land for the purpose of making payments under his contract of purchase, is not contrary to the statute, and may be specifically enforced against the grantee. Grant v Stewart, 96 M 230, 104 NW 966.

To take a parol gift of land out of the statute of frauds, the donee must not only enter into possession of the premises, but also make improvements thereon, or perform such other acts with reference thereto as would make it inequitable not to enforce the gift. Snow v Snow, 98 M 348, 108 NW 295.

The mere fact that a transfer of a land contract to a mother by a married daughter was invalid, because not also signed by the latter's husband, does not entitle the husband and wife to have the deed set aside in equity and the title confirmed in the wife, where it appeared that the mother, in fairness, should have held the legal title. Laythe v Minnesota Loan, 101 M 152, 112 NW 65.

To render valid a contract by an agent for the sale of real property of his principal, his authority to make the same must, under the statute be in writing; and the fact the principal authorizes the agent to accept an offer by telegram does not, in the absence of facts creating an estoppel, obviate the lack of written authority in the agent. A contract so entered has the effect of an oral contract, and is enforceable only when there has been a substantial part performance. Thomas v Rogers, 108 M 132, 121 NW 630.

The defendant executed to plaintiffs a written instrument, whereby he assigned to them all interest in and to land, then owned by his mother, which should thereafter accrue to him as one of her heirs, to secure a debt to them. After the mother's death plaintiff brought action to foreclose upon defendant's interest in the mother's estate. The answer alleged that before the mother's death, plaintiffs agreed orally to cancel the assignment in consideration of the giving by defendant of renewal notes and a bill of sale of certain chattels to secure their payment. Held, that oral evidence as to this defense was admissible, and the transaction was not within the statute, and the original agreement was canceled. Elliott v Robbins, 110 M 481, 126 NW 65.

The evidence was sufficient to warrant a finding that appellant, Hoerr, agreed to credit a stipulated amount on certain mortgage notes, in consideration of the relinquishment of all interest in a timber contract which had been assigned to him by defendant Babcock. Such agreement was not the purchase of an interest in real estate. Bank v Babcock, 113 M 493, 129 NW 1045.

A mortgage to secure an existing debt which gives to the mortgagee a preference over other creditors of the mortgagor is not for that reason fraudulent. Such mortgage may be set aside, if part of a plan to defraud creditors and the mortgagee be chargeable with notice of that fact. This action is to foreclose a preferential mortgage, but if any fraud existed the mortgagee was not chargeable with notice of it, and the mortgage is valid. Bank v McKinley, 129 M 481, 152 NW 879.

Defendant Koch consented to act as a nominal vendee in a contract for the purchase of land by plaintiff, and verbally agreed that upon the conveyance to him by the vendor he would in turn convey to plaintiff, who paid the purchase price of the land. Held, the transaction being wholly executory is not affected by the statute and may be enforced against the vendor the plaintiff. Watters v Railway, 141 M 480, 170 NW 703.

The evidence is sufficient to establish a complete verbal gift from father to son, accompanied by delivery of possession and such performance by the donee as to render the verbal gift effectual taking the case out of the statute. Evanson v Aamodt, 153 M 14, 189 NW 584.

The broker does not become entitled to his commission by tendering a contract signed by the proposed purchaser, unless the contract can be enforced against the purchaser if accepted and executed by the owner. Huntley v Smith, 153 M 300, 190 NW 341.

A promise to execute a mortgage is within the statute and not enforceable. Eulter v Levin, 166 M 158, 207 NW 315.

An agreement to pay a vendee in an executory contract for the purchase of land, a sum of money for his abandonment of such contract is not within the statute. Vought v Porter, 168 M 43, 209 NW 642.

Public officials who have no personal pecuniary interest in the matter involved will not be permitted to raise the question of the constitutionality of a statute to avoid the performance of a ministerial duty which it clearly imposes upon them. Clinton Falls v County, 181 M 427, 232 NW 737.

Part performance of an oral contract for the conveyance of lands held not sufficient to take the case out of the statute. Arntson v Arntson, 184 M 60, 239 NW 820.

The basis for a suit in equity for specific performance of an oral contract, void under the statute, is that plaintiff has so changed his position, made improvements or rendered service in reliance on the contract, that he cannot obtain adequate compensation therefor at an action at law, and that to deny him relief would cause him unjust and unreasonable injury and loss amounting to fraud. Plaintiff not coming under this rule is not entitled to recover. Hoppel v Hoppel, 184 M 377, 238 NW 783.

An oral agreement to extend the due date of a past due mortgage was not void as an attempt to vary the terms of a written instrument, which instrument was within the statute of frauds. Hawkins v Hayward, 191 M 543, 254 NW 809.

An easement, whether by grant or prescription, may be modified or relocated by agreement between the owners of the dominant and servient estates. Such agreement is within the statute of frauds; but if the oral agreement has been executed or so far carried out that one of the parties is estopped, the law may regard the new easement as substituted for the old. Schmidt v Koecher, 196 M 178, 265 NW 347.

The doctrine of part performance rests on the ground of fraud. The underlying principal is that where one of the contracting parties has been induced or allowed to alter his situation on the faith of an agreement within the statute to such an extent that it would be a fraud on the part of the other party to set up its invalidity, equity will make the case an exception to the statute. Equity will not permit the statute of frauds, the purpose of which was to prevent fraud,

to be used as a means of committing it. Schaefer v Thoeny, 199 M 610, 273 NW 190.

Deceased orally promised to devise all property owned by him at his death to appellant in exchange for her promise to give him a home for the balance of his life. Appellant performed her part of the agreement fully but the deceased died intestate. The agreement is within the statute of frauds, and such contract is indivisible and an entirety and must be enforced as such including both realty and personalty. Damages for breach of the contract cannot be allowed. All the appellant can receive is the reasonable value of her services. Estate of Roberts, 202 M 217, 277 NW 549.

A party in possession of land under parol gift may testify directly to the fact that he made improvements on the land and paid the taxes in reliance upon the gift. Henslin v Wingen, 203 M 166, 280 NW 281.

Parties in pari delicto. 2 MLR 544.

Future estates. 4 MLR 318.

Adverse possession under parol gift. 7 MLR 342.

Sufficiency of signature to memorandum. 16 MLR 327.

Parol sale of a building or fixtures permanently affixed to realty. 18 MLR 234.

2. Contractual phases

An oral contract between parties that one should purchase land at a certain price, and when sold the profit be divided was not within the statute, and no trust was created, and the contract was a valid one. Snyder v Walford, 33 M 175, 22 NW 254; Fountain v Menard, 53 M 443, 55 NW 601.

An agreement between parties to purchase real property as an investment, all contributing but the title taken in the name of one, is in the nature of a partnership and is valid though not in writing. This imposes a relation of a fiduciary character, and if one obtains an unauthorized advantage he can be compelled to account to his associates. Newell v Cochran, 41 M 374, 43 NW 84.

Plaintiff and Uplinger entered into a written contract for the exchange of real property, the contract containing a provision that Uplinger might examine the land before accepting the contract. Held that to be valid the acceptance must be in writing. Acceptance could not be made effectual by his agent unless the power was in writing. Newlin v Hoyt, 91 M 409, 98 NW 323.

An easement may be extinguished or modified by a parol agreement granted by the owner of the dominant tenement and executed by the owner of the servient tenement and the consent of the parties to the substitution of one way for another may be implied from their acquiesence. Davidson v Kretz, 127 M 313, 149 NW 652.

Action for specific performance of an oral contract for sale of real estate. Plaintiff entered into an oral contract whereby defendant was to build a house on a lot and convey to plaintiff. The sum was agreed upon, and plaintiff (employed by defendant) was to pay $10.00 per month beginning with occupancy and the taxes which defendant paid from year to year. Plaintiff took immediate possession, built a barn which he occupied until the house was ready, and made other improvements, and occupied the house as his home. Held, that what the plaintiff did was sufficient part performance to take the case out of the statute. Porten v Peterson, 139 M 152, 166 NW 183.

An agreement for sale of a two-story frame building built on a permanent stone foundation, to be wrecked and removed by the buyer, is a sale of an interest in land, and, under the statute, is required to be evidenced by writing. Rosenstein v Gottfried, 145 M 243, 176 NW 844.

Where the plaintiff's parents on plaintiff's coming of age agreed in consideration that he remain at home and help on the farm to deed him a part of the parents' farm upon his marriage, the acts of the plaintiff in taking possession, paying taxes, and making improvements in reliance of the promise of the parents, is a sufficient part performance to take it out of the statute. Kociemba v Kociemba, 146 M 62, 177 NW 927.

Plaintiff performed services and furnished goods to his mother under oral contract that she would convey to him a farm for a certain price, and if she

failed to do so, to pay cash for what she had received from him. She died without having tendered the deed. Held, that her failure to avail herself of the option, the obligation as to a cash payment became fixed at her death and a cause of action on the contract accrued. Welsh v Welsh, 148 M 235, 181 NW 356.

An agreement between an attorney and client that the attorney receive as part of his fee a portion of certain land involved in the litigation is within the statute and in order to be valid such agreement must be in writing. Oxborough v St. Martin, 151 M 514, 187 NW 707.

A party may make a valid contract to bequeath property by will. Such contracts, if verbal may be taken out of the statute of frauds by part performance. Whitman v Dittman, 154 M 346, 191 NW 821.

Conveyance to agent in part payment of services in financing certain property, held not to be within the statute. Blanchard v Hoffman, 154 M 525, 192 NW 352.

An offer by a land owner to allow a city to connect its water works with an artesian well on his land, if the city would furnish him with water free of charge, was accepted and acted on for more than 20 years. Held to be an interest in land and within the statute, and all the city obtained was a revocable license. Hutchinson v Wagner, 157 M 41, 195 NW 535.

A letter, written by defendants proposing to sell a building and give a ground lease for a term of years did not become an enforceable contract by plaintiff's appending thereto the following: "Accepted: 8/8-22. Nathan Kris, providing conditions of lease are satisfactory". Kris v Pattison, 159 M 213, 198 NW 541.

The defendant, being agent for sale of a farm induced plaintiff to purchase by agreeing to obtain a purchaser at a stated profit within a stated time. Held, the contract was one to procure a purchaser, and was not within the statute as a contract for the sale of lands. Smith v Vosika, 166 M 18, 208 NW 1.

There was a contract between husband and wife whereby she was bound to make the agreed testamentary disposition of property left her by her husband; his will was of such nature as to its terms that, coupled with other evidence of the testator's intention, it was properly held that the agreement had been abrogated, and the final disposition under the husband's will was intended to be absolute. Hanefeld v Fairbrother, 191 M 547, 254 NW 821.

Certain conveyance by plaintiffs to defendants were obtained by fraudulent means. Mere delay does not constitute laches unless it is culpable under the circumstances. The important question in such case is whether there has been such unreasonable delay in asserting a known right resulting in prejudice to others as would make it inequitable to grant the desired relief. Peterson v Schober, 192 M 315, 256 NW 308.

The inflexible rule "once a mortgage always a mortgage" and the doctrine whereunder a deed absolute in form may be declared a mortgage if it was so intended are in operation wholly independent of the statute of frauds. An oral contract on the one hand to make and on the other to accept a mortgage on real estate is unenforceable if not void under the statute of conveyances and the statute of frauds. The equitable doctrine of part performance is inapplicable to an action for damages for breach of contract as distinguished from one of specific performance. Hatlestad v Mutual Co. 197 M 640, 268 NW 665.

Where former owners of a homestead remain in possession thereof after their title has been lost by foreclosure, and, while so in possession, the holder of the title conveys to the wife of one of the persons upon the promise of the wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v Anthony, 204 M 432, 283 NW 753.

Instrument evidencing a contract between a farmer and the promoter construed and found to create an estate of "profit a prendre", and not merely a revocable license to hunt over the premises. Minnesota v Northline, 207 M 128, 290 NW 222.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint herein is held to state facts from which it may be inferred that defendant will be unjustly enriched unless plaintiffs recover the value of their services rendered while permitted to perform their part of the oral

contract, less the benefits received during such time. Pfuhl v Sabrowsky, 211 M 441, 1 NW(2d) 421.

Comments on the statute of frauds relating to contracts. 14 MLR 746.

Promise to make a gift of realty. 15 MLR 825.

Requisites and sufficiency of writing. Necessity of delivery to and acceptance by vendee of memorandum signed by vendor. 18 MLR 362.

Oral partnership agreements for the purpose of dealing in land. 19 MLR 581.

Non-consensual suretyship. 26 MLR 890.

3. Leases

The surrender of a lease of real estate for ten years, may be established by parol. Levering v Langley, 8 M 107 (82).

Husband could not by oral authority make a valid lease of the wife's property, and as the term was for more than one year the wife's adoption being a new contract, was within the statute. Sanford v Johnson, 24 M 172.

Evidence sustains the finding that there was no yielding up of the leasehold estate under any mutual agreement for the extinction thereof. Dayton v Craik, 26 M 133, 1 NW 813.

A surrender by operation of law takes place where the owner of a particular estate has been a party to some act, the validity of which he is by law estopped from disputing and which would not be valid if his particular estate had continued to exist, and where the tenant surrenders a portion of the rented premises, and the value of the retained portion is not impaired by the surrender, the landlord may recover the entire amount of the rent. Smith v Pendergast, 26 M 318, 3 NW 978.

An oral lease for a term of three years, with a right in the lessor to terminate it at any time upon four months' notice, is void, but it regulates the terms of the tenancy as respects rent during the time of occupancy. Evans v Winona, 30 M 515, 16 NW 404; Steele v Anheuser, 57 M 18, 58 NW 685.

A lease of four rooms at a gross monthly rental, dated February 5, 1883, the tenants to have immediate possession of two of the rooms, and the term to continue to May 1, 1884, is a lease for more than one year and the authority of the agent to make such lease must be in writing, and a ratification of such lease must be in writing. Judd v Arnold, 31 M 430, 18 NW 151.

When leased premises are held from month to month, without any limitation as to time when the estate is to be determined, either party is entitled to notice of the determination of the estate by the other, a mere tender of the keys or similar act does not obviate the necessity of notice. Finch v Moore, 50 M 116, 52 NW 384.

Occupation of urban property and rental payments monthly, are insufficient, standing alone, to indicate an intention to create a yearly tenancy; a parol demise, void under the statute, cannot be resorted to for the purpose of ascertaining the duration of the term of the tenant. Johnson v Albertson, 51 M 333, 53 NW 642.

A principal, knowing that an unauthorized agent has made a contract, who enters into and occupies the premises, will be deemed to have ratified it, and neither the contract of leasing, nor the ratification need be in writing. Ehrmanntraut v Robinson, 52 M 333, 54 NW 188.

The statutory right of a mechanic's lien is not an estate in land that requires a release procedure under section 513.04, and may be waived by an instrument in writing, supported by a money consideration, paid by a third party. Burns v Carlson, 53 M 70, 54 NW 1055.

Acts on the part of the tenant indicative of an intent to abandon leased premises, and on the part of a landlord to resume possession, must, to bind the parties, and to amount to a surrender by operation of law, be notorious and sufficient to operate by way of estoppel. Stern v Thayer, 56 M 93, 57 NW 329.

A surrender of a lease by operation of law cannot be implied from the mere fact that the lessor assented to an assignment of the lease, and subsequently accepted rent from the assignee in possession. Rees v Lowy, 57 M 381, 59 NW 310.

Surrender of leasehold by operation of law as well as by consent of parties. Lafferty v Hawes, 63 M 13, 65 NW 87.

Claimant under a deed which is in fact a mortgage does not have sufficient title as a basis for an action for possession. Failure of the tenant to give required written notice of renewal of lease can only be relieved against by application to a court of equity. Tilleny v Knoblauch, 73 M 108, 75 NW 1039.

Where the tenant removes from premises without notice, the landlord may recover future rent even though he fails to prove a written lease. Prendergast v Searle, 74 M 333, 77 NW 231.

Evidence sustains a finding that the tenant surrendered the premises and the landlord's agent accepted them and resumed possession. Buckingham v Dofoe, 78 M 268, 80 NW 974.

A parol agreement to execute a lease of real property, the lease when executed to extend over a longer period than one year, is within the statute of frauds and unenforceable. Cram v Thompson, 87 M 172, 91 NW 483; Hanson v Marion, 128 M 468, 151 NW 195.

A sharecropper tenant may, before a division of the crop is had, mortgage his interest therein; but subject to the rights of the landlord. A parol modification of a written contract of sharecrop tenancy, acted on by the parties, and a crop raised thereunder, is not void under the statute. Part performance takes it out of the operation of the statute. Denison v Sawyer, 95 M 417, 104 NW 305.

An agreement was made by one person to transfer certain elevator stock in consideration of the transfer to him of certain other stock, and the conveyance of a certain elevator standing on a railway right of way. The stock was mutually transferred. This is an action in damages because the elevator was not conveyed. Held: (1) No equitable relief may be granted; (2) The agreement with the railroad company concerned an interest in land, and a lease for more than one year, and was void under the statute of frauds; (3) The contract was entire and indivisible, and being void in part was void in whole. Todd v Bettingen, 98 M 170, 107 NW 1049.

In an action by a landlord to recover rent under a written lease, the trial court denied defendant's application for leave to amend his original pleading, a general denial, by alleging also, by way of confession and avoidance, a subsequent oral agreement of the parties inconsistent with plaintiff's right to recover, and excluded evidence to that effect. Held to be error. Rees v Storms, 101 M 381, 112 NW 419.

A real estate lease for more than one year cannot be canceled and surrendered by parol agreement. But, when a landlord verbally agrees with his tenants to cancel and surrender and the tenant performs by vacating the premises, and the landlord acquiesces by resuming possession, the landlord is estopped from asserting his right to enforce the covenants of the lease. Millis v Ellis, 109 M 81, 122 NW 1119.

The owner of an apartment house placed the exclusive management of the property in the hands of an agent, who undertook to pay the expenses of operations and to pay the owner a fixed monthly income, in consideration of the agent retaining the overage as his compensation. Held, that by virtue of the contract the agent has authority to lease one of the apartments for a term of years and take in payment of the rent a conveyance of a house and lot, the deed being taken to himself. King v Benham, 172 M 40, 214 NW 759.

The statute of frauds does not prescribe a mere rule of evidence but precludes the substantive right of action upon a contract within it. Bruder v Wolpert, 178 M 330, 227 NW 46.

Taking possession of and operating a farm under an oral lease void under the statute creates a tenancy at will, which may be terminated only by statutory notice. Hagen v Bowers, 182 M 136, 233 NW 822.

A 30-year lease, and a subsequent modification thereof, taken by a promoter of a bank to be organized, and containing provisions that a bank could not lawfully assume, was not adopted by the action of the bank in improving the property, occupying the premises and paying the rent. Veigel v O'Toole, 183 M 407, 236 NW 710.

New trial ordered in case where lease and automobile agency contracts were modified by parol. Oakland v Kremer, 186 M 455, 243 NW 673.

In construing a tenancy, and contract whereby the tenant was to cut pulpwood, and in which the wife as one of the owners did not join in writing, it was held that in view of part performance, and her tacit consent, the statute of frauds is not availing as a defense. Morrow v Bank, 186 M 516, 243 NW 785.

A lease for a term of three years, could not be terminated or modified by parol. Hoppman v Persha, 189 M 40, 248 NW 281.

In construing the effect of a lease, if the answer admit the alleged promise or agreement, the defendant waives the benefit of the statute, unless he pleads or claims the benefit of it in connection with the admission. Vethourlkas v Schloff, 191 M 573, 254 NW 909.

The evidence supports the trial court in finding that a tenant surrendered its lease and the landlord accepted the surrender and terminated the relationship. Sjoberg v Hartz, 199 M 81, 271 NW 329.

4. Trusts

Plaintiff settled upon and improved government lands, and agreed, by parol with defendant, that the latter might enter it in his own name, at the land office, and pay for it, and convey it to plaintiff when he should repay the purchase price. Held, the contract was within the statute of frauds, and no trust resulted in favor of the plaintiff. Wentworth v Wentworth, 2 M 238 (277).

A contract by a preemptor about to preempt land, by which he agrees to give another an interest in the land, is void. Evans v Folsom, 5 M 342 (422).

Where the legal title to lands which are partnership property, is so held by one or more, a trust in favor of the partnership arises by operation of law. Such trust is not done away with by the statute of uses and trusts. Arnold v Wainright, 6 M 358 (241); Sherwood v Railway, 21 M 127.

Plaintiff by defendant's permission, purchased, in defendant's name, a town lot for $250.00 paying $70.00 thereon, and taking a complete contract of purchase in defendant's name, upon defendant's promise to hold the lot in trust for plaintiff. The agreement between plaintiff and defendant was oral. Held, the contract as to the real estate was unenforceable, but plaintiff may recover the $70.00 in assumpsit. Johnson v Krassin, 25 M 117.

A vendee of land is to be treated as the equitable owner, and his equitable interest may become the subject of a trust or power in trust, and is capable of being mortgaged. Where an absolute deed is made to a grantee, with the intention of establishing a trust, and, as a part of the transaction, an agreement or declaration of trust is duly executed by the parties in interest, such deed and agreement may be construed together as establishing a trust. Randall v Constans, 33 M 329, 23 NW 530.

Where three persons engaged in a real estate investment, and one of the three received a secret and valuable advantage over the other two, he is held to be trustee of the property secretly acquired and must account to them for their position. Hodge v Twitchell, 33 M 389, 23 NW 547.

To constitute a sufficient declaration of trust in real estate, the deed or instrument must disclose facts creating a fiduciary relation between the parties, and the terms of the trust. A married woman cannot declare a trust unless her husband join in the deed. Totge v Totge, 34 M 272, 25 NW 596, 26 NW 121.

In surcharging the account of an administrator of an estate, held, mere verbal declaration of a trust, where there is no fraud or bad faith except that which arises from merely refusing to carry out the promise, is void as within the statute of frauds, and the statute of uses and trusts. Ryan v Williams, 92 M 506, 100 NW 380.

Plaintiff brought an equitable suit against his sister, asserting an interest in certain real property. The court found the evidence insufficient to establish a trust. Rawson v Morris, 93 M 499, 101 NW 970.

A vacant lot, lying between the lake homes of plaintiff and defendant, was purchased by the defendant. This action is by plaintiff to enforce an alleged trust, and to compel the defendant to convey one-half of the lot to plaintiff, on payment to the defendant of one-half of the purchase price. Held: (1) If an agent to purchase land for another with money furnished by that other takes title in his own

name, without the assent of the principal, he will hold the legal title as trustee for his principal; (2) If the agent buys with his own money, and the principal advances no part of the price, and the right of the principal rests on a verbal agreement, which is denied, no resulting trust can arise. Dougan v Bemis, 95 M 220, 103 NW 882.

A mere verbal promise by a grantee to hold the legal title to land in trust for the benefit of the grantor and to reconvey it on demand, where there is no bad faith except that which arises from a mere refusal to carry out the promise, is void within the statute. Where a party obtains the legal title to land from another by fraud or by taking advantage of confidential or fiduciary relations, or in any other unconscientious manner, so that he cannot justly retain the property, equity will impress a constructive trust upon it in favor of the party who is equitably entitled to it. Henderson v Murray, 108 M 76, 121 NW 214.

An express trust in favor of the beneficiary cannot, by parol proof, be ingrafted upon a deed which is absolute in form, and the failure of the intended express trust does not result in a constructive trust. Harney v Harney, 170 M 479, 213 NW 38.

Plaintiff furnished defendants, husband and wife, money with which to purchase a home. The husband agreed that upon completion of the title, the defendants would execute a mortgage to plaintiff on the purchased premises. On defendants' refusal to execute the promised mortgage, this action to have a lien declared is brought. Held: the lien is prevented by statute. Bank v Lentz, 171 M 431, 214 NW 467.

The rule that equity will impose a constructive trust upon land obtained by bad faith in favor of the party equitably entitled to it rests upon the moral obligation to refrain from placing one's self in positions which may incite conflicts between self interest and integrity. The statute of conveyances excepts from its scope trusts arising by operation of law. In the instant case the defendant is held to be a trustee for the plaintiff not because of his interest but in spite of it. Whitten v Wright, 206 M 423, 289 NW 509.

Necessity of a writing for personal trusts. 17 MLR 313.

Constructive trusts. 25 MLR 717.

513.05 LEASES; CONTRACTS FOR SALE OF LANDS.

HISTORY. R.S. 1851 c. 62 ss. 8, 9; P.S. 1858 c. 49 ss. 8, 9; G.S. 1866 c. 41 s. 12; G.S. 1878 c. 41 s. 12; 1887 c. 26; G.S. 1894 s. 4215; R.L. 1905 s. 3488; G.S. 1913 s. 7003; G.S. 1923 s. 8460; M.S. 1927 s. 8460.

1. Generally
2. Memorandum
3. Agent's authority
4. Contracts within or not within the statute
5. Recovery of payments

1. Generally

To entitle a party to the specific performance of an alleged contract to convey real property, the contract must be clearly proved, and its terms should be so specific and distinct as to leave no reasonable doubt of their meaning. An offer in writing to sell lands, must be accepted in writing; a mere oral acceptance is insufficient. A part performance such as will take the parol agreement out of the statute must be something more than the deposit of the purchase price. Lanz v McLaughlin, 14 M 72 (55).

To constitute delivery of a deed of conveyance, it must not only be delivered by the grantor but accepted by the grantee, with the intent that it shall be operative. Where delivery is not complete the deed cannot operate as a contract to convey, specific performance of which will be enforced. Comer v Baldwin, 16 M 172 (151).

An agreement to purchase, at a stated price, flax straw of a certain amount, and it appearing that the amount will be greater in amount than $100.00, is within the statute, and no part of the purchase money having been paid, nor the straw

accepted, it is incompetent to show that the written evidence of the sale required by statute has been modified by parol. Brown v Sanborn, 21 M 402.

On the town plat of the town of Wells was left, undivided into lots, a strip of land on which were the words, "Reserved for right of way, S. M. R. R.". Held, this was not a donation of the land to the railroad company. Watson v Railway, 46 M 321, 48 NW 1129.

Plaintiff purchased a piece of land from defendant, who retained ownership of adjoining land. To induce plaintiff to purchase, defendant fraudulently pointed out trees as being located on the purchased portion. Later he cut the trees and marketed the timber and plaintiff sued for their value. Held, the statute of frauds has not abrogated the doctrine of estoppel in pais, as applied to purchases of real estate, and defendant by his false representations is estopped from claiming the trees. Bell v Goodnature, 50 M 417, 52 NW 908.

Where parties enter into an oral contract for the vacation of a plat of real property and the replatting of same, which is done, and a further oral agreement is made that one of the parties shall convey to the other a portion of the replatted premises, but which portion it is admitted cannot be located or described, and that, therefore, specific performance cannot be enforced, and there has been no entry into possession of said premises under the contract, an action for damages for nonperformance of the oral contract cannot be maintained, as it is within the statute and void. Fargusson v Duluth, 56 M 222, 57 NW 480.

To establish a contract for the sale of property by letters passing between the parties, it must appear that there is a clear accession on both sides to one and the same set of terms. Arnes v Smith, 65 M 304, 67 NW 999.

While a written contract, within the statute of frauds, cannot, so long as it remains executory, be altered orally, so as to bind the parties, as a part of the contract, yet evidence is admissible to prove an oral waiver of performance according to the terms of the contract as a ground for forfeiture, as, for example, by orally agreeing to extend the time of payment. Scheerschmidt v Smith, 74 M 224, 77 NW 34.

There is abundant authority to support the view that a contract which public policy requires to be in writing cannot be changed or modified by parol. Held that a modification of grain warehouse receipts made subsequent to their execution, was invalid, and that these contracts must be interpreted upon their original provisions expressed in writing. Thompson v Thompson, 78 M 379, 81 NW 543.

An agreement for the purchase of standing timber is a contract for an interest in lands, is within the statute of frauds, and must be in writing. Kileen v Kennedy, 90 M 414, 97 NW 126.

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

In this unlawful detainer action the defense was part performance of an oral lease void under the statute of frauds. Held, the evidence failed to show that the alleged acts of parol performance were done pursuant to and in reliance on such lease. Koch v Fischer, 122 M 123, 142 NW 18.

Plaintiff, a land broker, procured the sale of a tract of land from a third party to defendant, the contract being taken in the name of the defendant. The evidence sustains the finding of the jury that there was an agreement between plaintiff and defendant that the land was bought for their joint benefit. Such contract was a joint adventure and was not a sale to plaintiff of an interest in land, and was not within the statute of frauds. Sonnesyn v Hawbaker, 127 M 15, 148 NW 476; Kent v Costin, 130 M 450, 153 NW 874.

A parol agreement to execute a lease of real property, the lease when executed to extend over a longer period than one year, is within the statute of frauds and unenforceable. Hanson v Marion, 128 M 468, 151 NW 195.

As to assignment of certificates of state or school lands. Krelwitz v McDonald, 135 M 408, 161 NW 156; Werntz v Bolen, 135 M 449, 161 NW 155.

Where a contract for the sale of real estate has been modified by parol and performed as so modified, it is no longer within the statute, and the consideration for performing it as modified received by one party from the other, may be shown

by parol. Durdahl v Tostenson, 150 M 414, 185 NW 494; Erickson v Kleinman, 195 M 623, 263 NW 795.

Where a vendee, also at that time a tenant of the vendor, under and in reliance upon an oral contract to purchase, makes valuable improvements on the property, and the vendor refuses to carry out the contract, the vendee may recover for such improvements to the extent that they enhanced the value of the property. Schultz v Thompson, 156 M 356, 194 NW 884.

Where parties conducted a saloon and restaurant as partners, on the dissolution of the partnership and sale of the lease, the evidence was sufficient to justify a finding of performance to take an oral agreement relating to the lease out of the statute. Carlson v Johnson, 156 M 416, 195 NW 41.

A landowner allowed the city of Hutchinson to connect its water-works with an artesian well on his land, the city in return to furnish him with water free of charge. This agreement was in force for more than 20 years. The agreement was not in writing and the duration of the privilege was not specified. Hutchinson v Wegner, 157 M 41, 195 NW 535.

Where a purchaser of land has paid the entire purchase price and nothing remains to be done except the execution and delivery of the deed, and the vendor is able and willing to perform, a creditor of the vendor, with notice, cannot step in and urge that the contract was invalid under the statute. Scott v Bank, 173 M 225, 217 NW 136.

A lease for a term of three years could not be terminated or modified by parol. Hoppman v Persha, 189 M 40, 248 NW 281.

Where former owners of a homestead remain in possession thereof after their title has been divested by mortgage foreclosure, and while in possession the holder of the title conveys to the wife of one of such persons upon the promise of husband and wife to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v Anthony, 204 M 432, 283 NW 753.

Although statute of frauds requires a writing when realty is concerned, a party may without writing so conduct himself with reference to it that he will be estopped from afterward asserting a claim thereto. Holders of judgment liens against realty not in the name of the judgment debtor were "estopped" from asserting priority of their liens against purchaser of realty whom they failed to join as a party in action to establish a resulting trust, and to whom they gave assurances in writing of intention not to disturb his rights as purchaser. Roberts v Friedell, 218 M 88, 15 NW(2d) 496.

Requirement under the statute of frauds, contract to pay commission be in writing. 6 MLR 167.

2. Memorandum

Inaccuracies of description in an instrument conveying real estate may be helped by averment and proof. Baldwin v Winslow, 2 M 213 (174).

An agreement "to execute and deliver to each and every lot owner who may have title thereto from J. B. and wife, or from either of them, in any portions of lot 4, section 29, town. 111, north of range 10 west, a good and sufficient deed in fee simple", is void, because it does not show what property such deed is to convey. Sharpe v Rogers, 10 M 207 (168).

The proper evidence of a sale of real estate on execution, is the certificate prescribed by statute, and no other note or memorandum is required to make it a valid contract, and the sheriff may maintain an action in his individual name for the sum bid at the sale. Armstrong v Vroman, 11 M 220 (142).

Certain letters of offer and acceptance passing between plaintiff and defendant relating to the sale of real estate held to satisfy the requirements of the statute, and entitled the plaintiff to specific performance, and to entitle the plaintiff to a decree passing a clear title even though the defendant's wife refuse to join in a deed. Sanborn v Nockin, 20 M 178 (163).

In a contract for the sale of lands, the memorandum in writing required by the statute must disclose upon its face the subject matter of the contract, and the

land so described that it may be identified. Its location and identification may be by parol. If the contract is contained in letters their connection and relations to each other must appear from the writings themselves. Tice v Freeman, 30 M 389, 15 NW 674.

A written contract for the sale of "two and one-half acre tract of land, being the first half of the five-acre tract along by the fence just back of the Chicago Catholic Burying-ground", does not describe any land as the subject of the sale, so as to satisfy the statute of frauds. A complaint for specific performance, based upon such contract, held demurrable. Pierson v Ballard, 32 M 263, 20 NW 193.

Memorandum of contract to sue land held sufficient. Romans v Langevin, 34 M 312, 25 NW 638.

In an action for specific performance a written memorandum of an agreement for the sale of "N. W. ¼ of section 1, township 49, range 15" without other description except that the one who signed designated himself as owner, held to be a sufficient description under the statute of frauds, the court taking judicial notice of the general system of government surveys. Quinn v Champagne, 38 M 322, 37 NW 451.

Judgment for the defendant, the proposed purchaser, in an action for specific performance because of the faulty and indefinite wording of the terms. The phrase "the securities for the deferred payments" held to be too uncertain. George v Conhaim, 38 M 338, 37 NW 791.

This agreement for the purchase of land, executed prior to the 1887 amendment of the statute, held void for uncertainty in that it did not sufficiently name or describe the vendor. Under the statute the vendor must be so designated that he can be identified without parol proof. Clampet v Bells, 39 M 272, 39 NW 495.

A description of land, in an agreement to convey, as "five acres, lot 3, section 23" there being nothing to show what five acres is intended, is not a good description, and the defect cannot be supplied by parol. Nippoldt v Kammon, 39 M 372, 40 NW 266.

An agreement for the conveyance of a designated number of acres "in" a specified larger tract of land, the subject of the agreement not being otherwise designated, is ineffectual, because of uncertainty, to transfer or create an interest or right in any land. Brockway v Frost, 40 M 155, 41 NW 411.

Where a land contract set forth in the complaint in an action for specific performance contains a complete and certain description on its face, it is a matter of defense that the description is false. The court cannot take judicial notice of the records of land titles in the office of the register of deeds, or of the existence or absence of town plats therein. Williams v Langevin, 40 M 180, 41 NW 936.

A contract for the sale of lands cannot rest partly in writing and partly in parol. A modification of a written contract imposing new terms and obligations upon one of the parties thereto must be in writing, and upon a sufficient consideration. Heisley v Swanstrom, 40 M 196, 71 NW 1029.

Certain correspondence between the parties held insufficient, as a written memorandum of a contract for sale of land, for the reason that it contained no description of the subject matter. Taylor v Allen, 40 M 433, 42 NW 292.

It is not essential to the validity of a contract for the sale and conveyance of real property that the particular tract of land to be conveyed be described with precision, provided the writing furnishes the means, or points out the method, by which, without further agreement of the parties, the description may be ascertained. (Distinguishing Nippoldt v Kammon, and Brockway v Frost) Burgon v Cabanne, 42 M 267, 44 NW 118.

Defendants executed to plaintiff a writing whereby they agreed to convey to him a piece of land out of a certain 80-acre tract to be not less than 40 by 120 feet, and to front on a public street, the particular location and description to be thereafter mutually agreed upon by the parties. The particular description was never agreed upon. Held, not to constitute a contract, but a mere expression to make a contract in the future. Scanlon v Oliver, 42 M 538, 44 NW 1031.

An agent authorized to sell real estate does not earn such compensation by procuring a person to proceed so far towards a contemplated purchase as to pay a part of the price as earnest money, but who enters into no obligatory contract to purchase, and who, upon examination of the title, refuses to accept a deed of con-

veyance. Overruled in part by Western v Bank, 80 M 317, 83 NW 192. Yeager v Kelsey, 46 M 402, 49 NW 199.

Reformation of a contract for the sale or exchange of lands, and a specific performance of the contract so reformed, may be had in one and the same action. Ham v Johnson, 51 M 105, 52 NW 1080.

The vendee in a contract for the purchase of land need not sign the same to give it validity. Overruling Yeager v Kelsey, 46 M 402, 49 NW 199. Western Land v Banks, 80 M 317, 83 NW 192.

The memorandum of a contract for the sale of land, to satisfy the statute of frauds, may consist wholly of letters, if they are connected by reference, expressed or implied, so as to show on their face that they all relate to the same subject matter. The relation cannot be shown by parol. It must appear from the letters. It is not essential that the land be described with precision if the writing on its face is an adequate guide to it. Swallow v Strong, 83 M 87, 85 NW 942; Welsh v Brainerd, 95 M 234, 103 NW 1031.

A contract for the sale of lands, to be valid within the statute of frauds, must describe them with reasonable certainty, but they may be described by reference from one writing to another. Only the vendor need sign the contract; and if signed by the vendor and accepted by the vendee the contract is enforceable at the suit of the vendor. Gregory v Shapiro, 125 M 81, 145 NW 791.

Certain premises being described in a lease by street number and the name of an apartment building situated thereon, parol evidence is competent to identify and show the extent of the premises in question. Gustafson v Juckem, 164 M 516, 205 NW 446.

The acceptance of the terms of a written proposal for the purchase of real estate must be in writing. In this case two elements of the proposal were not so accepted, and hence no contract. Bey v Keeping, 192 M 283, 256 NW 140.

Sufficiency of a signature to a memorandum. 16 MLR 327.

Constructive trusts in cases of agency to buy real estate. 17 MLR 734.

3. Agent's authority

An agent authorized to sell real estate by an instrument insufficient, for want of a seal, to give him authority to convey, may bind his principal by an executory contract to convey. Minor v Willoughby, 3 M 225 (154).

A contract to sell real estate must be in writing; but it may be executed by an agent whose authority is oral. Brown v Eaton, 21 M 409.

McKinney acting as agent for Chapman paid Harvie $100.00 down payment on a purchase of land. A deed was executed to Chapman, left in escrow with McKinney. Chapman refused to accept the deed or pay the balance. McKinney refused to pay the balance. Held, the instrument evidencing the payment was a receipt only, and not a contract for sale of land, and hence subject to be supplemented by evidence aliunde. McKinney v Harvie, 38 M 18, 35 NW 668.

In an action for specific performance the instrument construed to have been executed by plaintiff as an agent and in behalf of certain undisclosed principals. Morton v Stone, 39 M 275, 39 NW 496.

Where the power of attorney authorizes the agent both to sell and convey, if the agent exceeds his authority as to the terms, and executes a conveyance, the deed is not absolutely void, but merely voidable, and the sale may be ratified by the principal by parol. Dayton v Nell, 43 M 246, 45 NW 231.

Where an agent lawfully authorized to contract to sell real estate has attempted to convey same by deed under a defective power of attorney, the deed will be treated in equity as a contract for the sale thereof within the statute of frauds. Hersey v Lambert, 50 M 373, 52 NW 963.

Plaintiff, a 20-year old half-breed, sold his half-blood scrip to one who thereafter re-sold it. Under the law scrip was not assignable prior to location. This assignment was made in 1870, and in 1878 plaintiff executed a new power of attorney to cure the defects in the original. Held, (1) he ratified the act and cured the defect of minority, and (2) bringing this action after a lapse of 25 years was laches,

and the doctrine of estoppel will prevent recovery. Coursolle v Weyerhaeuser, 69 M 328, 72 NW 697.

Ratification of the act of an agent who had acted without precedent authority, creates the relation of principal and agent, and the principal is bound by the ratification. A principal is not at liberty to disaffirm if he has assented to the act of the agent. Hunter v Cobe, 84 M 187, 87 NW 612.

The authority of an agent to enter into a contract for the conveyance of real property must be in writing. Newlin v Hoyt, 91 M 409, 98 NW 323; Power v Immigration Co. 93 M 247, 101 NW 161; Thomas v Rogers, 108 M 132, 121 NW 630.

Prior to Laws 1887, Chapter 26, the authority of an agent to make a contract for the sale of land was not required to be in writing. Exhibit D, executed in 1890, was properly executed and subsequently recognized by the corporate vendor. Olson v Burk, 94 M 456, 103 NW 335.

The authority of an agent to contract for the sale of land must under the statute of frauds be in writing; but such contract, if oral, may subsequently be ratified by the principal. Ratification is a question of fact for the jury. Matteson v United States, 112 M 190, 127 NW 629.

A husband, owning homestead property, may lease a portion of it for a period of six months, if by so doing he does not interfere with the use of the property as a homestead. Bacon v Mirau, 148 M 268, 181 NW 579.

In an action for specific performance of a contract for conveyance of land, executed by an agent whose authority rested on a telegram from defendant, the agent is held to have had authority to execute the contract at the time it was executed. Gagnon v Barnes, 155 M 348, 193 NW 685.

The promoter of a bank executed a 30-year lease, to be adopted by a bank being organized, was not adopted by the bank paying rent and occupying the premises and making improvements, because the covenants were such that the bank could not lawfully assume them. Veigel v O'Toole, 183 M 407, 236 NW 710.

The owner of an apartment house placed the exclusive management of the property in the hands of an agent, who undertook to pay all necessary outlays and net the owner a fixed monthly income, the agent retaining the overage for his services. The act of the agent in leasing one of the apartments for a term of years, and accepting in payment of future rent a conveyance of certain property to himself was not within the statute of frauds and was a valid contract. King v Benham, 172 M 40, 214 NW 759.

Undisclosed principal. 1 MLR 463.

Principal and agent; undisclosed principal; parol evidence admissible to reveal agency. 15 MLR 250.

Oral partnership agreements for the purpose of dealing in land. 19 MLR 581.

4. Contracts within or not within the statute

A defendant is bound to plead the statute of frauds, only where it does not appear from the complaint that the contract was by parol. When it does so appear, and nothing is alleged taking the case out of the statute, the complaint is demurrable. Wentworth v Wentworth, 2 M 277 (238).

Either party may object that a contract to convey real estate is void because not in writing, although the purchaser may have paid the purchase price. Mackubin v Clarkson, 5 M 247 (193).

A contract by a preemptor about to preempt land, by which he agrees to give another an interest in the land is void. Evans v Folsom, 5 M 422 (342).

Where a contract, which, when made, was within the statute of frauds, and might have been avoided thereby, has been fully executed, the statute furnishes no defense. McCue v Smith, 9 M 252 (237).

A contract for the assignment of a lease of real estate for a term of years is within the statute of frauds, but it is not necessary to allege that it was in writing in the pleadings. Benton v Schulte, 31 M 312, 17 NW 621.

To make out an agreement for the sale and conveyance of real estate, sufficient to entitle to specific performance, it must appear that there was a "clear accession

on both sides to one and the same set of terms." Hamlin v Wistar, 31 M 418, 18 NW 145; Langellier v Schaefer, 36 M 361, 31 NW 690.

Plaintiff and defendant entered into a parol contract by the terms of which the defendant was to serve the company as treasurer for a term of five years for a percentage of the profits. Defendant served for two years when he left on account of sickness. Held, that while the contract could not be enforced by action, the terms might be referred to in determining the compensation so far as it had been voluntarily executed. LaDu-King v LaDu, 36 M 473, 31 NW 938.

A written contract falling within the statute of frauds cannot be varied by a subsequent oral agreement of parties; and this whether the variation consists of adding to or subtracting from its terms. Burns v Fidelity, 52 M 31, 53 NW 1017.

Where under an oral contract for the sale of standing timber, to be severed from the land by the vendee, the vendee enters under the license, and severs the timber, the contract becomes an executed one for the sale of chattels, with all the incidents of any other contract for the sale of personal property. Hence, if the sale was with a warranty, and there is a breach of it, the vendor is liable for damages. Wilson v Fuller, 58 M 149, 59 NW 988.

Wacks owned a house and lot, the house being insured for $1,500 for a term of three years. He sold to Hagelin and as part of the transaction agreed to assign the policy of insurance, which he failed to do. The building was destroyed by fire. Recovery could not be had on the policy because of change of ownership. Hagelin sued to recover damages for a breach of the oral agreement. Held, that so much of the contract as came under the statutory restrictions having been performed, the remaining stipulations are enforceable. Hagelin v Wacks, 61 M 214, 63 NW 624. (Corrected and overruled by Pierce v Clark, 71 M 114, 73 NW 522)

Defendant transferred certain notes secured by mortgage, guaranteeing payment in full. On default he orally agreed with plaintiff that if he would foreclose and bid in the property he would thereupon pay the full amount to plaintiff and take over the property. Failing to keep the agreement plaintiff sued on the oral agreement. Held to be within the statute of frauds, and unenforceable. It was not taken out of the statute by the foreclosure action. Veazie v Morse, 67 M 100, 69 NW 637.

As an inducement for its sale to a third party, the defendant Clarke guaranteed payment of a note, secured by a real estate mortgage. The note, mortgage and guarantee were transferred to the plaintiff Pierce, who upon default commenced foreclosure. Whereupon plaintiff and defendant entered into a written agreement, signed by Clarke and by Pierce's agent, who had no authority in writing. Held, the agreement was within the statute of frauds, and the finding for the defendant must be reversed. Hagelin v Wacks, corrected. Pierce v Clarke, 71 M 114, 73 NW 522.

A written lease, executed prior to the passage of Laws 1901, Chapter 31, of urban premises for one year contained a provision for its renewal for the term of two years at the option of the lessee. Rent was paid and accepted for a period of two years and four months, when this action was instituted by the landlord to dispossess the tenant. Held, the facts indicated an acceptance of the option by the lessee and the consent of the plaintiff, and the lessee may occupy the premises to the end of the three-year period. Caley v Thornquist, 89 M 348, 94 NW 1084.

The alleged contract was but an offer to exchange properties, and to give it force and validity, a written acceptance was necessary, under the statute of frauds. Newlin v Hoyt 91 M 409, 98 NW 323; Power v Immigration Co. 93 M 247, 101 NW 161.

To constitute a contract for the sale of real estate valid within the statute of frauds, a written offer to buy or sell it must be accepted in writing, but the offer and acceptance need not be in the same writing. It was error for the trial court to exclude an offer on behalf of the defendants to show an oral acceptance of their application to purchase the land, with proof of such performance on their part as would take the contract out of the statute. Ferguson v Trovaten, 94 M 209, 102 NW 373.

Where a party contracts to convey premises in which he has no title, but which he subsequently acquires, such fact cannot be taken advantage of by a sub-

sequent assignee of the contract as against a prior assignee. The word "party" contained in the statute of conveyance applies only to the vendor, and does not include the vendee. McPheeters v Ronning, 95 M 164, 103 NW 889.

An agreement by a husband to enter into a contract at a stated time in the future for the sale of real estate owned by his wife is wholly void. Betcher v Rinehart, 106 M 380, 118 NW 1026.

Defendant made his written offer to sell certain land on January 8th. The plaintiff did not accept but made a counter offer and after some correspondence the plaintiff accepted the original offer on January 26. Held, a party to whom an offer of contract is made must either accept it wholly or reject it wholly. A suggestion of modification is a rejection of the offer and substitution of a counter offer. The offer of the defendant having lost its vitality, the plaintiff could not, at his option, revive and accept the original offer of January 8. Lewis v Johnson, 123 M 409, 143 NW 1127.

In an action for renewal of a lease, the facts disclose that plaintiff became a tenant for one year ending February 28, 1915, the lease being a written one. During plaintiff's occupancy under the lease defendant orally agreed to give the plaintiff a year's extension. This would be within the statute and void except for part performance. The jury found the plowing and other work done in preparing the farm for the next year's crop was a sufficient performance. Biddle v Whitmore, 134 M 68, 158 NW 808.

An undisclosed principal is one not disclosed in the contract, and may in fact be known to the vendee, and he may enforce specific performance of the contract made by his agent, even though the agent had no authority in writing. He may enforce everything vouchsafed by his contract. Unruh v Roemer, 135 M 127, 160 NW 251.

In an executory contract for the sale of lands the vendor is the one required to sign. The vendee need not. The vendee can enforce specifically. In this case Johnson listed his land for sale with agent Monson who negotiated a sale to Krohn. Johnson in writing agreed to the sale provided Krohn paid $500.00 down. Krohn paid $100.00 and Monson advanced the other $400.00 to be paid by Krohn to him on December 27. Monson sent the $500.00 to Johnson who accepted same and in writing approved the sale on December 22. Johnson died next day. Held a completed contract. Krohn v Dustin, 142 M 304, 172 NW 213.

In an oral contract to convey real estate, the agreement to pay the grantor a certain amount "at such time as the grantee might elect" is not so indefinite and uncertain as to avoid specific performance. Seigne v Warren, 147 M 142, 179 NW 648.

Plaintiff and defendant agreed together to buy a quarter section of land, each to take one eighty. Each then procured a contract from the owner for the purchase of one eighty, each agreeing to pay half the purchase price of the quarter section. It was agreed that defendant should pay plaintiff one-half the value of certain buildings on defendant's half. Held, the agreement was not within the statute and is valid and enforceable. Holmstrom v Barstad, 147 M 173, 179 NW 737.

Plaintiff and defendant made an oral contract by which defendant leased a dwelling house for the period from November 1, 1919, to April 15, 1921, which contract would be void, except for a finding of a sufficient performance and change of position and reliance upon it to remove the bar of the statute. Pierce v Hanson, 147 M 219, 179 NW 893.

A parol contract for present insurance for the period between the date of the application and the issuance or rejection of the policy, is binding upon the company, if within the scope of the agent's authority. Held, that in view of the established practice, the agent in this case, had the needed authority. Koivisto v Bankers, 148 M 255, 181 NW 580.

Lease of premises for two years from a specified date, with option to renew, reduced to writing and the lessor's name signed thereto by an agent who was not authorized in writing so to do, is void under the statute of frauds; (1) may be removed from the operation of the statute by part performance, (2) the provision for renewal is operative, and (3) specific performance may be enforced. Bergstein v Bergquist, 152 M 358, 189 NW 120.

After more than five years of an existing lease had expired, the lessor endorsed on the lease an option permitting the lessee if he accepted the offer to a five-year extension. The lessor sold the property before the six months' option had expired. Held, the alleged option was void because it did not express a consideration, and the original lease could not be accepted as a basis to create a consideration. Weisman v Cohen, 157 M 161, 195 NW 898.

An automobile agency contract contained a clause permitting cancelation on 30 days' notice. The company to induce the agent to rent premises and move its service station to the place occupied as a sales agency is alleged by the agent to have waived the 30 days' cancelation clause. Held, it is admissible to show the expense incurred in the removal of the service department, and a paper executed at the time, if executed with authority, was sufficient within the statute to show a modification of the original contract and a surrender of the right of cancelation without cause. Oakland v Kremer, 186 M 455, 243 NW 673.

A contract between husband and wife as to the disposition of the husband's property existed. The husband's will did not follow the terms of the contract. Held, the terms of the will were of such nature that coupled with other evidence it is clear that the agreement between husband and wife had been abrogated, and the disposition made by will was absolute. Hanefeld v Fairbrother, 191 M 547, 254 NW 821.

Evidence conclusively shows that there was no contract entitling defendant to an order for specific performance. Johlfs v Cattoor, 193 M 553, 259 NW 57.

An oral contract on the one hand to make and on the other to accept a mortgage on real estate is unenforceable under the statute of conveyances and the statute of frauds. Performance to take a case out of the statute must be unequivocally referable to the oral contract.

The equitable doctrine of part performance is inapplicable to an action for breach of contract, as distinguished from one of specific performance. Hatlestad v Mutual, 197 M 640, 268 NW 665; Alamoe v Mutual, 202 M 457, 278 NW 902.

Optional sale; rescission. 2 MLR 387.

Specific performance as to whole where possession is taken and improvement made on part of land. 10 MLR 74.

Frauds relating to contracts. 14 MLR 746.

Unequivocal reference theory as a basis for the doctrine of part performance. 21 MLR 224.

5. Recovery of payments.

Money paid under an agreement, whether void by the statute of frauds or not, may be recovered back, if the defendant without the fault of the plaintiff refuses or is unable to perform the contract. Bennett v Phelps, 12 M 326 (216); Taylor v Read, 19 M 372 (317); Johnson v Krassin, 25 M 117; Wyvell v Jones, 37 M 68, 38 NW 43.

Plaintiff paid defendant $50.00 "as and for a part of the purchase price" of land, which the latter by parol agreed to sell and convey to plaintiff when requested and on payment of the balance. Held, the payment and conveyance were dependent acts to be concurrently performed, and plaintiff may not recover the payment without pleading and showing a readiness to perform on his part, and a refusal by the defendant. Sennett v Shehan, 27 M 328, 7 NW 266.

An agreement for leasing, void under the statute of frauds, though there has been part performance by the tenant, is, with a decree of a competent court enforcing it, no defense in proceedings under General Statutes 1878, Chapter 84. Petsch v Biggs, 31 M 392, 18 NW 101.

A complaint showing a payment by the plaintiff to the defendant of the price of land, under verbal contract on the part of the defendant to convey the same, and showing the refusal of the defendant to so convey, held to state a cause of action at least for the recovery of the money paid. Pressnell v Lundin, 44 M 551, 47 NW 161.

If one who has made an oral, and hence invalid, contract for the sale of standing timber, and who has received the purchase price, refuses to allow the purchaser to cut and remove the timber, or sells the land so the timber cannot be

removed, he may be compelled to repay the purchase price. This action does not involve an issue as to title to real estate. Herreck v Newell, 49 M 198, 51 NW 819.

Where the vendor, in a contract for the sale of land, refuses for any reason to carry out and complete the contract, the purchaser may recover the purchase price paid by him. Payne v Hackney, 84 M 195, 87 NW 608.

There was a five-year lease of a saloon location in Des Moines, Iowa, and the defendant guaranteed the payment of rent, the guarantee being in writing. Held to be binding and in accordance with the Iowa statute although the guarantee did not express the consideration as would be required by the law in Minnesota. Halloran v Jacob Schmidt, 137 M 141, 162 NW 1082.

Where parties to a five-year lease mutually agree upon a reduction of the monthly rental, and month after month for two years the lessor receipts for rent at the reduced rental, the lessor cannot recover the amount rebated. Brockett v Lofgren, 140 M 53, 167 NW 274.

A contract void under the statute is relevant in an action to recover on a quantum meruit for services rendered, pursuant to such contract as an admission of value. Oxborough v St. Martin, 169 M 72, 210 NW 854.

The statute of frauds does not prescribe a mere rule of evidence but precludes the substantive right of action upon a contract within it. A defendant answering and denying the making of the oral contract sued upon may invoke the statute. Bruder v Wolpert, 178 M 330, 227 NW 46.

A defendant who has been evicted from premises under a writ of restitution in an unlawful detainer action in justice court may appeal to the proper court and have a trial de novo. Strand v Hand, 178 M 460, 227 NW 656.

513.06 SPECIFIC PERFORMANCE.

HISTORY. R.S. 1851 c. 62 s. 10; P.S. 1858 c. 49 s. 10; G.S. 1866 c. 41 s. 13; G.S. 1878 c. 41 s. 13; G.S. 1894 s. 4216; R.L. 1905 s. 3489; G.S. 1913 s. 7004; G.S. 1923 s. 8461; M.S. 1927 s. 8461.

When it appears by the complaint that the contract was by parol, and nothing is alleged to take the case out of the statute, the complaint is demurrable. Where plaintiff settled on a piece of government land, and later the defendant furnished the money to purchase the land, and is alleged by plaintiff to have taken title to the land on an oral agreement to convey it to plaintiff, on plaintiff's paying the money and interest to the defendant, the agreement being oral is within the statute and unenforceable and the fact that he settled upon and improved the property both before and after the making of the alleged oral contract is not sufficient performance so that equity can relieve plaintiff of the effect of the statute. Wentworth v Wentworth, 2 M 277 (238).

One Askin preempted land, and had an understanding with plaintiff by which plaintiff was to have an interest with him, and they would jointly establish a townsite on the property. Held, that such a contract is void, and incapable of becoming the foundation for any rights. Askin's vendee, Case, expended money and made improvements and claims part performance, and equitable relief. Held, his case, on account of the acts of his vendor, was tainted with fraud and equity will grant no relief. Evans v Folsom, 5 M 422 (342).

Courts are unwilling to enforce parol contracts to convey lands where indemnity in damages may be had. In ejectment an equitable defense may be set up, but to equities should be strong, such as would entitle the defendant for a conveyance on a bill for that purpose. McClane v White, 5 M 178 (139).

Facts in this case deemed insufficient to entitle a party to specific performance of a verbal contract to convey real estate. Towerton v Davidson, 7 M 408 (327); Miller v Miller, 125 M 49, 145 NW 615; Berndt v Berndt, 127 M 238, 149 NW 287.

Money paid under an agreement whether void by the statute of frauds or not, may be recovered back, if the defendant without the fault of the plaintiff refuses or is unable to perform the contract. Bennett v Phelps, 12 M 326 (216).

Where a vendee, under a parol contract for the sale of land, enters into possession of the land in pursuance of and with direct reference to the parol contract, and makes valuable improvements on the land, it constitutes a part performance of the contract which takes it out of the operation of the statute of frauds. Gill v Newell, 13 M 462 (430).

A part performance, such as will take a parol agreement for the sale of lands out of the statute, is not made out by proof that the price mentioned in such offer has been deposited with the agent of the party to whom the offer was made, and that notice of such deposit has been given to the party making the offer, and that the party to whom the offer was made is ready to pay over such price upon delivery of a deed. Lanz v McLaughlin, 14 M 72 (55).

Payment alone is not a good part performance to take a verbal contract out of the statute, but payment and taking possession, under and in pursuance of a verbal contract, has always quite uniformly been. Atkins v Little, 17 M 342 (320); Townsend v Fenton, 30 M 528, 16 NW 421; 32 M 482, 21 NW 726.

Plaintiff's possession after the expiration of the lease was such part performance of the parol contract as entitled her to specific performance thereof, and her right to a specific performance was not defeated by her acceptance through misinformation of a deed for part of the property, and she is entitled to a decree giving her title to all the described property. Her mistake coupled with defendant's fraud is equivalent to mutual mistake of both. Place v Johnson, 20 M 219 (198).

Defendant condemned for a right of way a strip of land across plaintiff's land, and later by oral agreement it was mutually agreed on a change of location as to the crossing. Held, the making of substantial improvements is such part performance as takes the agreement out of the statute of frauds. Pfifner v Railway, 23 M 343.

The wife of the mortgagor, because of and relying upon the agreement with the mortgagee, refrained from exercising her right of redemption until it had expired has made sufficient part performance to take the oral agreement out of the operation of the statute of frauds. Williams v Stewart, 25 M 516.

Where the licensor verbally promised and agreed with the licensee, "that if they would erect a mill at a certain point, he would give them privilege of flowing his land as long as they would maintain the mill", and the licensees erected said mill, held, such agreement amounted to a license only, and was revocable even after execution. Johnson v Skillman, 29 M 95, 12 NW 149.

An agreement for leasing, void under the statute of frauds, though there has been part performance by the tenant, is, with a decree of a competent enforcing it, no defense in proceedings in unlawful detainer. In such matters requiring equitable relief, the defendant must go to the district court for relief. Petsch v Biggs, 31 M 392, 18 NW 101.

The right under an oral agreement to let a building, with the land, for a term of years, partly performed, so as to take the agreement out of the operation of the statute of frauds, is an owner of such interest in property so that a mechanics lien will attach. Benjamin v Wilson, 34 M 517, 26 NW 725.

The underlying principle upon which courts enforce oral agreements within the statute of frauds, on the ground of part performance, is that when one of the parties has been induced to alter his situation, on the faith of the oral agreement, to such an extent as to inflict "an unjust injury and loss" upon him, the other party will be held estopped, by force of his acts, from setting up the statute. The acts constituting "part performance" must have been done in reliance upon and in pursuance of the oral agreement. Brown v Hoag, 35 M 373, 29 NW 135; Mournin v Trainor, 63 M 230, 65 NW 444; Jorgenson v Jorgenson, 81 M 428, 84 NW 221; Holland v Ousbye, 132 M 106, 155 NW 1071.

In an action by a cemetery company to enforce specific performance of an oral agreement to convey land, the clearing of brush, cutting of trees, and building of fences, and the burial of one or more persons may be a sufficient part performance. Evergreen v Armstrong, 37 M 259, 34 NW 32.

Case considered as showing such part performance of an agreement for the sale of land that specific performance should be decreed. Evans v Miller, 38 M 245, 36 NW 640.

Plaintiff brought suit against his father on five causes of action. When the first of the series of suits was on for trial, defendant agreed orally with the plaintiff that if he would dismiss all actions he would deed to the defendant a certain farm with stock and machinery, upon his marriage with a certain lady. Plaintiff performed on his part and this action is brought to enforce specific performance on the part of the father. Held, that allowable damages would not be an adequate

remedy, and there was sufficient performance to warrant an order for specific performance. Slingerland v Slingerland, 39 M 197, 39 NW 146.

An owner upon whose land a railroad company has, without making compensation, or acquiring the right in any other way, constructed its railroad, and whether it did so with or without his acquiescence may bring ejectment to recover the land. Watson v Railway, 46 M 321, 48 NW 1129.

Probst who owed no debts, deeded a property to Kistler presumably to facilitate conveyance without the consent of his wife. Later he became indebted to plaintiff who obtained a judgment and brought this action against Probst to enforce a lien on the property conveyed to Kistler. Held, oral proof cannot be heard to ingraft an express trust on a conveyance absolute in its terms, nor under the doctrine of part performance. Pillsbury v Kistler, 53 M 123, 54 NW 1063.

Plaintiff Pawlak paid defendant Granowski $185.00 for three lots. He had a deed drawn for Granowski and wife to sign, but it was never signed. Pawlak went into possession for two years when he moved to Chicago, and his brother and later his sister continued to cultivate the land. During all the time he paid the taxes. In 1891 Granowski sold one of the lots to Dauck, who recorded the deed, went into possession and built a house. Pawlak brought this action for specific performance in 1891. Held, Pawlak may recover from Granowski $250.00 for the lot sold to Dauck and is entitled to a conveyance from Granowski of the other two lots. Pawlak v Granowski, 54 M 130, 55 NW 831.

Plaintiff sued the defendant for services in moving a building. Defendant denied the employment, and alleged that plaintiff by oral agreement had purchased at a stated price, and by oral contract the building and the ground to which it was removed. Held, that while the oral contract was within the statute of frauds evidence of its terms was material, in showing that the defendant never employed the plaintiff to move the building. The evidence furnished no ground on which the plaintiff could recover the value of his work under a theory of nonperformance by defendant. Mahan v Close, 63 M 21, 65 NW 86.

Defendant transferred certain secured notes to plaintiff and guaranteed the collection of them. Later it was orally agreed that if plaintiff would foreclose upon and bid in the property defendant would pay the amount to plaintiff and plaintiff would deed the property to defendant. Held the oral agreement was within the statute, as by its terms it could not be performed within a year, and because it was an oral contract for conveyance of land. It was not taken out of the statute by the foreclosure. Veasie v Morse, 67 M 100, 69 NW 637.

Possession of land, in order to take a verbal contract out of the statute, must be taken with the specific intent of carrying out the contract. Such intent cannot be shown by the verbal contract. If the possession is not a new fact, but is a continuation of a former similar condition, the intent must be proved by some further act which shows without equivocation or uncertainty that the possession cannot be accounted for except by verbal contract of purchase. Possession by a son raises no presumption that it was taken pursuant to any contract for purchase of the land. Bresnohan v Bresnohan, 71 M 1, 73 NW 515.

Where in a parol agreement for the purchase of real estate, the consideration consists of services to be rendered which are of such nature that their value cannot be estimated by any pecuniary standard, the performance of the services will entitle the vendee to specific performance, even though the contract was by parol. Application to case where children resided with an uncle under promise of being rewarded by inheritance of property upon his death. Swanburg v Fosseen, 75 M 350, 78 NW 4.

A father entered into a contract with his son by which the son was to build a house on a lot owned by the father, the father helping the son in financing the house, and the son to get a deed to the property when he had paid for the lot and repaid the money advanced. Held, that the son had an equitable interest in the property to which a mechanics lien would attach, and without joining the legal title owner in the action. Carey v Biesbauer, 76 M 434, 79 NW 541.

The claimant and her husband were barred from testifying to conversations with persons deceased, relative to the alleged oral contract for a promised conveyance, and the court will not compel specific performance unless the terms are definite and certain, and proved to the satisfaction of the court. The proof must

show acceptance and mutuality. The court will not be bound by statements which may have been made to third parties. Lowe v Lowe, 83 M 206, 86 NW 11.

Plaintiff owner entered into an oral contract with defendant by which the landlord was to make certain improvements, and the defendant would rent the premises for one year beginning with a specified date in the future. The defendant agreed to carry out the contract, and the plaintiff rented to a third person and sued for damages. Held, the agreement was void under the statute and an action in damages would not lie. Crane v Thompson, 87 M 172, 91 NW 483.

Both parties claim under deeds from the Northern Pacific Railroad Company. Held, to constitute a contract for the sale of real estate valid within the statute, a written offer to buy or sell must be accepted in writing, but the offer and acceptance need not be in the same writing; a printed signature does not constitute a subscribing within the meaning of the statute. It was error for the trial court to exclude an offer to show an oral acceptance together with proof of part performance. Ferguson v Trovaten, 94 M 209, 102 NW 373.

Evidence tending to show an accepted gift from the father to the son considered and held to support the verdict of the jury sustaining the same. Schmitt v Schmitt, 94 M 414, 103 NW 214.

Where a child after arriving at majority continues to reside as a member of the family, the presumption is that no payment is expected for services; the presumption is overcome however in this case by proof of an express agreement shown by facts and circumstances of the case. Einalf v Thomson, 95 M 230, 104 NW 547.

In an action for specific performance of a verbal contract to convey real estate, it was held: (1) that a contract was entered into, (2) there was sufficient part performance to take it out of the statute, and (3) that the contract was not void for indefiniteness. Veum v Sheran, 95 M 315, 104 NW 135.

A parol agreement for the conveyance of an interest in land, not to be performed within a year, may be taken out of the operation of the statute by part performance. Stitt v Rat Portage, 96 M 27, 104 NW 561.

In unlawful detainer action, tried de novo in district court, the defense was part performance of an oral lease void under the statute of frauds. The evidence failed to show clearly that the alleged acts of part performance were done pursuant to and in reliance on such lease. Koch v Fisher, 122 M 123, 142 NW 18.

In an action for specific performance of an alleged oral agreement by parties now deceased to leave their property to plaintiff at their death, the evidence justifies but does not require a finding that such an agreement was made; it does not justify a finding that part only was subject to the agreement; and the district court might have found no agreement, or if there was an agreement it included all the property of the decedents, but it was error to find an agreement for less than all. Brosch v Reeves, 124 M 114, 144 NW 744.

A person, by contract, may bind himself to give his property to certain designated persons at his death, and a peculiar personal relation as a member of the family, the value of which is not measurable in money, is sufficient to justify specific performance; but if reasonable compensation can be made in money, the case does not justify specific performance. Robertson v Corcoran, 125 M 118 145 NW 812.

Adverse possession of the land for the statutory time was not necessary in order to prove an executed parol gift. To take a parol gift of land out of the statute of frauds there must be an acceptance by the donee, and such performance in the way of improvements as would make it substantial injustice or fraud to hold the gift void under the statute. Hayes v Hayes, 126 M 389, 148 NW 125.

The evidence is sufficient to sustain the findings of the trial court to the effect that the written option, contained in the lease, had subsequently been modified by parol, and the agreement had been acted upon to such an extent as to warrant specific performance thereof. Murphy v Anderson, 128 M 106, 150 NW 387.

In an application to register land, the title depending on validity of tax titles, and the right of one of the tax certificate dealers to convey to the city of St. Paul it was held, that the city, having been permitted to go into possession under the contract and make valuable improvements upon the land, is entitled to a conveyance thereof. Midway v City of St. Paul, 128 M 135, 150 NW 615, 151 NW 142.

Under the evidence the plaintiff had a right by prescription and by way of estoppel to the use of a ditch on defendant's land. The plaintiff was not entitled to specific performance of the defendant's agreement to construct a system of tile drainage upon his land. Schnette v Sutter, 128 M 150, 150 NW 622.

A father living on a farm, and owning an adjoining quarter section, told a son that if he would stay and work on both farms, the father would deed him the adjoining quarter section. On the son's marriage the father made him a parol gift of the farm. It was held that the son rendered services and performed acts sufficient to be entitled to a conveyance. Trebesch v Trebesch, 130 M 368, 153 NW 754.

The son in this case has not changed his situation in such manner or to such extent in reliance upon the oral agreement with his father as to bring this case within the cases in which specific performance is decreed. Chapel v Chapel, 132 M 86, 155 NW 1054.

A verbal agreement to extend the term of a lease for the period of one year to commence at a future date is within the statute and unenforceable; but evidence of part performance, in the way of conditioning the farm for next year's crop and in reliance on the oral promise, was sufficient to avoid the statute. Biddle v Whitman, 134 M 68, 158 NW 808.

In an action in ejectment, a demurrer to defendant's answer was properly sustained because the answer did not set up a legal contract and the facts as pleaded did not indicate part performance. Sandberg v Clausen, 134 M 321, 159 NW 752.

The evidence is sufficient to sustain a finding that plaintiff made a parol gift of land to defendant's deceased husband, that deceased accepted the gift and took possession and made such improvements in reliance on the gift, that it would work a substantial injustice to hold the gift void. Lindell v Lindell, 135 M 368, 160 NW 1031.

The finding that plaintiff and defendant made an oral contract of leasing covering the period from November 1, 1919, to April 15, 1921, is sustained by the evidence, there having been sufficient part performance to take it out of the statute. Pierce v Hanson, 147 M 220, 179 NW 893.

Lease of a store room and basement for two years from a specified date, with an option to renew for two additional years on the same terms, signed by an agent who had no written authority, was validated by performance, and such performance made the option of renewal enforceable. Bergstein v Bergquist, 152 M 358, 189 NW 120.

An oral offer by a landowner to allow a city to connect its water-works with an artesian well on his land, if the city would furnish him water free of charge, was accepted and acted on for 20 years. Held, all the city received was a license revocable at the will of the landowner and his grantee. Hutchinson v Wegner, 157 M 41, 195 NW 535.

Correspondence examined and held not to show a completed contract for the purchase of land. Lind v Russell, 161 M 350, 201 NW 547.

The evidence sustains a finding that plaintiff's deceased father bought and orally promised to give or devise her a residence property if she would care for and support him. This having been done she is entitled to specific performance of the contract. Morrow v Porter, 161 M 396, 202 NW 53.

Findings of lower court that (1) vendors were not able to perform punctually; (2) defendant was; (3) and on plaintiff's refusal to perform, the defendant rightfully rescinded. Stanek v Jindra, 162 M 452, 203 NW 215.

The plaintiffs, husband and wife, owned a quarter section of land of which 80 acres was exempt as a homestead. The husband contracted to sell the quarter to defendant. The wife refused to join. Held, the contract being void as to the homestead, the contract is entire, and defendant cannot demand specific performance of even the unexempt 80 acres, nor can he recover damages for the husband's failure to convey. Horseth v Fuglesteen, 165 M 38, 205 NW 607.

An oral promise to transfer property in consideration of services such as washing and mending, nursing and similar are not of a personal or domestic nature to take the promisee out of the statute. The services were such that the promisee

can be compensated by payment of the reasonable value. Olson v Dixon, 165 M 124, 205 NW 955.

The earnest money contract called for payment at a specified date upon tender of a contract for a deed binding the vendors to furnish a marketable title. Vendors had a right to use vendee's deposit or payment to satisfy taxes and liens of record. The title was encumbered by a right of way, and within the specified time vendors obtained a release thereof, but refused to record it until they received the payment. Held, it was the privilege of the defendant to end the negotiations. Joslyn v Irwin, 168 M 269, 209 NW 889.

Owner defendant wired "will accept eighteen hundred cash, this offer good ten days". The vendee (plaintiff) wired back an acceptance and instructed defendant to send papers to a certain bank. When the plaintiff called at the bank it was found that the deed was legal according to the laws of the state of the vendor, but did not have the right number of witnesses required by the Minnesota recording acts. The deed was sent back for correction, whereupon the defendant withdrew his offer and refused to go ahead with the sale. Held, plaintiff (vendee) had a legal right to enforce specific performance. Lloyd v Michelson, 168 M 441, 210 NW 586.

Evidence sustains the finding of the jury that no agreement was made between plaintiff and defendants whereby plaintiff was to convey certain property to them in consideration of their agreement to support him. Hopkins v O'Donnell, 169 M 427, 211 NW 823.

The evidence sustains the finding of the trial court that the plaintiff partially performed an oral contract for the purchase of real property so as to justify a decree of specific performance. Ritchie v Jennings, 181 M 458, 233 NW 20.

In an action for specific performance of an alleged contract for the conveyance of real estate, the facts sustain the findings that no legal contract had been made and the petition was properly denied. Arntson v Arntson, 184 M 60, 237 NW 820.

Plaintiff brought action for $344.98 paid in the construction of a dwelling on certain property, and defendant admitted the payment but claimed it as a part payment of and pursuant to the terms of an oral contract for the conveyance of the land. It was found that defendant was not entitled to specific performance of the alleged oral contract, and plaintiff had judgment as claimed. Johlfs v Cattoor, 193 M 553, 259 NW 57.

An oral contract on the one hand to make, and on the other to accept, a mortgage on real estate is unenforceable under the statute of frauds and conveyances. The equitable doctrine of part performance is applicable to an action for damages for breach of contract as distinguished from one for specific performance, but any part performance must unequivocally refer to the oral contract. Hatlestad v Mutual, 197 M 640, 268 NW 665.

Defendant bought land with full knowledge of plaintiff's option. The option was valid. Specific performance of the terms of the tenant-plaintiff's option was properly ordered. McKercher v Vik, 199 M 263, 271 NW 489.

A verbal agreement to extend the terms of a written lease for the period of a year, such year to commence at a future time, is within the statute and unenforceable, but the part performance by the tenant in this case was sufficient to avoid the bar of the statute. Atwood v Frye, 199 M 596, 273 NW 95.

This is a suit for specific performance of a stipulation. Heirs of the deceased Katie Keko filed objection to the probate of her will claiming testamentary incapacity and undue influence. A stipulation was entered into between the parties by which the defendant hospital agreed to accept $1,500 in lieu of their claim under the will. $1,300 of the amount was paid to and accepted by the hospital, and the remaining $200.00 offered and refused. The hospital claims that Anderson, the attorney who signed the stipulation, was not legally authorized to do so. It was held that as the officers of the hospital were fully informed of all the facts and acquiesced, and accepted several payments aggregating $1,300, they are estopped to deny sufficient part performance to take the stipulation out of the statute. Schaeffer v Thoeny, 199 M 610, 273 NW 190.

Where it is optional with the lessor to forfeit a lease it necessarily follows that in order to forfeit he must manifest that intent by some clear and unequivocal

act. Where a lease gives the tenant an option of purchase, the relation of tenant ceases and that of vendor and purchaser arises, and the landlord cannot thereafter exercise his option to forfeit the lease. Gasserl v-Anderson, 201 M 515, 276 NW 808.

Action to have Cora Smith adjudged the owner of certain lands in Hennepin county, and to set aside certain deeds to others. The defendants are residents of Brown county. The action rests on the validity of a contract, in which specific performance may be ordered or damages for breach awarded. The action is transitory and may be specifically enforced wherever defendants may be found. Smith v District Court, 202 M 75, 277 NW 353.

Record sustains the trial court in finding that letters passing between the Salvation Army in Minneapolis and Karp in Faribault created a legal contract for an exchange of property, and specific performance may be ordered. Karp v Salvation Army, 203 M 285, 281 NW 41.

Plaintiff asks to enjoin the conservator of rural credit making disposition of property to others, after plaintiff had applied for an option under Laws 1933, Chapter 429, and Laws 1937, Chapter 409. Held, dealings between plaintiff and the conservator never went beyond negotiations and did not result in a contract. Specific performance will be granted on a contract but not negotiations for a contract. Where dealings terminate in the negotiation stage there is no contract to enforce. Bjerke v Arens, 203 M 501, 281 NW 865.

Where former owners of a homestead remain in possession thereof after their title has been divested by foreclosure, and, while so in possession, the holder of the title conveys to the wife of one of such persons, upon the promise of husband and wife to execute a mortgage on the property for the balance of the purchase price, equity will enforce performance by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v Anthony, 204 M 432, 283 NW 753.

In an action to compel specific performance of option contract, optionee must allege tender of performance within time specified or a waiver or refusal thereof, where certain conditions are to be fulfilled before a day certain to prevent termination of contract. A general allegation of full performance must yield to a specific allegation that there was not complete performance because of an alleged excusable reason. Vogt v Ganlisle, 217 M 601, 15 NW(2d) 91.

Contract to sell real estate; risk of loss pending conveyance. 6 MLR 531.

Oral lease; part performance insufficient to take out of statute. 6 MLR 529.

Specific performance as to whole where possession is taken and improvement made on part of land. 10 MLR 74.

Specific performance of right of inspection incident to option. 12 MLR 1.

Privileges in gross to do acts on the land of another; when will they be specifically enforced. 13 MLR 593.

513.07 LOGS; EXTENSION OF TIME OF PAYMENT FOR LABOR.

HISTORY. 1891 c. 76 s. 1; G.S. 1894 s. 4217; R.L. 1905 s. 3490; G.S. 1913 s. 7005; G.S. 1923 s. 8462; M.S. 1927 s. 8462.

CONVEYANCES FRAUDULENT AS TO PURCHASERS

513.08 WHEN MADE TO DEFRAUD, VOID; EXCEPTION.

HISTORY. R.S. 1851 c. 62 ss. 1, 2; P.S. 1858 c. 49 ss. 1, 2; G.S. 1866 c. 41 ss. 1, 2; G.S. 1878 c. 41 ss. 1, 2; G.S. 1894 ss. 4204, 4205; R.L. 1905 s. 3491; G.S. 1913 s. 7006; G.S. 1923 s. 8463; M.S. 1927 s. 8463.

513.09 WITH POWER OF REVOCATION, DETERMINATION OR ALTERATION; WHEN VOID.

HISTORY. R.S. 1851 c. 62 s. 3; P.S. 1858 c. 49 s. 3; G.S. 1866 c. 41 s. 3; G.S. 1878 c. 41 s. 3; G.S. 1894 s. 4206; R.L. 1905 s. 3492; G.S. 1913 s. 7007; G.S. 1923 s. 8464; M.S. 1927 s. 8464.

513.10 UNDER POWER OF REVOCATION.

HISTORY. R.S. 1851 c. 62 s. 4; P.S. 1858 c. 49 s. 4; G.S. 1866 c. 41 s. 4; G.S. 1878 c. 41 s. 4; G.S. 1894 s. 4207; R.L. 1905 s. 3493; G.S. 1913 s. 7008; G.S. 1923 s. 8465; M.S. 1927 s. 8465.

513.11 PREMATURE CONVEYANCE.

HISTORY. R.S. 1851 c. 62 s. 5; P.S. 1858 c. 49 s. 5; G.S. 1866 c. 41 s. 5; G.S. 1878 c. 41 s. 5; G.S. 1894 s. 4208; R.L. 1905 s. 3494; G.S. 1913 s. 7009; G.S. 1923 s. 8466; M.S. 1927 s. 8466.

CONVEYANCES FRAUDULENT AS TO CREDITORS

513.12 SALE OF CHATTELS WITHOUT DELIVERY; FRAUD PRESUMED.

HISTORY. G.S. 1866 c. 41 ss. 15, 16; G.S. 1878 c. 41 ss. 15, 16; G.S. 1894 ss. 4219, 4220; R.L. 1905 s. 3496; G.S. 1913 s. 7011; G.S. 1923 s. 8467; M.S. 1927 s. 8467.

Defendant sheriff at the instance of creditors levied a writ of attachment on cattle and hay in the possession of Haynes. Plaintiff brought suit to recover back same alleging that he had purchased from Haynes prior to the attachment. Held, under the pleadings the character of the sale was not in issue, and evidence could not be introduced under the pleadings to show intent on the part of plaintiff and Haynes to delay or defraud the creditors. Livingstone v Brown, 18 M 308 (278).

Capron and Morris were indebted to plaintiff in the amount of $1,015.53 and delivered to them goods to that amount. A contract was then entered into between plaintiff and Capron and Morris by which the goods were left on consignment with Capron and Morris to be sold on commission. The sheriff attached the goods for other creditors, and plaintiff brought this action against the sheriff. Held, in the absence of special statutory prohibition, the mere preference by a debtor of one creditor to another is not fraudulent, though such preference may have the incidental effect of preventing the latter from collecting his debt. Recovery by plaintiff. Vose v Stickney, 19 M 367 (312).

The defendant sheriff levied upon wood, in possession of Oehler, at the instance of Oehler's creditors. Plaintiff sued the sheriff in conversion claiming under a prior bill of sale from Oehler. Held, the presumption of fraud when the purchaser leaves the purchased goods in the possession of the vendor, may be overcome as in this case by showing purchase in good faith, and the question of good or bad faith is for the jury. Malm v Barton, 27 M 530, 8 NW 765.

In an action by plaintiff against the sheriff to recover possession of personal property, the sheriff having seized same at the instance of certain creditors of plaintiff's father. Plaintiff had prior bill of sale of the cattle. Held, whether there has been a delivery of personal property, and an actual and continued change of possession as required by the statute depends upon the kind and nature of the chattels, the situation of the parties to the sale, and other circumstances, and is a matter for the jury. Tunnell v Larson, 39 M 269, 39 NW 628.

The sheriff attached the money in the saloon cash drawer, and plaintiff brought an action in conversion claiming to be the owner of the business. Held, that the evidence of the vendor debtor contained admissions on which the jury could find lack of possession or control by the plaintiff sufficient that the jury could find for the sheriff defendant. Murch v Swensen, 40 M 421, 42 NW 290.

The husband by bill of sale dated July 6th transferred the stock of groceries to his wife. The sheriff defendant levied for a judgment creditor of the husband on August 17th. The wife sued to recover the value and for punitive damages. Judgment of the lower court reversed because of error of the trial court. The question of good faith of the plaintiff, and as to her notice to the sheriff at the time of the levy was for the jury. Hopkins v Swensen, 41 M 292, 42 NW 1062.

Chickering, the plaintiff, sold goods to Peterson and Blaikie, and when Peterson left St. Paul, but still retaining his interest in the firm, Chickering demanded and obtained possession of the goods, and by oral agreement left them with Blaikie under consignment. Neither party contemplated the insolvency of Peterson and Blaikie. Sixty days later Peterson and Blaikie made a general assignment to de-

fendant. The judgment of the lower court in favor of defendant was reversed on appeal. Held, the provision "delivery on change of possession" in the insolvency law has a meaning similar to the language in the statute of frauds. A mere symbolical delivery and constructive change of possession is insufficient. Chickering v White, 42 M 457, 44 NW 988.

Comer sold a horse and colt to his father-in-law, the plaintiff, evidenced by a bill of sale. Four months later Comer mortgaged this and other personal property to the bank, which foreclosed. The plaintiff brought this action for recovery of possession. The finding of the lower court was in favor of plaintiff, but a motion for new trial was granted and plaintiff appeals. Held, that in an action in replevin, each party pleading in general terms that he has title to the property, the defendant may avail himself of the defense that the conveyance under which the plaintiff claims title was fraudulent and void as to the defendant. Mullen v Noonan, 44 M 541, 47 NW 164.

A bridge builder, having placed building material on the bank of the river at a point where the bridge was to be built, on December 12 transferred his contract to plaintiff, and on December 13 gave a bill of sale to plaintiff which was recorded on December 14. On December 14 defendant attached the property. Plaintiff had judgment, defendant appeals, and there was an affirmance. Held, when it happens that the subject of the sale is not reasonably capable of actual delivery, a constructive delivery will be sufficient, as in cases where it might not be impossible, but would be injurious and unusual, to remove the property. Lathrop v Clayton, 45 M 124, 47 NW 544.

Cottrell, a manufacturer of flour barrels, on January 3, made a bill of part of his stock to plaintiff, the president of a creditor bank, the price being credited on Cottrell's indebtedness to the bank. On January 20 a deficiency was discovered, and on January 20 Cottrell made a new bill of sale to plaintiff for 12,384 barrels a part of those then in stock. Between March 10 and 22 Cottrell sold barrels from the stock, including some of plaintiff's, to Pillsbury, and on March 27 Cottrell made a general assignment to Booth. Plaintiff sued Pillsbury and assignee Booth intervened. The assignment was under Laws 1876, Chapter 44, and three days after the original assignment, Booth and Cottrell petitioned the court to amend so that the assignment be under Laws 1881, Chapter 148, which request the court granted. Held, (1) an assignment, when executed by the assigner and accepted by the assignee, creates a valid trust and cannot be changed or revoked by the parties or by the court; (2) a preference by an insolvent debtor of one creditor over others is not unlawful except as prohibited, and enforced under Laws 1881, Chapter 148; (3) where a sale of chattels is not accompanied by an immediate delivery, and followed by actual and continued change of possession, it merely raises a presumption of fraud, which the vendee may overcome by a showing of good faith. Mackellar v Pillsbury, 48 M 396, 51 NW 222.

When, at the time of a sale or transfer, certain whiskey certificates were in the hands of one who has a lien thereon, notice to him of such sale or transfer is sufficient to constitute delivery, as against subsequent attaching creditors. Freeberg v Steenback, 54 M 509, 56 NW 175.

The burden of rebutting the presumption of fraudulent intent arising from continued possession by the vendor, rests on the vendee, but it does not rest on him to show affirmatively that the vendor was not implicated or guilty of fraud, because the fraudulent intent of the vendor cannot affect the rights of a bona fide purchaser for a valuable consideration, without notice. Leqve v Smith, 63 M 24, 65 NW 121.

Minea, a grocer, being indebted to plaintiff and others in 1895 sold the store to plaintiff for a cancelation of plaintiff's debt and for enough additional money to pay his creditors 30 cents on the dollar. Minea remained the manager at a salary of $100.00 per month, profit above that amount to be equally divided between plaintiff and Minea. Robinson obtained a judgment against Minea growing out of a disputed matter other than the grocery. A levy was made in 1897 upon the stock claimed by Bruggeman. Held, in an action against the sheriff; upon the evidence produced on trial it cannot be held, as a matter of law, that a sale and transfer of personal property therein involved was fraudulent and void as to vendor's creditors, and plaintiff had judgment. Bruggeman v Wagener, 72 M 329, 75 NW 230.

Plaintiff claims a horse exhibited at a fair was sold to him. He paid $10.00 down and was to pay the balance of $340.00 next day. On the following day Boyn-

ton and Neff proposed to buy and the owner told them plaintiff had an option expiring at 11 o'clock A. M. and when the option was not exercised the owner sold to Boynton and Neff for $425.00 and delivered the horse to them. Judgment was against the claim of plaintiff. Where a vendor of personal property is allowed by the vendee to continue in possession of same after the sale, so as to give the world a colorable appearance of continued ownership, the rights of a subsequent bona fide purchaser from the first owner who retains possessions will be upheld. Flanigan v Pomeroy, 85 M 264, 88 NW 761.

Plaintiff purchased a car from Spargo, permitting Spargo to use the car for certain purposes and for a specified time. Spargo mortgaged the car to defendants. Held, dictum in case of Flanigan v Pomeroy disapproved; the presumption of fraud is overthrown when those claiming under such sale make it appear that the sale was made in good faith and without intent to hinder, delay, or defraud creditors or subsequent purchasers. Wilson v Walrath, 103 M 412, 115 NW 203.

Where a stock of goods was sold by one brother to another, the vendor remaining as manager of the store and apparently as in possession, and a levy is made by a creditor of the vendor, the burden of proof is on the vendee to show good faith in the alleged purchase. Held, in this case the vendee sufficiently sustained that burden of proof as to the stock of goods, but did not so sustain as to the moneys in bank. Gilbert v Gonyea, 103 M 459, 115 NW 640.

Ross, a sister of the defendants, paid $1,800 down payment on a land contract from Holte, and later assigned same to defendants. Some payments were made by defendants to Holte, and defendants, equitable owners, were in possession, and there was a balance due on the Holte contract of $4,725. The defendants proposed selling their equqity to Holte for $3,000 and pay the First National Bank $1,700, $48.84 in taxes and the balance of $1,251.16 to their sister, Ross, to whom they owed a balance of $1,338. Plaintiff, a creditor of defendants, attached, claiming the proposed payment to Ross both preferential and fraudulent. Held, while the payment may have been preferential, it was not fraudulent, and the facts do not sustain an attachment. Bank v Lee, 124 M 112, 144 NW 433.

Plaintiff, residing with his son on a farm, alleges that he purchased certain cattle from the son, and later moved to North Dakota leaving the cattle in the son's possession. The dealings were oral. The following year the son without notice to the plaintiff mortgaged the cattle to the defendant bank. Upon the son's death the bank foreclosed and plaintiff alleges conversion. Held, while the sale was presumptively fraudulent, the presumption is rebuttable on a showing of a sale in good faith, and the doctrine of estoppel, raised in this case against the plaintiff, does not apply in the case to the act of the plaintiff in leaving the cattle in son's possession. Tousley v Bank, 155 M 162, 193 NW 38.

A chattel mortgage of a stock of merchandise contemplating the retention of possession by the mortgagor and a sale at retail, the mortgagor agreeing that "at least the amount of the wholesale price of that which is sold" shall be applied on the mortgage debt, is constructively fraudulent. Secord v N. W. Tire Co. 159 M 473, 199 NW 84.

Plaintiff, alleging ownership of horses under a chattel mortgage, sued the sheriff in conversion, he having taken same from the mortgagor. Held, the uniform fraudulent conveyance act is identical in effect and meaning to a similar statute existing prior to the revision of 1905. The finding of the jury, that plaintiff did not sustain the burden of proof that the mortgage was taken in good faith and not for the purpose of hindering, delaying or defrauding the attaching creditor is supported and affirmed. Glasser v O'Brien, 172 M 355, 215 NW 517.

Burns purchased a gasoline shovel from Mergens on a conditional sales contract which was not recorded. Burns later bought ten Mack trucks from plaintiff, and at the same time transferred the shovel to plaintiff and plaintiff transferred back to Burns, and took a mortgage covering the ten trucks and the shovel. Burns failed, and sent word to Mergens to come and take the shovel. Held, in a replevin action by plaintiff, that the Mergens' contract, not being on file, is presumptively fraudulent. The presumption in this case is rebuttable. Plaintiff failing to bear the burden of proof as to the sale and mortgage back, the finding was properly in favor of Mergens. Mack v Burns, 175 M 157, 220 NW 560.

Tuttle for many years owned a houseboat and occupied it as his home. About 18 months prior to his death he sold the houseboat to plaintiff, but was left in

possession. The bill of sale was not recorded but left in a safety deposit vault. Plaintiff notified the undertaker that he was owner of the houseboat but notwithstanding the undertaker applied for probation of the estate, and an administrator was appointed, who sold the houseboat to defendant. Held, plaintiff being able to show a bona fide purchase, is able to overcome the presumption of fraud and is entitled to the boat. Finnerty v Gerlach, 176 M 433, 223 NW 683.

Hackl, a dealer, transferred to his employee Wilcox a stock car on a conditional sales contract. Hackl sold the contract to plaintiff. Wilcox did not apply for registration of the car nor obtain a license. The car remained on Hackl's floor for sale and was sold as a new car to defendant, who took possession and obtained a license. Default on the part of Wilcox caused the plaintiff to institute replevin action. Held, the rights of an innocent purchaser of a new unregistered car from a dealer may be subject to those of the assignee of a prior and duly recorded conditional sales contract; but a conditional sales contract of a new and unregistered automobile, left on the sales floor of the dealer, held, subject to the provisions of the statute, as against creditors of the vendor, and subsequent purchasers for value. Drew v Fener, 185 M 133, 240 NW 114.

Plaintiff turned the car over to Mrs. Schiller and she obtained a license, and transferred the card to client. This was done for three successive years. Notwithstanding the fact that the car on the books of the state was owned by and licensed to Mrs. Schiller, the car was in fact the property of plaintiff, and Mrs. Schiller used the car in connection with an advertising campaign. This action is for damages against the sheriff who levied on and sold the car as the property of Mrs. Schiller. The plaintiff had judgment. Held, the statute providing that conditional sales contracts shall be void as to creditors of the vendee unless filed does not apply to a bailment; it is not fraud on creditors for a debtor to transfer to the true owner, the latter's property; and one cannot claim an estoppel unless he can show that he parted with something upon faith in the alleged transfer. Bolton v Owens, 201 M 162, 275 NW 855.

A. W. Hemple in 1929 transferred certain real estate to Marion Wicklund; and at about the same time transferred his business to a corporation of which he became president. He was solvent and his creditors, if any, were paid. In 1936 plaintiff obtained a judgment for rent from 1932 to 1934, and brings this action to set aside the transfers as fraudulent. The action was dismissed by the trial court and affirmed by the supreme court. Held, the solvency of a transferor when he transfers his property affords evidence against a claimed fraudulent purpose, but is only an item to be considered along with other facts. The evidence did not require a finding of the existence of a secret trust fraudulent as to plaintiff. Andrews v Wicklund, 207 M 404, 292 NW 251.

A trust deed of a mill and equipment left the owner in possession and management. It was recorded as a real estate mortgage but not as a chattel mortgage. Held, not invalid as to attaching creditors, where there was no expressed agreement relieving the mortgagor from accounting for proceeds of the mill income. Re Hanover Milling Co. 31 F(2d) 442.

A chattel mortgage covering a stock of merchandise under which the mortgagor is permitted to retain possession and sell from and replenish the stock is fraudulent and void as to creditors, but a conditional sales contract under the same circumstances may be valid. In re Horwitz, 32 F(2d) 285.

Under the uniform fraudulent conveyance act the wife was held not to be a creditor. Maruska v Equitable Life, 21 F. Supp. 841.

What constitutes preferential payments of depositors in case of insolvent banks. 1925 OAG 5.

Laws 1917, Chapter 465.

Laws 1921, Chapter 415, Section 14.

Scope of uniform fraudulent conveyance act. 7 MLR 455, 549.

Rights of assignee of conditional sales contract against subsequent bona fide purchases from original vendor. 16 MLR 698, 722.

Rights of bona fide purchasers at execution sales in case where there are chattel mortgages. 24 MLR 828, 844.

513.13 EXCEPTED CASES.

HISTORY. G. S. 1866 c. 41 s. 17; G.S. 1878 c. 41 s. 17; G.S. 1894 s. 4221; R.L. 1905 s. 3497; G.S. 1913 s. 7012; G.S. 1923 s. 8468; M.S. 1927 s. 8468.

513.14 RIGHTS OF HEIRS.

HISTORY. R.S. 1851 c. 64 s. 3; 1853 c. 11 s. 2; P.S. 1858 c. 51 s. 3; G.S. 1866 c. 41 s. 19; G.S. 1878 c. 41 s. 19; G.S. 1894 s. 4223; R.L. 1905 s. 3499; G.S. 1913 s. 7014; G.S. 1923 s. 8469; M.S. 1927 s. 8469.

As against A's creditors and their assigns the conveyance was fraudulent and void, and this carries with it the right to sequester the rents and profits. Thompson v Bickford, 19 M 17 (1); Bank v Lee, 124 M 113, 144 NW 433.

Where there is a deficiency of assets in his hands, an administrator may, for the benefit of the creditors of the deceased, sue and recover for all goods, chattels, rights or credits which may have been conveyed by the deceased in his lifetime with intent to defraud his creditors. Bennett v Schuster, 24 M 383.

Scope of uniform fraudulent conveyance act. 7 MLR 455, 538.

513.15 FRAUDULENT INTENT QUESTION OF FACT.

HISTORY. R.S. 1851 c. 64 s. 4; P.S. 1858 c. 51 s. 4; G.S. 1866 c. 41 s. 20; G.S. 1878 c. 41 s. 20; G.S. 1894 s. 4224; R.L. 1905 s. 3500; G.S. 1913 s. 7015; G.S. 1923 s. 8470; M.S. 1927 s. 8470.

1. Question of fact

2. Voluntary transfers

1. Question of fact

Where the intent of the assignor, in executing an assignment for the benefit of creditors, was to prevent a forced sale, and permit the goods to be sold at retail, the assignment is void. The innocence of the assignee will not cure the fraud of the assignor. Gere v Murray, 6 M 305 (213).

Mills sold the store to plaintiff, whereupon the defendant sheriff at the instance of creditors of Mills levied upon and sold the stock of goods. Held, if there was fraud on the part of Mills, it was enough for defendants to show that plaintiff had notice of it. An instruction, that the burden of proof was on plaintiff to show that he bought in good faith without knowledge or reasonable cause to believe that Mills made the sale to defraud his creditors; that if he has failed to so satisfy the jury by a preponderence of proof, that he did so purchase in good faith, they must find a verdict for defendants, was rightly refused. Hathaway v Brown, 18 M 414 (373).

Under the statute the question of fraud in the transaction is a question of fact, and in the absence of statutory prohibition, the mere preference by one creditor to another is not fraudulent, though such preference may have the incidental effect of preventing the latter from collecting his debt. Vose v Stickney, 19 M 367 (312).

In testing the validity of the transfer of ownership of 22 cords of wood, the effect of a failure on the part of the vendee to take immediate possession and hold it, is to raise a presumption that the sale is void as to creditors of the vendor, but the vendee may overcome this presumption by showing facts that indicate good faith, and the decision is with the jury. Malm v Barton, 27 M 530, 8 NW 765; Lathop v Clayton, 45 M 124, 47 NW 544.

Ahearn mortgaged a stock of jewelry to plaintiff, and although a consideration, it was admittedly in order to delay creditors from enforcing their claims. The defendant under a deed of general assignment took possession and plaintiff sued. The court directed a verdict for the assignee. Fish v McDonnell, 42 M 519, 44 NW 535.

Otis A. Pray through a third party deeded property to his wife. The bank some years later became a creditor of Pray, and brought action to have the conveyance set aside as fraudulent. Held, the conveyance was in good faith and the bank cannot recover. Bank v Pray, 44 M 168, 46 NW 304.

Defendant's son lived with and was employed on his father's farm for some years after he came of age, under an alleged promise that the farm would be con-

veyed to him. Defendant was insolvent and being pressed by his creditors, deeded the land to the son, but remained in possession and control. Held, the facts warrant a finding that the conveyance was in fraud of creditors. Welch v Bradley, 45 M 540, 48 NW 440.

Where a sale of chattels is not accompanied by delivery and continued change of possession it raises a presumption that the sale was fraudulent, which it is competent for the vendee to overcome by a showing of good faith, and title may pass where part of certain goods are sold and not segregated from the mass. Mackellar v Pillsbury, 48 M 396, 51 NW 222.

Plaintiff delivered goods of its own manufacture together with other goods to W. No transfer of the property was contemplated or price fixed, nor any payment on a contingency. Held, that the contract was one of consignment only, and plaintiff is entitled to possession of the property or payment of its value. No dispute as to facts exists for the consideration of the jury. Cortland Wagon v Sharvy, 52 M 216, 53 NW 1147.

On September 29, 1893, a merchant named Swanson gave a trust mortgage to Partridge for the benefit of creditors and this included the attaching creditors. Two of the creditors repudiated the deal, and sued and obtained judgment and in March, 1894, levied upon and sold part of the goods. Swanson had been left in the store. Partridge sold to plaintiff who sued the sheriff who made the levy. Verdict was for plaintiff by the court. Held, it was a question of fact for the jury and a renewal was ordered. Blakely v Hammeral, 62 M 307, 64 NW 821.

The burden of rebutting the presumption of a fraudulent intent, arising from the actual and continued possession by the vendor of property sold rests upon the vendee, as against creditors, but this burden does not rest upon him to show affirmatively that the vendor was not implicated in or guilty of the fraud, because the fraudulent intent of the vendor cannot affect the rights of a bona fide purchaser for a valuable consideration without notice. It is sufficient if the vendee is innocent of fraud and did not participate therein, and had no notice of the fraudulent intent of the vendor. Leqve v Smith, 63 M 24, 65 NW 121.

In January, 1899, Brundin conveyed the property in question to defendant. There was no consideration other than the assumption of a mortgage. An action was brought against Brundin Bros. to have them declared bankrupt, but the petitioners did not prevail and the case was dismissed in December, 1899. In January, 1900, Brundin filed a voluntary petition. Held, the transfer was in fraud of creditors, and the court did not abuse its discretion in refusing to submit the question of fact for the jury. Hibbs v Marpe, 84 M 10, 86 NW 612.

Hoover, in ill health, conveyed a farm to his brothers. There was a $9,000 mortgage and a default in interest and taxes, which the brothers paid. Hoover's wife allegedly took over the management of the farm, and paid off the brothers, who then conveyed the equity in the farm back to her. The sheriff levied upon certain live stock and this is an action by the wife in replevin. Held, a finding by the jury in favor of the defendant sheriff is not sustained by the evidence. Hoover v Carver, 135 M 105, 160 NW 249.

Plaintiff and defendant agreed orally that defendant was to become the agent of plaintiff for the sale of plaintiff's product, and as a part of that agreement a written contract was entered into, by which defendant executed an instalment note in payment of shares of stock in the plaintiff corporation. Held, that while parol testimony may not be introduced to modify a written instrument, the rule does not apply when the contract is oral, and the instrument only a part of the whole. Independent v Malzohn, 147 M 145, 179 NW 727.

Whether a real estate mortgage covering personal property on the premises is invalid as to creditors because permitting the mortgagor to retain possession of the personal property is a question of fact. In re Hanover Milling Co. 31 F (2d) 442.

As to what intent to defraud will sustain an attachment. 30 LRA 465.

Burden of proof as to fraud against creditors in transfer of property from husband to wife. 56 LRA 823.

Scope of uniform fraudulent conveyance act. 7 MLR 453, 530.

Presumptions of intent. 23 MLR 616.

2. Voluntary transfers

Declarations, made by a party who has conveyed property, or who has made a voluntary assignment for the benefit of creditors, cannot be received to invalidate the transfer. A voluntary assignment may contain provisions, so that on the face of the instrument and without other evidence it may be declared invalid. Burt v McKinstry, 4 M 204 (146).

A voluntary conveyance will not be held void, simply because the grantor was at the time indebted, without regard to the proportion his debts bear to the property reserved. Evidence is required to bring the case within the statute, and when the plaintiff alleges actual fraud the defendant may prove every fact and circumstance which might disprove the charge of fraud. Filley v Register, 4 M 391 (296).

Hinman, being insolvent, in consideration of $1.00 and a covenant by the grantee to support him during his life, transferred all his personal property, and all his real estate. There being no proof that debtor had other property to satisfy the demands of his creditors the conveyance was void as to creditors. Henry v Hinman, 25 M 199; Tupper v Thompson, 26 M 385, 4 NW 621.

Voluntary conveyances by a debtor who is financially embarrassed are prima facie fraudulent as to existing creditors, and where the conveyance is made mala fide, and the fraud is participated in by both parties, it cannot be held in derogation of the claims of creditors, and a receiver appointed in proceeding supplementary to execution may bring action. Walsh v Byrnes, 39 M 527, 40 NW 831.

Where a conveyance is made to a party wholly and primarily for the use of the grantor, it is void as to his creditors, existing or subsequent, without reference to the intention of the parties thereto, for as to creditors of the grantor the subject matter of the grant remains his property; but where the conveyance is made for the actual and real use of the grantee, the reservation for the use of the grantor is incidental and partial, it is not void as to creditors, unless in fact it was made with the intent to defraud them. Wetherell v Canney, 62 M 341, 64 NW 818.

Domestic services performed voluntarily by a daughter of legal age for her parents, in the absence of a special contract, does not furnish a basis for a conveyance to her the effect of which is to defraud creditors. McCord v Knowlton, 79 M 299 (303), 82 NW 589.

Where an insolvent debtor makes a voluntary transfer of his property for the purpose of defrauding his creditors, such transfer is void as to those creditors, even though the vendee has no notice of the fraudulent purpose of the vendor. Knotvold v Wilkinson, 83 M 265, 86 NW 99.

A bill of sale of personal property executed by defendant to claimant, construed together with an agreement executed at the same time providing a sale of the property at auction and the application of the proceeds to the payment of an indebtedness of defendant to claimant on an executory contract for the sale of land. Held, the transfer did not vest title in claimant and the property and proceeds from the sale thereof were subject to garnishment. Johnson v Carlin, 123 M 444, 143 NW 1130.

A preferential transfer or payment, without actual fraud, does not constitute a disposition of property with intent to delay and defraud creditors, so as to authorize the issuance of a writ of attachment. Bank v Lee, 124 M 112, 144 NW 433.

The owner of a lot conveyed it to her sister and a creditor brings this action to set aside the conveyance. The sister defendant in answering alleges the consideration was an agreement to provide a home and do certain other things for her sister during her lifetime. The lot was valued at $350.00 and there had been a part performance of $200.00. Held, that on the allegations and the proof by plaintiff, the court was not bound as a matter of law to conclude that the deed be presumed in defraud of creditors. Ryan v Simms, 147 M 101, 179 NW 683.

The evidence sustains the finding that the deed in controversy, though made to give the defendant bank a preference over other creditors, was not fraudulent as to such other creditors. The conveyance was made prior to the passage of the uniform fraudulent conveyance act. Engenmoen v Lertroe, 153 M 409, 190 NW 894.

An 80-acre farm was purchased by husband and wife largely from money inherited by the wife. When the husband was 53 years of age and the wife 45, the property was deeded to a son, with the usual support provision. All continued to live on and operate the farm. Later the husband and father filed a voluntary peti-

tion in bankruptcy, and this trustee brings action to set aside the deed. The debts antedated the giving of the deed. Held, to be a fraudulent transfer, and the trustee prevailed. Schmitz v Wetzel, 166 M 433, 208 NW 185.

In an action by a trustee to set aside conveyances, the evidence amply sustains the findings that they were made without adequate consideration, with intent to defraud creditors, and that grantee knew of the insolvent condition of the grantor. Nash v Bengston, 179 M 7, 228 NW 177.

513.16 BONA FIDE PURCHASERS.

HISTORY. R.S. 1851 c. 64 s. 5; P.S. 1858 c. 51 s. 5; G.S. 1866 c. 41 s. 21; G.S. 1878 c. 41 s. 21; G.S. 1894 s. 4225; R.L. 1905 s. 3501; G.S. 1913 s. 7016; G.S. 1923 s. 8471; M.S. 1927 s. 8471.

A party purchasing goods from a person who as against the creditors of his vendor is a fraudulent vendee, such purchaser having paid nothing on his purchase, is not protected as a bona fide purchaser for value as against an attaching creditor, even though he was entirely ignorant of the fraud. Hicks v Stone, 13 M 434 (398).

Mills, the owner of a store, sold to Hathaway, the plaintiff, and the defendant Brown attached on behalf of creditors of Mills. Hathaway obtained a verdict against the sheriff, and on appeal to the supreme court there was a reversal based upon improper ruling as to the admissibility of evidence. Hathaway v Brown, 18 M 414 (373).

A debtor, in consideration of future maintenance during life, transferred his real and personal property. There being no proof that the debtor had any other property than that transferred the conveyance was held fraudulent and void as to creditors. Henry v Hinman, 25 M 199.

Plaintiff purchased lumber from Campbell paying part in cash and giving a note for the balance. The sheriff attached on behalf of the vendor's creditors and plaintiff brought suit to recover the value and had a verdict for same. A new trial was denied, an appeal taken, and the order of the trial court sustained. Held that in this action at law in trespass or trover, the defendant cannot without setting out his equitable defenses prevail against the plaintiff, who acted in good faith. Crockett v Phinney, 33 M 157, 22 NW 292.

Munger sold pianos to Northcott, who in turn sold the store to his brother, who in turn sold this piano to plaintiff on an instalment contract. The sheriff levied on the piano and plaintiff sued, and recovered a judgment and on appeal there was a reversal. Held, much latitude may be allowed on cross-examination of a party claiming to have made a bona fide purchase, in cases where fraud is alleged and proven as against the vendor. Riddell v Munro, 49 M 532, 52 NW 141.

Hourn being insolvent, and operating many scattered enterprises, transferred a feed mill and creamery to defendants, the price and consideration being a cancelation of his indebtedness to them, and a short time later made a general assignment to plaintiff under Laws 1881, Chapter 148. Held, that as Hourn was insolvent, and as defendants had notice of the insolvency, the assignee may recover. Thompson v Johnson, 55 M 515, 57 NW 223.

The burden of rebutting the presumption of a fraudulent intent, arising from the actual and continued possession by the vendor, rests upon the vendee, as against creditors; but the burden does not rest upon him to show affirmatively that the vendor was not implicated in or guilty of the fraud, because the fraudulent intent of the vendor cannot affect the rights of a bona fide purchaser for a valuable consideration, without notice. Leqve v Smith, 63 M 24, 65 NW 121.

Feldman, a dealer, sold to McGuire, who two days later sold the articles to plaintiff. The goods were levied upon by the sheriff at the suit of a creditor of Feldman, and plaintiff replevined. Held, the utmost liberality is allowable in the introduction of evidence, or in cross-examination of witnesses, to prove or disprove fraud, or to establish a bona fide purchase. Mix v Ege, 67 M 116, 69 NW 703.

Hoschildt conveyed to Simonds, who conveyed to Hoschildt's wife, who in turn conveyed to the defendant Bernard. On an action brought by plaintiff, a judgment creditor, to set aside the conveyances as fraudulent, the evidence was held sufficient to warrant granting the relief prayed for by the plaintiff. Arnold v Hoschildt, 69 M 101, 71 NW 829.

In an action of claim and delivery brought by an assignee in insolvency to recover possession of a stock of goods alleged to have been transferred to defraud creditors, it is not necessary for plaintiff to prove that the vendee actually participated in, or had actual notice of, the vendor's fraud. When the vendee has knowledge of such facts as would lead the ordinarily prudent man, using ordinary caution, to make inquiries, whereby the fraudulent intent would have been discovered, he cannot be deemed a bona fide purchaser. Manwaring v O'Brien, 75 M 542, 71 NW 1.

A preferential transfer or payment, without actual fraud, does not constitute a disposition of property with intent to delay and defraud creditors, so as to authorize the issuance of a writ of attachment. Bank v Lee, 124 M 112, 144 NW 433.

Simms conveyed a lot to her sister, Johnson, for a consideration of "$1.00 and other valuable consideration". When the transfer was attacked by a creditor, Mrs. Johnson alleged the "good and valuable consideration" was an oral promise by Johnson to provide a home for her sister, Simms. Held, from the allegations of the answer and the proof offered by the plaintiff, the court was not bound to conclude as a matter of law that the conveyance was fraudulent. Ryan v Simms, 147 M 98, 179 NW 683.

Scope of the uniform fraudulent conveyance act. 7 MLR 455, 544.

513.17 ASSIGNMENT OF DEBT.

HISTORY. 1899 c. 268; R.L. 1905 s. 3502; G.S. 1913 s. 7017; G.S. 1923 s. 8472; M.S. 1927 s. 8472.

Butterfass threshed grain for Pieper and gave to Minneapolis Threshing Machine Company an order on Pieper which Pieper accepted. Plaintiff, a creditor of defendant Butterfass, garnished Pieper, and the threshing machine company intervened. Held (1) an order on a debtor by his creditor directing him to pay his indebtedness to the payee of the order, and acceptance thereof by the debtor is an equitable assignment of the debt, (2) such assignment is void against creditors when not filed, unless good faith be affirmatively shown. In this case the evidence was sufficient to show good faith. Baylor v Butterfass, 82 M 21, 84 NW 640.

A logging contract between a lumber company and the contractee, was in good faith verbally assigned to a third party as security for supplies, a portion of which was delivered at the time of the transfer. Held, such transfer not void under the statute. Burton v Gage, 85 M 355, 88 NW 997.

Preston entered into a constructive contract with the City of St. Paul, giving a bond. During the progress of the work he filed in bankruptcy, having previously assigned the money due him to plaintiff for money earned by plaintiff. The city held the moneys, and plaintiff sued and the bondsmen intervened. Held, the assignment was legal, and the intervenors are not entitled to receive the money until their liability as sureties has been determined and discharged. Dickson v St. Paul, 97 M 258, 106 NW 1053.

A contractor transferred certain assets to his brother, a bona fide creditor, and was later adjudicated bankrupt, and this action is to set aside the transfer as in fraud of creditors. Held, section 513.17 is not a recording act. It provides a mere rule of evidence, and hence, the assignment having been made more than four months previous to the filing of the bankruptcy petition it could not be avoided as a preference under the bankruptcy law. Telford v Henrickson, 120 M 427, 139 NW 941.

The defendants disposed of their property, the proceeds being paid to creditors. Held, the transfer being bona fide, though preferential, there is no ground for attachment by a creditor. Bank v Lee, 124 M 112, 144 NW 433.

One who has contracted to perform certain work may assign his claim for compensation to be received therefor before the work has been completed. Failure to file the assignment does not render such assignment void, but casts upon the assignee the burden of proving that it was made in good faith and for a valuable consideration. Leonard v Farrington, 124 M 160, 144 NW 763.

Plaintiff was not entitled to a directed verdict because the evidence made it a question for the jury whether the assignment, under which the plaintiff claims, was executed with intent to defraud creditors. Bank v Woehler, 140 M 32, 167 NW 276.

The presumption that an unfiled assignment of a debt is fraudulent as to the creditors of the assignor can be overcome only by facts showing that the assignment was made in good faith and based upon a valuable consideration. The burden of proof is with the assignee, and evidence that at the time of the assignment the assignor was indebted to the assignee, and no evidence that the assignment was accepted in pro tanto discharge of the debt was good faith security for the debt is insufficient to overcome the presumption. National v Winslow, 143 M 66, 173 NW 181.

The validity of a transfer of property given by a debtor to a creditor to secure or pay his claim, in consideration for which the creditor agrees to advance to the debtor sufficient on which to live during the season, depends upon the bona fides of the transaction, and in this action to set aside an assignment of certain cream checks to the bank, the evidence is not sufficient to support the contention and order for judgment. Nielson v Larson, 158 M 305, 197 NW 259.

Schlecht entered into a contract by which he would earn a percentage of certain fees. He subsequently and before the fees had been earned, assigned his interest in the fees. The court found that the transferees acted in good faith, and gave sufficient consideration for what they got, and the evidence supports the findings. Schlecht v Schlecht, 168 M 168, 209 NW 883.

Good faith established. Nash v Bramen, 210 M 203, 297 NW 755.

Not repealed by uniform fraudulent conveyance act. 7 MLR 549.

Collection of assigned receivables. 25 MLR 203.

513.18 SALE OF STOCK OF MERCHANDISE.

HISTORY: 1899 c. 291; R.L. 1905 s. 3503; G.S. 1913 s. 7018; G.S. 1923 s. 8473; M.S. 1927 s. 8473.

In an action by a purchaser against an attaching creditor of the seller, held, the sale was presumed to be fraudulent as to the merchandise, but the act has no relation to the fixtures. Kolander v Dunn, 95 M 422, 104 NW 271, 483.

Section 513.18 merely prescribes a rule of evidence and when a partnership being insolvent, procures new capital with which to organize a corporation, and the corporation is organized, and the store taken over and operated by the corporation, without compliance with the provisions of the statute, and later the corporation assigns its assets to a trustee, it is held that the creditors of the corporation are entitled to full payment of their claims before the creditors of the corporation are entitled to participate. Thorpe v Pennock, 99 M 22, 108 NW 940.

The owner of a store transferred it to his brother, the plaintiff, a creditor of the vendor levied, and plaintiff brings replevin on the issue of a question of the good faith and consideration of the transfer to plaintiff. Held, the failure of the vendee to secure an inventory, or otherwise follow the mandate of the statute, rendered the sale presumptively void, and the burden of showing good faith rested on the vendee. Gilbert v Gonyea, 103 M 459, 115 NW 640; Seabury v Michaelis, 106 M 544, 119 NW 65.

A sale or mortgage of a stock of liquors, although upon an adequate consideration, may be fraudulent against creditors, and it was error for the trial court to so instruct the jury as to lead them to the conclusion that if the plaintiff paid a fair price, they were entitled to a verdict. Melges v Duluth, 118 M 139, 136 NW 401.

A preferential transfer or payment, without actual fraud, does not constitute such disposition of property with intent to delay and defraud creditors, as to furnish grounds for a writ of attachment. Bank v Lee, 124 M 112, 144 NW 433.

Finding of transfer of property in defraud of creditors sustained. Wickstrand v Pure Oil Co. 159 M 263, 198 NW 811.

Plaintiff, as trustee in bankruptcy brings action to avoid as preferential a chattel mortgage and bill of sale to the defendant. Under the evidence, as a matter of law, the defendant had reasonable cause to believe, within the meaning of the bankruptcy act, that the security he took covering a preexisting debt would operate as a preference. Martin v McDonald, 159 M 447, 199 NW 176.

A sale without compliance with the statute is presumptively fraudulent and the burden of proof is on the purchaser in an action to set aside. 17 F(2d) 492.

Bulk sales act. 5 MLR 557.

Scope of fraudulent conveyance act. 7 MLR 455.

Applicability of bulk sales act to sale of partner's interest to co-partner. 11 MLR 669.

Limitations on application of bulk sales act. 15 MLR 475.

Protection of creditors under bulk sales act. 17 MLR 441.

513.19 CONVEYANCE.

HISTORY. R.S. 1851 c. 64 s. 7; P.S. 1858 c. 51 s. 7; G.S. 1866 c. 41 s. 22; G.S. 1878 c. 41 s. 22; G.S. 1894 s. 4226; R.L. 1905 s. 3504; G.S. 1913 s. 7019; G.S. 1923 s. 8474; M.S. 1927 s. 8474.

A preferential transfer or payment, without actual fraud, does not constitute such disposition of property with intent to delay and defraud creditors, so as to authorize the issuance of a writ of attachment. Bank v Lee, 124 M 112, 144 NW 433.

FRAUDULENT CONVEYANCES

513.20 DEFINITIONS.

HISTORY. 1921 c. 415 s. 1; G.S. 1923 s. 8475; M.S. 1927 s. 8475.

UNIFORM FRAUDULENT CONVEYANCE ACT

The act, Laws 1921, Chapter 415, Section 14, expressly repeals Revised Laws 1905, Sections 3495 and 3498, General Statutes 1913, Sections 7010 and 7013. It has been adopted by Arizona, California, Delaware, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, South Dakota, Tennessee, Utah, Wisconsin, Wyoming.

The act is discussed generally in:

Uniform fraudulent conveyance act. 7 MLR 453, 530.

Waiver of fraud by ratification. 14 MLR 299.

The law of fraudulent conveyances. 16 MLR 122.

Liability of partners. 17 MLR 359.

Uniform fraudulent conveyance act. 23 MLR 616.

Duration of lien. 24 MLR 664.

Defect in the title of a judgment debtor. 24 MLR 809.

Chattels. 24 MLR 829.

Presumption of fraud in conveyance of chattels. 24 MLR 832.

Effect on creditors' rights. 25 MLR 80.

Constructive trusts; nature of equitable relief. 25 MLR 670, 713.

A debtor's unexempt property belongs to his creditors, and their legal demands must be satisfied before the debtor gives such property to others. The fact that the statute relating to fraudulent transfers of real estate omits a reference to personal property, does not abrogate the common law rule which remains in force. Murphy v Casey, 157 M 1, 195 NW 627.

A subsequent creditor cannot avoid a conveyance by his debtor merely because it was made with intent to defraud his creditors. To avoid such conveyance, the subsequent creditor must allege and prove facts showing that its purpose was to defraud him. Nielson v Larson, 158 M 305, 197 NW 259.

A creditor may maintain an action in equity to procure the setting aside of an alleged fraudulent conveyance of real estate, where the debtor is insolvent and a non-resident of the state, without first obtaining service upon the debtor or procuring a lien against the property. In this case the transfer was prior to January 1, 1922. Humphrey v McCleary, 159 M 535, 198 NW 132.

On transfers prior to January 1, 1922, the provisions of the uniform fraudulent conveyance act, do not apply. In this case the evidence sustains the fact that the debts upon which the judgments were entered antedated the mortgage and conveyance, and the finding that the mortgage and deed were fraudulent as to the plaintiff judgment creditor. Schumacher v Streich, 168 M 497, 210 NW 634.

The uniform fraudulent conveyance act does not repeal section 511.01, and the attachment made by a creditor of the vendor in the instant case was valid; the mortgagee failing to prove her good faith in the transaction. Glasser v O'Brien, 172 M 355, 215 NW 517.

The fraudulent conveyance act of 1921 did not modify or repeal any part of the homestead law. Bowers v Norton, 173 M 576, 218 NW 108.

The receiver plaintiff in this case was not appointed in a proceeding supplementary to execution. His action is not a creditors bill. A receiver cannot attack a chattel mortgage as void as to creditors because not recorded, without showing that he occupies a status entitling him to assail it. Munck v Bank, 175 M 47, 220 NW 400.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attacking as fraudulent a transfer of property by his principal obligor. On a state of facts arising prior to the uniform fraudulent conveyance act, a conclusion of law that a voluntary transfer was void against an existing creditor not sustained, the transfer having been made in good faith. National v Wittich, 184 M 44, 237 NW 690.

The uniform fraudulent conveyance act is aimed at the dishonest debtor and seeks to afford the creditor an orderly, efficient, and speedy remedy to reach debtor's property fraudulently conveyed. The act is remedial and should be liberally construed. By its terms it was not intended to impair or limit the old methods as a means to make effective the rights of a judgment creditor. It is an extension of our former law so that a simple creditor may now sue where formerly judgment was a prerequisite to the maintenance of suit. Lind v Johnson, 204 M 30, 282 NW 661.

Only the charter and the restrictions and prohibitions contained therein, or in the laws of the state of origin in relation thereto, follow the corporation into another state and are recognized and enforced there under the rules of comity. In the instant case the laws of South Dakota must determine the ultra vires character of the transactions under attack. Erickson v Wells, 217 M 372, 15 NW(2d) 162, 459.

An assignment of future wages is not an act on which to predicate the denial of the discharge of a bankrupt. Strane v Strane, 87 F(2d) 365.

Voluntary conveyance by accommodation endorser of a note before maturity. 12 MLR 301.

Bulk sales act; remedy of creditors. 18 MLR 225.

Definite indications as to meaning of the provisions of the uniform fraudulent conveyance act. 23 MLR 616, 622.

Uniform fraudulent conveyance act; relating to chattel mortgages. 24 MLR 838.

Constructive trusts. 25 MLR 670, 713.

513.21 INSOLVENCY DEFINED.

HISTORY. 1921 c. 415 s. 2; G.S. 1923 s. 8476; M.S. 1927 s. 8476.

In determining insolvency, exempt property such as a homestead is not included in the assets or in the computation. Bowers v Norton, 173 M 579, 218 NW 109.

513.22 FAIR CONSIDERATION DEFINED.

HISTORY. 1921 c. 415 s. 3; G.S. 1923 s. 8477; M.S. 1927 s. 8477.

Where children, after becoming of age, remain as members of the family and perform services under an agreement for compensation, such services are a valid consideration for a conveyance thereof. But such services if rendered without a prior agreement, will not sustain such a conveyance as against creditors of the grantor. Gibbon v Fossbender, 164 M 317, 204 NW 953.

The consideration required by the uniform fraudulent conveyance act, section 513.22, is one which fairly represents the value of the property transferred or the obligation incurred. Schlecht v Schlecht, 168 M 168, 209 NW 883.

An instrument transferring to certain directors of a bank, certain real estate and other property (later sold and the proceeds applied) to secure an indebtedness

from the grantor to the bank, was given upon a fair consideration and was not void under the uniform fraudulent conveyance act, even though the giving of the instrument rendered the grantor insolvent, there being no evidence of an actual intent to defraud creditors. Nelson v Pass, 172 M 149, 214 NW 787.

The findings are supported to the effect that conveyances of certain lands by the husband to his wife and daughters, the consideration being moneys advanced and loaned to him by them, though leaving him insolvent, were made in good faith, for full and adequate considerations, and not with the intent to defraud the creditors of the husband. Klasens v Meester, 173 M 468, 217 NW 593.

Where full values of the properties conveyed are applied in reduction of a bona fide debt owing to the grantee, a fair consideration is paid, thereupon the burden is upon one attacking the conveyance to show that both grantor or grantee had actual as distinguished from implied intent to hinder, delay or defraud creditors. Watson v Goldstein, 174 M 423, 219 NW 550.

In an action to set aside a quitclaim deed and bill of sale, the evidence amply sustained the finding that they were made without adequate consideration, with intent to hinder, delay and defraud creditors, and received by the grantee with full knowledge of such intent. Nash v Bengston, 179 M 7, 228 NW 177.

In an action by a lumber company which furnished material for the improvement of a homestead, to set aside as fraudulent a transfer by the husband to his wife through a third party, the evidence sustains the findings of the trial court that the transfer was supported by a fair consideration and made without any fraudulent intent. Stenke v Newdall, 183 M 491, 237 NW 194.

Transfer of property paying an antecedent debt and resulting in a preference does not in itself constitute fraud, and the evidence sustains a finding that there was such an antecedent debt owing by the husband to the wife, constituting sufficient consideration, and it not being disproportionate to the value of the property transferred. National v Wittich, 184 M 21, 237 NW 585.

Where the value of the property conveyed was greater than the cash consideration of $1,000 paid, the court might find that the 15 years' work and service of the son might well make up the difference, there being no evidence that the father was made insolvent by the transfer. Larson v Tweton, 185 M 366, 241 NW 43.

Finding sustained that transfers of property from father to son were honestly made in payment of an antecedent debt and without intent to defraud other creditors of the father. Skinner v Overend, 190 M 456, 252 NW 418.

Whether the transferee participated in the fraud or acted in bad faith, or was put upon inquiry such as would have disclosed the fraud, were questions of fact for the trial court, and the findings that the transfer was fraudulent and void as to defendant judgment creditor was sustained. Weese v Weese, 191 M 526, 254 NW 816.

Action by a judgment creditor to set aside as fraudulent a real estate mortgage on real property by a father to his children the consideration being his promise to so reward them if they remained at home and worked after attaining their majority. Held to be a valid lien and superior to the lien of plaintiff's judgment. Kray v Peterson, 197 M 364, 267 NW 144.

Clara H. Freeman was a creditor of W. H. Freeman, Inc. and paid to a bank $1,050 to satisfy a note of the corporation and received from the bank an assignment of collateral previously assigned to the bank and of a face value of $8,500. This was less than the amount of the corporation's indebtedness to Clara. Held, the consideration was ample, and the transaction without fraud. Hamilton v Freeman, 198 M 308, 269 NW 635.

A fair consideration is given for property or obligation where in exchange for such property or obligation as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or when such property, or obligation, is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation, obtained. Kohrt v Mercer, 203 M 494, 282 NW 129.

Testimony that a transfer of money by a husband to his wife was made in part in consideration of an antecedent debt and in part as the proceeds of insurance on property belonging to the wife sustains a finding that the transfer was not fraudulent as to creditors. Kummet v Thielen, 210 M 302, 298 NW 245.

The evidence sustains the finding that the deed in controversy, though made to give the bank a preference over other creditors, was based on a sufficient consideration, and not fraudulent as to such other creditors. Engenmoen v Lutroe, 153 M 409, 190 NW 894.

A chattel mortgage on a stock in trade, permitting mortgagor to retain possession, sell and apply part on a mortgage debt, is constructively fraudulent notwithstanding the uniform fraudulent conveyance act. In re Frey, 15 F(2d) 871.

In absence of allegation that value of property transferred to creditor to satisfy antecedent debt was disproportionate to the amount of such debt, no case is stated under the statute making transfers without fair consideration fraudulent as to creditors. Irving Trust v Kamisky, 19 F. Supp. 817.

Debtor while solvent assigned accounts receivable to a creditor and the assignment required debtor to account either by payment of moneys to creditor or by replacement and substitution of other accounts of equal value. Debtor collected funds and used them in business without segregation. Held, assigned and substituted accounts at a time when debtor was insolvent was constructively fraudulent. In re De Luxe Oil Co. 36 F. Supp. 287.

513.23 CONVEYANCE BY INSOLVENT.

HISTORY. 1921 c. 415 s. 4; G.S. 1923 s. 8478; M.S. 1927 s. 8478.

Where children, after coming of age, remain as members of the family and perform services under an agreement for compensation, such services are a valid consideration for a conveyance in payment therefor. But the services of such children, if rendered without a prior agreement for compensation, will not sustain such a conveyance as against creditors of the grantor. Gibbon v Fossbender, 164 M 317, 204 NW 953.

The consideration required is one which fairly represents the value of the property transferred or the obligation incurred. Schlecht v Schlecht, 168 M 168, 209 NW 883.

The wife had advanced various sums of money to the husband long prior to the execution of the deeds. The court found insufficient proof of any agreement to convey. The evidence supports the finding of lack of sufficient consideration and if the conveyance stand, the husband would be insolvent. Thompson v Schiek, 171 M 284, 213 NW 911.

An instrument transferring properties to directors of a bank, with power of disposal, and application of the proceeds to vendor's indebtedness to the bank, was given upon a fair consideration, and was not void under the uniform fraudulent conveyance act, even though the giving of the instrument rendered the grantor insolvent, there being no evidence of an actual intent to defraud creditors. Nelson v Pass, 172 M 149, 214 NW 787.

Conveyance by vendor to wife and daughters in payment of moneys theretofore advanced to him under promise of repayment, and with no intent to defraud, is not fraudulent even though it leave him insolvent. Klasens v Meester, 173 M 468, 217 NW 593.

The day after his father's death the defendant Edwin transferred his interest in his inheritance to his mother who accepted knowing his insolvent condition. The transfer caused Edwin to become insolvent. Subsequently he was adjudicated bankrupt. The court held the conveyance fraudulent and void. Nash v Bengston, 179 M 7, 228 NW 177.

The evidence sustains a finding of solvency of Wittich at the time of making the conveyance, and the transfer was made in good faith and based on sufficient consideration, and was in fact bona fide, and the fact that he later became liable on a bond and was declared bankrupt does not invalidate the conveyance. National v Wittich, 184 M 21, 237 NW 585.

The conveyance rendered the grantor, the judgment debtor in this case, insolvent, but as the consideration was fair, and based upon proper consideration the judgment against the plaintiff was reversed. Larson v Tweton, 185 M 366, 241 NW 43.

Transfers between husband and wife, whether made directly or indirectly, are prima facie fraudulent as to existing creditors; the burden resting upon the wife to

show by clear and satisfactory evidence that a valuable consideration was paid by her or by someone in her behalf. The conveyance in this case was fraudulent. Bank v Swenson, 197 M 425, 267 NW 366.

Conveyance in this case held based upon a fair consideration and without fraud, and superior to defendant's alleged lien. Kohrt v Mercer, 203 M 494, 282 NW 129.

The mere fact that a person is solvent as and when he transfers his property does not necessarily render him incapable of making conveyances fraudulent to his creditors. While solvency when transfer is made affords evidence against a claimed fraudulent purpose, it is only an item to be considered with all the facts and circumstances. Lind v Johnson, 204 M 30, 282 NW 661.

In an action to remove clouds from title, where a mortgage was being attacked as fraudulent conveyance because allegedly given by mortgagor when insolvent for less than fair consideration, it was prejudicial error for trial judge to reject proof that notes which mortgage secured were executed for fair consideration. McIntyre v Peterson, 210 M 419, 298 NW 713.

In suit by a judgment creditor of husband to set aside as fraudulent a transfer of bank stock by husband to wife, burden of clearly and satisfactorily showing good faith in the transfer and that a valuable consideration was paid by the wife, rested on the wife. In this case the transferee being unable to establish consideration and good faith by convincing evidence, the transfer was set aside. Brennan v Friedell, 212 M 115, 2 NW(2d) 547.

See Erickson v Wells, 217 M 372, 15 NW(2d) 162, under section 513.20.

Conveyance of property, though fraudulent as to creditors, is good as between the parties; statutes affecting such conveyances being for protection of creditors or subsequent purchasers, a creditor cannot impeach a transfer of property as fraudulent unless injured thereby. Federal equity court should not enforce letter of state statutes, where application of facts violates fundamental principles of equity. Brill v Foshay, 65 F(2d) 420.

Bankrupt's assignment of salary expected to be earned by him in the future is not an act barring his discharge; nor is the fact he listed a person as a creditor in too large an amount. Strane v Schaeffer, 87 F(2d) 365.

513.24 OTHER SPECIFICATIONS OF LEGAL FRAUD.

HISTORY. 1921 c. 415 s. 5; G.S. 1923 s. 8479; M.S. 1927 s. 8479.

The evidence sustains the finding that the debt on which plaintiff's judgment was entered, antedated the mortgage; and that the mortgage and deed were fraudulent as to the plaintiff. Schumacher v Streich, 168 M 497, 210 NW 634.

Whether there was a fair or sufficient consideration for transfer of securities here attacked was a question of fact for the trial court; and the evidence supports the finding that the transfer was made with the intent on the part of the judgment debtor to avoid payment of plaintiff's judgment and that the intervenor participated in the fraud and was guilty of bad faith. Weese v Weese, 191 M 526, 254 NW 816.

In determining whether ownership of stock by husband and wife was a joint tenancy as affecting the wife's liability as transferee for husband's unpaid income taxes after husband's death, the laws of the state where husband and wife lived and acquired the stock are controlling. Irvine v Helvering, 99 F(2d) 265.

Scope of the uniform fraudulent conveyance act. 7 MLR 456, 549.

Rights of subsequent creditors in corpus of trust fund set up by debtor reserving life estate and general powers of appointment. 19 MLR 329.

Presumption of intent. 23 MLR 618.

Presumptions of fraud in chattel mortgages under the uniform fraudulent conveyance act. 24 MLR 835.

Renunciation of a testamentary gift to defeat the claims of devisee's creditors. 25 MLR 951.

513.25 CONVEYANCE BY A PERSON ABOUT TO INCUR DEBTS.

HISTORY. 1921 c. 415 s. 6; G.S. 1923 s. 8480; M.S. 1927 s. 8480.

Markley being indebted to plaintiff and others conveyed his stock of merchandise to plaintiff, and in a separate instrument was set forth terms of disposition of the proceeds, the stock to be sold at retail. There was a further provision that any residue was to be at the order of Markley. Held, as against a levying creditor, such as the defendant, not included in the schedule of creditors listed to receive pro rata of the proceeds, the two instruments constitute a trust deed of assignment, and void because the instrument creates a resulting trust in favor of the vendor, and because of the provision for sale in the ordinary course of business. Truitt v Caldwell, 3 M 364 (257).

In the absence of special statutory prohibition, such for instance as a bankruptcy law, the mere preference of one creditor is not fraudulent, and the question of fraudulent intent in a conveyance alleged to have been made to defraud creditors is a question of fact. Vose v Stickney, 19 M 367 (312).

Clark gave plaintiff an absolute bill of sale of certain lumber, and plaintiff in return gave Clark an agreement to dispose of the lumber and pay himself out of the proceeds, the average to be rebated to Clark. Held, the statute has no reference to a case such as this in which the conveyance is made primarily for the use of the grantee, and the reservation to the grantor is merely incidental. Camp v Thompson, 25 M 175.

A conveyance of real property upon the understanding that the grantee hold it in trust for the grantor, and where money could be realized therefrom, it should be applied by the grantor to the payment of his debts, is void against his creditors. A debtor's property is by law subject immediately to process issued at the instance of his creditors, and he may not lawfully hinder or delay them by any device which leaves his property, or the proceeds subject to his control. Though absolute in form, and made for a double purpose of paying a just debt to the grantee, and a residue to creditors, the conveyance is nevertheless void. Smith v Conkwright, 28 M 23, 8 NW 876; Westerill v Canney, 62 M 341, 64 NW 818; Hunt v Ahnemann, 94 M 67, 102 NW 376.

Plaintiff recovered a judgment against the defendants and garnisheed Jenks, who disclosed holding property under an assignment by defendants of their partnership property only. Held, an assignment under the insolvent law of Laws 1881, Chapter 148, contemplates all of the debtor's property not exempt from execution. An assignment by a partnership, of partnership property, exclusively, is upon its face, partial, and not general, and therefore not such as our insolvent law contemplates, and as to the garnishee Jenks, the property or proceeds are not in custodia legis. May v Walker, 35 M 194, 28 NW 257.

A mortgage on land in question executed in 1857 was foreclosed under a power in 1874, and there being no redemption the mortgagee went into possession, and he and his vendees remained in possession until in 1887 the heirs of the original mortgagor discovered that the foreclosure was abortive. Held, the abortive foreclosure under power is no bar to subsequent foreclosure by action; the defendants are mortgagees in possession; any right of the mortgagor is barred by a lapse of ten years from the date of the mortgagee in possession. Rogers v Benton, 39 M 39, 38 NW 765.

Boisjoli owned 200 acres of land, 80 acres of which was his homestead. The mortgage against the 200 was for more than the value of the non-exempt 120 acres. He traded his equity in the 200 acres for a lot in Little Falls, the title to which he took in his wife's name. Held, in an action by a creditor to enforce a trust on the acquired property, that the statutory presumption of fraudulent intent was disproved, and judgment was for the defendant. Blake v Boisjoli, 51 M 296, 53 NW 637.

In an action by a judgment creditor to subject certain real estate previously conveyed by the judgment debtor to a third party, held, that the complaint did not state facts sufficient to constitute a cause of action. Anderson v Lindberg, 64 M 476, 67 NW 538.

Distinguishing Truitt v Caldwell, 3 M 364 (257), it is held that where a partnership in good faith, and solely to secure their debts to one or more but not all of their creditors, transfer firm property, reserving the right of redemption, the instrument is not a deed of assignment but valid mortgage security and cannot be attacked, even though the debtors are insolvent, except in regular insolvency proceedings. Dyson v Bank, 74 M 439, 77 NW 236.

513.26 CONVEYANCE MADE WITH INTENT TO DEFRAUD.

HISTORY. 1921 c. 415 s. 7; G.S. 1923 s. 8481; M.S. 1927 s. 8481.

Laws 1921, Chapter 415, expressly repealed General Statutes 1913, Section 7013. (Revised Laws 1905, Section 3498). Section 513.26 is a reenactment of section 7013.

I. Annotations under repealed sections

II. Cases since enactment of Laws 1921, Chapter 415

I

Annotations Under Repealed Sections

1. Based on 13 Elizabeth, Chapter 5. Bruggerman v Peter, 7 M 337 (264); Wellington v Northwestern, 48 M 490, 51 NW 475; Byrnes v Volz, 53 M 110, 54 NW 942.

2. Declaration of common law. Piper v Johnston, 12 M 60 (27); Blockman v Wheaton, 13 M 326 (299); Hathaway v Brown, 18 M 414 (373); Byrnes v Volz, 53 M 110, 54 NW 942.

3. Personalty. Fraudulent transfers of personalty are voidable the same as fraudulent transfers of realty. Blockman v Wheaton, 13 M 326 (299); Hicks v Stone, 13 M 434 (398); Benton v Snyder, 22 M 247; Byrnes v Volz, 53 M 110, 54 NW 942.

4. Who are "other persons." Wife suing or about to sue for divorce. Byrnes v Volz, 53 M 110, 54 NW 942; Dougan v Dougan, 90 M 471, 97 NW 122.

Wife after decree dissolving marriage. Cochran v Cochran, 96 M 523, 105 NW 183.

5. Meaning of "lawful." Bruggerman v Peter, 7 M 337 (264); Shunk v Hellmiller, 11 M 104 (62).

6. Subsequent creditors. A subsequent creditor cannot avoid a conveyance merely because it was made with intent to defraud creditors existing at the time of its execution. Fullington v Northwestern, 48 M 490, 51 NW 475; Schmitt v Dahl, 88 M 506, 93 NW 665; Seager v Armstrong, 95 M 414, 104 NW 479; Williams v Kemper, 99 M 301, 109 NW 242.

Otherwise if it was made to defraud him. Walsh v Byrnes, 39 M 527, 40 NW 831; Fullington v Northwestern, 48 M 490, 51 NW 475; Byrnes v Volz, 53 M 110, 54 NW 942.

Or where the necessary consequence of the transfer is to defraud creditors. Gallagher v Rosenfield, 47 M 507, 50 NW 696.

7. Essential elements. To make a debtor's transfer of property fraudulent as respects his creditors there must be an intent to defraud, express or implied, and an act which, if allowed to stand, will actually defraud them by hindering, delaying or preventing the collection of their claims. Baldwin v Rogers, 28 M 544, 11 NW 77; Blake v Boisjoli, 51 M 296, 53 NW 637; Aretz v Kloos, 89 M 432, 95 NW 216, 769.

The thing transferred must be of value out of which the creditor could have realized the whole or a part of his claims, or, otherwise expressed, property which is appropriable by law to the payment of the debt. Blake v Boisjoli, 51 M 296, 53 NW 637; Aretz v Kloos, 89 M 432, 95 NW 216, 769.

8. Intent. As a general rule a fraudulent intent is essential. Burt v McKinstry, 4 M 204 (146); Gere v Murray, 6 M 305 (213); Hathaway v Brown, 18 M 414 (373); Horton v Williams, 21 M 192 (187); Bennett v Ellison, 23 M 242; O'Connor v Meehan, 47 M 247, 49 NW 982; Roellers v Hall, 62 M 341, 64 NW 818.

When a fraud on creditors is a necessary consequence of the transfer the fraudulent intent will be presumed. Chaphard v Bayard, 4 M 533 (418); Gallagher v Rosenfield, 47 M 507, 50 NW 696.

The intent must exist at the time of the transfer. Burt v McKinstry, 4 M 204 (146); Filebeck v Bean, 45 M 307, 45 NW 969.

Good faith. Bank v Anderson, 101 M 107, 111 NW 947; Davison v Patton, 101 M 344, 112 NW 266.

9. Property must be appropriable. The transfer of exempt property is not fraudulent. Morrison v Abbott, 27 M 116, 6 NW 455; Ferguson v Kumler, 27 M 156, 6 NW 618; Furman v Tenny, 28 M 77, 9 NW 172; Kieth v Albrecht, 89 M 247, 94 NW 677.

Nor is the transfer of property encumbered to its full value. Baldin v Rogers, 28 M 544, 11 NW 77; Horton v Kelly, 40 M 193, 41 NW 1031; Blake v Boisjoli, 51 M 296, 53 NW 637; Ahllman v Pikop, 56 M 531, 58 NW 551; Spooner v Travelers, 76 M 311, 79 NW 305; Fryberger v Berven, 88 M 311, 92 NW 1125; Kieth v Albrecht, 89 M 247, 94 NW 677; Aretz v Kloos, 89 M 432, 95 NW 216.

There may be a fraudulent transfer of a "contingent interest." Fryberger v Berven, 88 M 311, 92 NW 1125.

Or of a "beneficial interest." Brown v Matthaus, 14 M 205 (149).

10. Voidable; good between the parties; confirmation. The term "void" means voidable. Hathaway v Brown, 22 M 214; Butler v White, 25 M 432; Devlin v Quigg, 44 M 534, 47 NW 258; Broisie v Minneapolis, 87 M 456, 92 NW 340; Lucy v Freeman, 93 M 274, 101 NW 167.

A fraudulent conveyance is good between the parties. Piper v Johnston, 12 M 60 (27); Adler v Apt, 30 M 45, 14 NW 63; Cain v Mead, 66 M 195, 68 NW 840; New Prague v Schreiner, 70 M 125, 72 NW 963; Brown v Scheffer, 72 M 27, 74 NW 902; Brosie v Minneapolis, 87 M 456, 92 NW 340.

And their privies. Collins v Collaran, 86 M 199, 90 NW 364.

The grantor cannot maintain an action to set it aside. Dougan v Dougan, 90 M 471, 97 NW 122.

But a fraudulent mortgagor may redeem. Livingston v Ives, 35 M 55, 27 NW 74.

Or resist a foreclosure. Bickford v Johnson, 36 M 123, 30 NW 439.

A fraudulent pledgor may redeem. Jones v Rahilly, 16 M 320 (283).

Creditors may confirm a fraudulent transfer and they will be held to have done so if they pursue the property or money which the debtor received in exchange for the transfer. LeMay v Bibeau, 2 M 291 (251); Scott v Edes, 3 M 377 (271); Hathaway v Brown, 22 M 214; Kells v McClure, 69 M 60, 71 NW 827; New Prague v Schreiner, 70 M 125, 72 NW 963.

But see Banning v Sibley, 3 M 389 (282).

11. Creditor's right to debtor's property. The law regards the property of the debtor as of right belonging to his creditors and sanctions no scheme or device to deprive them of it. Gere v Murray, 6 M 305 (213).

A debtor's property is by law subject immediately to process issued at the instance of his creditor. Smith v Conkwright, 28 M 23, 8 NW 876.

12. Knowledge of grantee. As a general rule, to render a transfer fraudulent, the grantee must participate in the fraud or have knowledge of it. Hathaway v Brown, 18 M 414 (373).

But it is not necessary in the case of a fraudulent assignment for the benefit of creditors. Gere v Murray, 6 M 305 (213); Bennett v Ellison, 23 M 242.

Or in the case of any other voluntary conveyance. Knotvold v Wilkinson, 83 M 265, 86 NW 99.

Or where the necessary consequence of the transfer is to defraud creditors. Gallagher v Rosenfield, 47 M 507, 50 NW 696.

13. Devices to hinder or delay. A transfer by a debtor to secure an extention of time in which to pay his debts is fraudulent. Bennett v Ellison, 23 M 242; Kells v McClure, 69 M 60, 71 NW 827.

14. Transfer with trust for grantor. A debtor cannot place his property beyond the reach of the process of his creditors, and, at the same time, retain control over it, and its avails and it is immaterial that he intends ultimately to

apply the avails of it to the payment of his debts. Thompson v Bickford, 19 M 17 (1); Smith v Conkwright, 28 M 23, 8 NW 876.

Transfer of real or personal property by debtor to a third party to be held in trust for his use and benefit is void as to existing and subsequent creditors. Williams v Kemper, 99 M 301, 109 NW 242.

15. Existence of other property. If a transfer is made with a fraudulent intent it is void although the creditor has other property out of which the debt might be made. Spooner v Travellers, 76 M 311, 79 NW 305.

But see Camp v Thompson, 25 M 175.

If a grantor retains property sufficient for the payment of all his debts he has a right in good faith to provide for his future support by a conveyance of a portion of his property. Wetherell v Canney, 62 M 341, 64 NW 818.

16. Consideration. Transfer may be fraudulent although based on a valuable consideration. Truitt v Caldwell, 3 M 364 (257); Braley v Byrnes, 20 M 435; Fish v McDonnell, 42 M 519, 44 NW 535.

17. Preferences. The payment of an honest debt is not deemed fraudulent under this statute although it operates as a preference and hinders and delays the other creditors. Ferguson v Kemler, 11 M 104 (62); Vose v Stickney, 19 M 367 (312); Butler v White, 25 M 432; Smith v Dederick, 30 M 60, 14 NW 262; Atwater v Bank, 45 M 341, 48 NW 187, Frost v Steele, 46 M 1, 48 NW 413; Mac Kellar v Pillsbury, 48 M 396, 51 NW 222; Walsh v St. Paul, 60 M 397, 62 NW 383; Davis v Cobb, 81 M 167, 83 NW 505; Aretz v Kloos, 89 M 432, 95 NW 216.

Preferential mortgage is not void under this statute. Berry v O'Connor, 33 M 29, 21 NW 840; Bannon v Bowler, 34 M 416, 26 NW 237; Dyson v Bank, 74 M 439, 77 NW 236; Aretz v Kloos, 89 M 432, 95 NW 216.

18. Deed fraudulent in part void in toto. Horton v Williams, 21 M 187; Gallagher v Rosenfield, 47 M 507, 50 NW 696; Erickson v Paterson, 47 M 525, 50 NW 699.

19. Title of grantee. Becomes absolute when statute of limitations has run. Brosie v Minneapolis, 87 M 456, 92 NW 340.

A fraudulent grantee may do with the property all that the grantor might have done if he had retained it. Brown v Scheffer, 72 M 27, 74 NW 902.

20. Liability of grantee. Thompson v Bickford, 19 M 17 (1).

21. Crops on land fraudulently conveyed. Sanders v Chandler, 26 M 272, 3 NW 351; Hossfeldt v Dill, 28 M 469, 10 NW 781; Hartman v Weiland, 36 M 223, 30 NW 815; Erickson v Paterson, 47 M 525, 50 NW 699; Olson v Amundson, 51 M 114, 52 NW 1096; Cain v Mead, 66 M 195, 68 NW 840.

22. Badges of fraud. Adler v Apt, 31 M 348, 17 NW 950; Hanson v Bean, 51 M 546, 53 NW 871; Bond v Stryker, 73 M 265, 76 NW 26; Benson v Nash, 75 M 341, 77 NW 991; Carson v Hawley, 82 M 204, 84 NW 746.

23. Transfers between husband and wife. Transfers between a husband and wife, whether directly or indirectly, are prima facie fraudulent as to existing creditors. The burden is on the wife to show good faith and a valuable consideration paid by her or by someone in her behalf. Minneapolis v Halonen, 56 M 469, 57 NW 1136; Shea v Hynes, 89 M 423, 95 NW 214.

But see, Teller v Bishop, 8 M 226 (195); Sanders v Chandler, 26 M 373, 3 NW 351; Farnham v Kennedy, 28 M 365, 10 NW 20; Ladd v Newell, 34 M 107, 24 NW 366; Eilers v Conradt, 39 M 242, 39 NW 320; Bank v Pray, 44 M 168, 46 NW 304; Chadbourn v Williams, 45 M 294, 47 NW 812; Frost v Steele, 46 M 1, 48 NW 413; Bond v Stryker, 73 M 265, 76 NW 26.

24. Transfers between near relatives. Transfers between near relatives are scrutinized by the courts closely but they are not presumptively fraudulent except in the case of husband and wife. Shea v Hynes, 89 M 423, 95 NW 214.

But see, Welch v Bradley, 45 M 540, 48 NW 440; Leqve v Stoppel, 64 M 152, 66 NW 124; Nichols v Gerlich, 84 M 483, 87 NW 1120; Oliver v Hilgers, 88 M 35, 92 NW 511; Gustafson v Gustafson, 92 M 139, 99 NW 631.

And when they are voluntary they are, like all voluntary conveyances, presumptively fraudulent. McCord v Knowlton, 79 M 299, 82 NW 589.

25. Transfers in consideration of future support. Henry v Hinman, 25 M 199; Tupper v Thompson, 26 M 385, 4 NW 621; Wetherell v Canney, 62 M 341, 64 NW 818.

26. Transfers of stocks of merchandise. Hathaway v Brown, 22 M 214; Campbell v Landberg, 27 M 454, 8 NW 168; Cotterell v Dill, 29 M 114, 12 NW 355; Wilcox v Landberg, 30 M 93, 14 NW 365; Mix v Ege, 67 M 116, 69 NW 703; McCarvel v Wood, 68 M 104, 70 NW 871; Bruggeman v Wagener, 72 M 329, 75 NW 230; Benton v Minneapolis, 73 M 498, 76 NW 265; Benson v Nash, 75 M 341, 77 NW 991; Manwaring v O'Brien, 75 M 542, 78 NW 1; Scheffer v Lowe, 77 M 279, 79 NW 970; Carson v Hawley, 82 M 204, 84 NW 746; Dispatch v George, 83 M 309, 86 NW 339; Sharood v Jordan, 90 M 249, 95 NW 1108.

27. Assignment of claims. Dyer v Rowe, 82 M 223, 84 NW 797.

28. Assignment of wages to be earned. O'Connor v Meehan, 47 M 247, 49 NW 982.

29. Mortgages of real estate. Thompson v Bickford, 19 M 17 (1); Gjerness v Matthews, 27 M 320, 7 NW 355; Livingston v Ives, 35 M 55, 27 NW 74; Nazro v Ware, 38 M 443, 38 NW 359; Horton v Kelly, 40 M 193, 41 NW 1031; Devlin v Quigg, 44 M 534, 47 NW 258; Kellogg v Kelly, 69 M 124, 71 NW 924; New Prague v Schreiner, 70 M 125, 72 NW 963; Moffett v Parker, 71 M 139, 73 NW 850; Bank v Brass, 71 M 211, 73 NW 729; Anderson v Lee, 73 M 397, 76 NW 24; Hanson v White, 75 M 523, 78 NW 111; Taylor v Mitchell, 80 M 492, 83 NW 418; De Lancey v Finnegan, 86 M 255, 90 NW 387.

30. Chattel mortgages. Chaphard v Bayard, 4 M 533 (418); Braley v Byrnes, 20 M 435 (389); Horton v Williams, 21 M 187; Bennett v Schuster, 24 M 383; Stein v Munch, 24 M 390; Camp v Thompson, 25 M 175; Mann v Fowler, 25 M 500; Solberg v Peterson, 27 M 431, 8 NW 144; Forepaugh v Pryor, 30 M 35, 14 NW 61; Minor v Sheehan, 30 M 419, 15 NW 687; Weston v Sumner, 31 M 456, 18 NW 149; Melin v Reynolds, 32 M 52, 19 NW 81; Millis v Lombard, 32 M 259, 20 NW 187; North Star v Ladd, 32 M 381, 20 NW 334; Berry v O'Connor, 33 M 29, 21 NW 840; Talbert v Horton, 33 M 104, 22 NW 126; Bannon v Bowler, 34 M 416, 26 NW 237; Bickford v Johnson, 36 M 123, 30 NW 439; Ellingboe v Brakken, 36 M 156, 30 NW 659; Merrill v Ressler, 37 M 82, 33 NW 117; Stevens v McMillan, 37 M 509, 35 NW 372; Ludlum v Rothschild, 41 M 218, 43 NW 137; Fish v McDonnell, 42 M 519, 44 NW 535; Mullen v Noonan, 44 M 541, 47 NW 164; Filebeck v Bean, 45 M 307, 47 NW 969; Howe v Cochrane, 47 M 403, 50 NW 368; Gallagher v Rosenfield, 47 M 507, 50 NW 696; Hanson v Bear, 51 M 546, 53 NW 871; Fitzpatrick v Hanson, 55 M 195, 56 NW 814; Hayes v Gallagher, 58 M 502, 60 NW 343; Blakely v Hammond, 62 M 307, 64 NW 821; Heim v Chapel, 62 M 338, 64 NW 825; Pierce v Wagner, 64 M 265, 66 NW 977, 67 NW 537; Pound v Pound, 64 M 428, 67 NW 200; Schlitz v Childs, 65 M 409, 68 NW 65; Pabst v Butchart, 67 M 191, 69 NW 809; Grant v Minneapolis, 68 M 86, 70 NW 868; Henderson v Kendrick, 72 M 253, 75 NW 127; Olson v Hanson, 74 M 337, 77 NW 231; Dyson v Bank, 74 M 439, 77 NW 236; Donahue v Campbell, 81 M 107, 83 NW 439; Aretz v Kloos, 89 M 432, 95 NW 216, 769; Allen v Thompson, 96 M 340, 104 NW 963.

31. Who may assail. Assignees and receivers for the benefit of creditors. Partners. Fuller v Nelson, 35 M 213, 28 NW 511.

Purchaser at execution sale. Millis v Lombard, 32 M 259, 20 NW 187.

Receiver in supplementary proceedings. Dunham v Byrnes, 36 M 106, 30 NW 402.

Administrator. Bennett v Schuster, 24 M 383.

Judgment creditors. Gorton v Massey, 12 M 145 (83).

Wife of grantor. Dougan v Dougan, 90 M 471, 97 NW 122.

But see, Byrnes v Volz, 53 M 110, 54 NW 942.

Debtor of assignor when sued by assignee. Roher v Turrill, 4 M 407 (309).

One not a creditor. Zimmerman v Lamb, 7 M 421 (336).

32. Remedies of creditors; election. Judgment creditor has election of three remedies. He may sue on execution; or maintain an action to set aside the conveyance; or maintain an action in the nature of a creditor's bill. Jackson v Halbrook, 36 M 494, 32 NW 852; Brosie v Minneapolis, 87 M 456, 92 NW 340.

33. Sale on execution. Arper v Baze, 9 M 108 (98); Campbell v Jones, 25 M 155; Tupper v Thompson, 26 M 385, 4 NW 621.

34. Action to set aside. It is the general rule (changed by Laws 1921, Chapter 415) that a simple contract creditor cannot maintain the action. The creditor must first obtain a judgment and docket it in the county where the land lies. It is not necessary to issue execution and have it returned unsatisfied. Banning v Armstrong, 7 M 40 (24); Gorton v Massey, 12 M 145 (83); Rounds v Green, 29 M 139, 12 NW 454; Wadsworth v Schisselbauer, 32 M 84, 19 NW 390; Scanlan v Murphy, 51 M 536, 53 NW 799; Spooner v Travellers, 76 M 311, 79 NW 305; Peaslee v Ridgeway, 82 M 288, 84 NW 1024.

A simple contract creditor may maintain the action where the debtor is a non-resident or has absconded. Overmire v Haworth, 48 M 372, 51 NW 121; Rule v Omega, 64 M 326, 67 NW 60.

In a case of personalty (prior to the passage of Laws 1921, Chapter 415) the creditor must first have an execution returned unsatisfied. Wadsworth v Schisselbauer, 32 M 84, 19 NW 390.

Requisites of complaint. Piper v Johnston, 12 M 60 (27); Rounds v Green, 29 M 139, 12 NW 454; Wadsworth v Schisselbauer, 32 M 84, 19 NW 390; Walsh v Byrnes, 39 M 527, 40 NW 831; Sawyer v Harrison, 43 M 297, 45 NW 434; Welch v Bradley, 45 M 540, 48 NW 440; Scanlan v Murphy, 51 M 536, 53 NW 799; McKibbin v Ellingson, 58 M 205, 59 NW 1003; Anderson v Lindberg, 64 M 476, 67 NW 538; Tvedt v Mackel, 67 M 24, 69 NW 475; Duxbury v Boice, 70 M 113, 72 NW 838; Spooner v Travellers, 76 M 311, 79 NW 305; Minneapolis v Jones, 89 M 184, 94 NW 551; Williams v Kemper, 99 M 301, 109 NW 242.

Parties. Campbell v Jones, 25 M 155; Jackson v Holbrook, 36 M 494, 32 NW 852; Williamson v Selden, 53 M 73, 54 NW 1055; Tatum v Roberts, 59 M 52, 60 NW 848; French v Smith, 81 M 341, 84 NW 44; Hunt v Dean, 91 M 96, 97 NW 574.

Venue. Hunt v Dean, 91 M 96, 97 NW 574.

Joinder of causes of action. North v Bradway, 9 M 183 (169); French v Smith, 81 M 341, 84 NW 44; Hunt v Dean, 91 M 96, 97 NW 574.

Relief allowable. Coons v Lemieu, 58 M 99, 59 NW 977.

Debtor may assert homestead right. Horton v Kelly, 40 M 193, 41 NW 1031.

Interest giving right to defend. Johnston v Piper, 4 M 192 (133).

35. Action in nature of creditor's bill. Banning v Armstrong, 7 M 40 (24); Wadsworth v Schisselbauer, 32 M 84, 19 NW 390; Overmire v Haworth, 48 M 372, 51 NW 121; Rule v Omega, 64 M 326, 67 NW 60; Spooner v Travellers, 76 M 311, 79 NW 305.

36. Limitation of actions. Newell v Dart, 28 M 248, 9 NW 372; Rounds v Green, 29 M 139, 12 NW 454; Morrill v Madden, 35 M 493, 29 NW 193; Duxbury v Boice, 70 M 113, 72 NW 838; Brosie v Minneapolis, 87 M 456, 92 NW 340; Minneapolis v Jones, 89 M 184, 94 NW 551.

But see, Dale v Wilson, 39 M 330, 40 NW 161.

37. Burden of proof. It is the general rule that fraud will not be presumed and that the burden of proving a conveyance fraudulent is on him who asserts it. Hathaway v Brown, 18 M 414 (373); McMillan v Edfast, 50 M 414. 52 NW 907; Nichols v Gerlick, 84 M 483, 87 NW 1120; Brosie v Minneapolis, 87 M 456, 92 NW 340; Shea v Hynes, 89 M 423, 95 NW 214; Heim v Heim, 90 M 497, 97 NW 379; Holbert v Pranke, 91 M 204, 97 NW 976; including the fact that the grantee had notice of the fraudulent intent. Hathaway v Brown, 18 M 414 (373).

But see, Hartman v Willard, 36 M 223, 30 NW 815; Anderson v Lee, 73 M 397, 76 NW 24.

Until a prima facie proof is made in proof of fraudulent intent on the part of the grantor it is not incumbent on the grantee to prove that he paid a valuable consideration. McMillan v Edfast, 50 M 414, 52 NW 907.

Special rules apply to transfers between husband and wife. Minneapolis v Halonen, 56 M 469, 57 NW 1136.

The creditor must prove that the claim on which his judgment is based existed prior to the transfer and the judgment itself does not prove it. But the judgment proves the validity of the claim and cannot be attacked except for fraud or want of jurisdiction. Zimmerman v Lamb, 7 M 421 (336); Braley v Byrnes, 20 M 435 (389); Hartman v Weiland, 36 M 223, 30 NW 815; Bloom v May, 43 M 397, 45 NW 715; Fullington v Northwestern, 48 M 490, 51 NW 475; Bank v Brass, 71 M 211, 73 NW 729; Hoerr v Meihofer, 77 M 228, 79 NW 964; Schmidt v Dahl, 88 M 506, 93 NW 665.

Burden of officer to justify seizure of goods fraudulently transferred. Howard v Manderfeld, 31 M 337, 17 NW 946.

38. Degree of proof required. Proof that a conveyance is fraudulent must be clear and satisfactory. It must be sufficiently strong and cogent to satisfy a man of sound judgment. Aretz v Kloos, 89 M 432, 95 NW 216, 769.

The fraud must be manifest or plainly inferable. Leqve v Smith, 63 M 24, 65 NW 121.

Plaintiff must show, by evidence outside of proof of judgment, that claim on which the judgment was based existed so as to make him creditor when transfer was made. Not required to establish that such claim was valid and enforceable. Grantee estopped from setting up any defense, including statute of limitations, which might have been interposed in original action. Irish v Daniels, 100 M 189, 110 NW 968.

39. Evidence. To be admitted freely. Ladd v Newell, 34 M 107, 24 NW 366; Nicolay v Mallery, 62 M 119, 64 NW 108; Pfefferkorn v Seefield, 66 M 223, 68 NW 1072; Christian v Klein, 77 M 116, 79 NW 602.

Circumstantial evidence sufficient. Nicolay v Mallery, 62 M 119, 64 NW 108; Manwaring v O'Brien, 75 M 542, 78 NW 1.

Acts and declarations of grantor while in possession. Murch v Swensen, 40 M 421, 42 NW 290; Dailey v Linnehan, 42 M 277, 44 NW 59; Cortland v Sharvy, 52 M 216, 53 NW 1147; Lehman v Chapel, 70 M 496, 78 NW 402; Christian v Klein, 77 M 116, 79 NW 602.

But see, Olson v Swenson, 53 M 516, 55 NW 596.

Admissions of grantor subsequent to transfer. Adler v Apt, 30 M 45, 14 NW 63.

But see, Allen v Knudson, 96 M 340, 104 NW 963.

Solvency and insolvency of debtor. Teller v Bishop, 8 M 226 (195); Adler v Apt, 31 M 348, 17 NW 950; Walkow v Kingsley, 45 M 283, 47 NW 807; Quinn v Minneapolis, 102 M 256, 113 NW 689.

Payment of grantor's debts by grantee. Adler v Apt, 31 M 348, 17 NW 950.

Grantor may testify as to fraudulent intent. Allen v Knudson, 96 M 340, 104 NW 963.

Books of account and similar to show insolvency. Kells v McClure, 69 M 60, 71 NW 827.

Value of the land. Boze v Arper, 6 M 220 (142).

Inadequacy of price. Carson v Hawley, 82 M 204, 84 NW 746.

Declarations of fellow conspirators. Adler v Apt, 30 M 45, 14 NW 63; Nicolay v Mallery, 62 M 119, 64 NW 108; Carson v Hawley, 82 M 204, 84 NW 746.

Failure to investigate title. Benson v Nash, 75 M 341, 77 NW 991.

Generally. Olson v Swensen, 53 M 516, 55 NW 596; Cain v Mead, 66 M 195, 68 NW 840; Mix v Ege, 67 M 116, 69 NW 703; Scheffer v Lowe, 77 M 279, 79 NW 970.

40. Cross-examination. Great latitude is allowable in the cross-examination of the immediate parties. Not limited to matters touched on in the direct examination. Bowers v Mayo, 32 M 241, 20 NW 186; Ladd v Newell, 34 M 107, 24 NW 366; Homburger v Brandenberg, 35 M 401, 29 NW 123; Allen v Fortier, 37 M 218, 34 NW 21; Tunell v Larson, 39 M 269, 39 NW 628; Nicolay v Mallery, 62 M

119, 64 NW 108; Cohen v Goldberg, 65 M 473, 67 NW 1149; Pfefferkorn v Seefield, 66 M 223, 68 NW 1072; Manwaring v O'Brien, 75 M 542, 78 NW 1.

And the same rule applies to the examination of one claiming to be a bona fide purchaser. Riddell v Munro, 49 M 532, 52 NW 141.

41. Findings. Smith v Conkwright, 28 M 23, 8 NW 876; Lesher v Getman, 28 M 93, 9 NW 585; Lane v Innes, 43 M 137, 45 NW 4; Wetherill v Canney, 62 M 341, 64 NW 818; Heim v Heim, 90 M 497, 97 NW 379.

42. Generally. Spokane v Coffey, 123 M 364, 143 NW 915; Schroeder v Gohde, 123 M 459, 144 NW 152; Bank v Lee, 124 M 112, 144 NW 433; Burns v Burns, 124 M 176, 144 NW 761; Whitman v Gorman, 126 M 141, 147 NW 958; Imperial v Bennett, 127 M 256, 149 NW 372; Savell v Lincoln, 129 M 356, 152 NW 727; Thysell v McDonald, 134 M 400, 159 NW 958; Hoover v Carver, 135 M 105, 160 NW 249; Petersdorf v Matz, 136 M 374, 162 NW 474; Iverson v Iverson, 140 M 157, 167 NW 483; Murphy v Casey, 151 M 480, 187 NW 416; Murphy v Casey, 157 M 1, 195 NW 627.

II

Cases Since Enactment of Laws 1921, Chapter 415

Action by the receiver of the vendor corporation against a vendee corporation the control of which was identical with that of the vendor. Certain creditors intervened. Held, in this case an individual has incorporated himself in order to defraud creditors, and the court will go as far as necessary in disregarding transfers. A corporation cannot be a party to the fraud engineered by the individual, and cannot set up a title acquired by fraud; the fact that some of the stockholders were innocent does not relieve the vendee stockholder from guilt, or the consequences thereof. Matchan v Phoenix, 159 M 132, 198 NW 417.

The complaint alleges that Turritin paid to Pence a stated sum upon a note owing by her deceased husband who died insolvent; that her father was a surety on the note; that the payment was a voluntary one; that she was largely indebted at the time; that the payment made her insolvent; that it was made to defraud; that the defendants were conversant with the facts. Held, the complaint states a cause of action. Buck v Turritin, 159 M 353, 198 NW 1006.

When debtor is insolvent non-resident creditor may maintain action in equity to set aside alleged fraudulent conveyance without first obtaining service on debtor or lien against the property sought. Humphrey v McCleary, 159 M 535, 198 NW 132.

Germo deeded land to his sister at a time when he was solvent. There was a consideration though possibly not adequate. The transaction was held to be in good faith although a few months after the conveyance he became insolvent and a judgment was docketed against him. Rosenberger v Germo, 164 M 350, 205 NW 218.

Kronberg sued Martin Bondhus, and garnisheed a number of purchasers at Bondhus' auction sale. Thomas Bondhus intervened claiming ownership of the property sold at the sale. Intervenor's claim rested on an assignment of Martin's equitable interest in the farm, and a bill of sale of the stock and machinery made two years prior to the auction. Thirty days after the conveyance intervenor gave defendant a power of attorney to operate the farm which defendant proceeded to do. No accounting was had, and at the time the conveyance was made to the intervenor, he was not a creditor of the defendant. The holding was against the intervenor. *Kronberg v Bondhus*, 164 M 446, 205 NW 371.

Cook purchased on contract from Dall 529 acres of land and after paying $23,000 obtained a deed and gave a mortgage to Dall for the balance. The mortgage was recorded, the deed was not. Subsequently, the value of the property depreciated, and Cook being unable to pay, surrendered his unrecorded deed to Dall who destroyed it, and in turn Dall satisfied the mortgage and surrendered the note to Cook, and deeded 112 acres of the land to the wife of Cook. Held, that though the surrender of the deed did not revest the legal title in Dall, the doctrine of estoppel would apply because of Dall's surrender of the note, and as the Cooks had no substantial equity in the land, plaintiff, a judgment creditor of Cook, was not injured, and the transaction by which the conveyance was made to Mrs. Cook was bona fide and valid. Emerson v Cook, 165 M 198, 206 NW 170.

Hansen in October, 1923, gave a crop mortgage to his father-in-law to secure a past due debt. Hansen was adjudicated bankrupt in September, 1924. In an action to foreclose the chattel mortgage, Thomas, the trustee in bankruptcy, answered claiming a fraudulent preference. Held, the debtor Hansen may lawfully prefer the plaintiff Grager, and his intention in doing so does not constitute a purpose to hinder, delay or defraud other creditors. Grager v Hansen, 165 M 317, 206 NW 440.

The conveyance by defendant to his brother in anticipation of a judgment about to be taken against him by plaintiff, was not supported by sufficient evidence to show good faith and the conveyance was set aside. Gibbon v Walter, 167 M 37, 208 NW 423.

Plaintiff attached defendant's property, who made a motion to vacate the attachment. The lower court denied the motion. This was reversed by the supreme court. Held, the burden of proof is on the plaintiff, and in this case the evidence adduced is insufficient to show fraud. Larson v Soller, 167 M 181, 208 NW 759.

Action by the trustee in bankruptcy of Francis Dawsen to set aside a conveyance of certain land by the bankrupt to his mother. In 1916 the bankrupt's parents deeded him two acres which bankrupt occupied as a homestead. In 1918 the parents conveyed four forty-acre tracts to bankrupt, the consideration being the right of the parents to live on the land and an annual payment of $300.00 during the life of the parents. One payment of $300.00 and one year's taxes were paid when the father died intestate. In 1922 there was due to the mother $900.00 and the taxes on the land amounted to $300.00 unpaid, the property was deeded back to the mother and she leased the land to the bankrupt. Later Dawsen was declared bankrupt. Held, the deed to the mother was in good faith and valid. Warner v Dawsen, 167 M 275, 208 NW 1003.

Defendant was employed by attorneys to investigate fire losses due to a forest fire and was to have 25 per cent of the fees. He at various times assigned parts of those fees to various persons until his entire interest was assigned. These assignments were claimed to be fraudulent by the judgment creditor. Held, the assignments were made upon a sufficient consideration and in good faith and the finding for the defendant sustained. Schlecht v Schlecht, 168 M 168, 209 NW 883.

The defendant about a year before the docketing of plaintiff's judgment gave a second mortgage on his farm to his daughter and his brother, and later deeded his equity in the farm to his son. Held, the uniform fraudulent conveyance act made no change in the law as far as this case is concerned and as there was insufficient proof of a consideration, the transfers were not in good faith and consequently may be set aside. Schumacher v Streich, 168 M 497, 210 NW 634.

Action by the trustee in bankruptcy to set aside conveyances by the bankrupt to his children. Held, fraud may be proven by circumstantial evidence; the fact that the vendees are relatives is proper for consideration, and the fact that certain evidence of the vendees is not directly contradicted does not require its acceptance as true; the evidence sustains the finding of the court that the transfers should be set aside. Barnard v Seaman, 169 M 409, 211 NW 473.

Where land conveyed to defraud creditors is subject to a mortgage prior and paramount to the claims of such creditors, the foreclosure of the mortgage divests all rights under the fraudulent conveyance and all rights of the creditors to reach the land, and the grantee under the fraudulent conveyance owes no duty to the creditors to protect the property from the mortgage, and may acquire title thereunder free from their claims. Humphrey v McCleary, 171 M 197, 213 NW 892.

Plaintiff in an action in tort obtained a verdict against defendant on which at a later date a judgment was recorded. Between the date of the verdict and the entry of the judgment defendant deeded the property in question to his mother in part payment of his indebtedness to her. Held, as the consideration was ample, and no intent shown of bad faith or fraud, the mere fact that defendant preferred one creditor over another did not warrant setting aside the conveyance. Watson v Goldstein, 174 M 423, 219 NW 550.

Mergens sold Burns a steam shovel on a conditional sales contract not recorded. Plaintiff sold Burns ten trucks, which contract was filed. Subsequently Burns being in default on both contracts, gave a bill of sale of the shovel to plaintiff, and then plaintiff resold the trucks and the shovel to Burns on a new contract. The property remained in the possession of Burns, and plaintiff had no notice of the

Mergens contract. Held, plaintiff having failed to bear the burden of proof imposed upon it to rebut the presumption of bad faith, the rights of the Mergens Company are sustained. Mack v Burns, 175 M 157, 220 NW 560.

In an action to set aside an alleged fraudulent conveyance a finding for the plaintiff was sustained. Held, the trier of fact is not bound by testimony containing, upon the record, improbabilities, contradictions, inconsistencies, or which is irreconcilable to the facts shown by the record. Weber v Arend, 176 M 120, 222 NW 646.

In an action in equity to cancel and annul a transfer of real estate from father to son the submission to a jury is in the discretion of the court, and the findings by the trial court setting aside the transfer for conspiracy to defraud is supported by the evidence. Bank v Riley, 176 M 550, 224 NW 237.

In an action by the trustee in bankruptcy of the father to set aside a chattel mortgage to the son, the evidence sustains a finding that the chattel mortgage was not executed in good faith, but was for the purpose of delaying and defrauding creditors, and that the son had knowledge thereof. Nelson v Ruthkowski, 177 M 84, 224 NW 457.

In a suit by the commissioner of banks on a note signed by numerous defendants and payable to an insolvent bank, the evidence supports the verdict that the note was without consideration, and as it does not appear as a matter of law that the note was given for the purpose of deceiving the bank examiner, the doctrine of estoppel does not apply, and the judgment is in favor of the defendants. Bank v Schultz, 178 M 556, 228 NW 150.

The father being indebted to his daughter conveyed to her a one-third interest in property in which she already had a two-thirds interest. He also deeded property to a bank as security for a loan, his daughter being an accommodation surety. She later paid the debt to the bank and the bank deeded the land to her. In an action by a creditor of the father, joined with the administrator of the father's estate, it was held that the various conveyances to the daughter were not in fraud of creditors. Morris v Blossom, 181 M 71, 231 NW 397.

Morris Mann took out and carried life insurance on his life and in favor of his wife. Prior to his death Morris sold certain forged notes to plaintiffs who in this action, Mann having died, endeavor to have the life insurance applied to their notes. Held, the amount not being excessive for his station in life, and there not being sufficient evidence of actual fraud, judgment was properly ordered for defendants. Cook v Prudential, 182 M 496, 235 NW 9.

Larson, a banker, in July, 1926, assigned a note and the mortgage securing it to his wife, and 11 months later she assigned it to a daughter who foreclosed in 1928, and in 1930, after the year for redemption had expired, the intervenor levied an execution on a judgment obtained against Larson. The intervenor's claim arose by reason of a judgment obtained against Larson for accepting a deposit at a time when his bank was insolvent, although the bank examiner took it over six months after the date of the deposit. Held, that as neither the grantor nor the grantee had any knowledge of intervenor's claim at the time the assignments were made the intervenor is not entitled to judgment. Larson v Tweten, 185 M 370, 241 NW 45.

Wittich made a transfer of property to his wife; at the time of the transfer he was not indebted. The transfer was made at a time when he was being charged with being the father of a child of an unmarried woman. His liability on that charge did not render him insolvent. Subsequently he resigned as postmaster, and plaintiff became liable on his bond, and sued and obtained judgment, and brought this action to set aside the transfer. Held, a finding of good faith is supported by the evidence, and as there was no finding of insolvency, plaintiff cannot recover. National v Wittich, 186 M 93, 242 NW 545.

Action by a lumber company against Herman Joop and his father to collect a bill for lumber used in the construction of a barn on land occupied by Herman the legal title to which was in the father, and an action by Clara, Herman's wife, to recover the value of grain levied upon by the lumber company. In each case the holding was for the lumber company, and the holding of the trial court was sustained. Stenerson v Joop, 188 M 419, 247 NW 526.

Plaintiff as receiver of one company and trustee of another brought this action to subject certain stock issued to defendants in defraud of creditors. A de-

murrer was sustained by the trial judge, and on appeal to the supreme court there was a reversal. Held, the mere fact that a person is solvent as and when he transfers his property does not necessarily render him incapable of making conveyances fraudulent to his creditors. While solvency when transfer is made affords evidence against a claimed fraudulent purpose, it is only an item of evidence to be considered with all the other facts and circumstances of the case. Lind v Johnson, 204 M 30, 282 NW 661.

In an action to set aside a mortgage foreclosure on the ground of fraud, plaintiff must set forth the facts constituting the alleged fraud. Merely stating that defendant foreclosed its mortgage for the purpose of defrauding plaintiff of its property, without showing any wrongful conduct on defendant's part, is not sufficient. Erickson v Wells, 217 M 372, 15 NW(2d) 162, 459. Twin Ports v Whiteside, 218 M 78, 15 NW(2d) 126.

Where a conveyance claimed to be fraudulent is attacked, the grantee must be joined as a party. Roberts v Friedell, 218 M 90, 15 NW(2d) 496.

Federal equity courts should not enforce letter of state statutes, where application of facts violates fundamental principles of equity. Brill v Foshay, 65 F(2d) 420.

Assignment of future earnings, and the listing of a creditor relative in too large an amount are not acts barring the discharge of a bankrupt. Strane v Schaeffer, 87 F(2d) 365.

The law of the state where the bankrupt resides controls the effect of a conveyance by a husband to his wife of his interest in property held in joint tenancy in case where the federal government is endeavoring to hold the property for the deceased husband's unpaid income taxes. Irvine v Helvering, 99 F(2d) 265.

The words "hinder, delay, or defraud" in the uniform fraudulent conveyance act have no broader meaning than the same expression in Statute of Elizabeth and do not embrace mere preferences. Irvine Trust v Kaminsky, 19 F. Supp. 816.

Scope of uniform fraudulent conveyance act. 7 MLR 455, 549.

Rights of subsequent creditors in corpus of trust fund set up by debtor reserving life estate and general powers of appointment. 19 MLR 328.

Presumptions of intent; necessity for prior judgment. 23 MLR 616.

Presumptions of fraud. 24 MLR 832.

Renunciation of a testamentary gift to defend the claims of devisee's creditors. 25 MLR 951.

Creditor's rights, 25 MLR 79.

513.27 CONVEYANCE OF PARTNERSHIP PROPERTY.

HISTORY. 1921 c. 415 s. 8; G.S. 1923 s. 8482; M.S. 1927 s. 8482.

Relation of this section to section 513.21. 7 MLR 536.

513.28 RIGHTS OF CREDITORS WHOSE CLAIMS HAVE MATURED.

HISTORY. 1921 c. 415 s. 9; G.S. 1923 s. 8483; M.S. 1927 s. 8483.

A judgment creditor who claims that his debtor has conveyed real estate for the purpose of defrauding creditors may disregard the conveyance and levy upon and sell under execution, and such sale will not be restrained by injunction, and the sale may be made though an action to set aside the conveyance is undetermined. Doland v Burns, 156 M 238, 194 NW 636; Healy v Montevideo, 170 M 290, 212 NW 455.

A subsequent creditor cannot avoid a conveyance by his debtor merely because it was made with intent to defraud creditors. To avoid such a conveyance, the subsequent creditor must allege and prove facts showing that its purpose was to defraud him. Nielson v Larson, 158 M 305, 197 NW 259.

A creditor may maintain an action in equity to procure the setting aside of an alleged fraudulent conveyance of real estate, where the debtor is insolvent and a non-resident of the state, without first obtaining service upon the debtor or procuring a lien against the property to be reached. Humphrey v McCleary, 159 M 535, 198 NW 132.

Schlecht entered into a contract with an attorney to do certain investigating, and receive 25 per cent of the fees earned by the attorney. Subsequently Schlecht assigned various fractions of his fees earned or to be earned to creditors or to persons advancing money. Held, that the transferees acted in good faith, and the consideration was ample and the transfers valid. Schlecht v Schlecht, 168 M 177, 209 NW 883.

Under the findings indicating fraud the vendees were not entitled to relief upon the ground that they paid in part for the land and did not actually participate in the fraud. Barnard v Seaman, 169 M 409, 211 NW 473.

When land conveyed to defraud creditors is subject to a mortgage prior and paramount to the claims of such creditors, the foreclosure of the mortgage divests all rights under the fraudulent conveyance and all rights of the creditors to reach the land and the grantee under the fraudulent conveyance owes no duty to the creditors to protect the property from the mortgage, and may acquire title thereunder free from their claims. Humphrey v McCleary, 171 M 197, 213 NW 892.

Representations made to an attorney that certain other law firms had purchased Ruling Case Law, and on which he was induced to buy, found to be immaterial, and not a sufficient representation to warrant rescinding the contract. Edward Thompson v Peterson, 190 M 566, 252 NW 438.

In proceedings supplementary to an execution, the court was upheld in using his discretionary powers and in denying the judgment creditor motion for the appointment of a receiver, because the creditor had an adequate remedy at law. Ginsberg v Davis, 191 M 12, 252 NW 669.

Plaintiff sold a mechanical corn picker to defendant who used it two weeks and returned it. Held, the evidence sustains a finding that the defendant returned the property in rescission of the sale and the plaintiff accepted it, and there was a rescission by mutual consent, but under the uniform fraudulent conveyance act a rescission did not appear as a matter of law. Schultz v Tostove, 191 M 116, 253 NW 372.

A buyer may rescind a sale for a breach of warranty by the seller, and the delivery of a tent in deteriorated and rotten condition is such a breach. Saunders v Cowl, 201 M 574, 277 NW 12.

Creditor's bills in equity are of the type where the judgment creditor seeks to satisfy his judgment out of the debtor's equitable assets, or of the type when property legally liable to execution has been fraudulently conveyed and the creditor attempts to have the conveyance set aside. Lind v Johnson, 204 M 30, 282 NW 661.

Buyer's failure to exercise right of rescission for eight months after breach of warranty 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, but such pursuit of the wrong remedy is not an election which will bar the right remedy. Hubel v United, 206 M 288, 288 NW 393.

The burden of proof is on the party relying on a warranty to show the warranty and a breach thereof, and is not sustained by hearsay evidence. The trial court was in error in granting judgment in favor of a counter-claiming defendant against the assignee of the vendor's interest in a rescinded conditional sales contract for sums paid thereunder by defendant to the vendors. Korli v Leifman, 207 M 549, 292 NW 210.

Plaintiff sued on a note given in part payment for a power fan sold and installed in defendant's bowling alley under a conditional sales contract and judgment was for the plaintiff in the amount of his cash down payment. On appeal to the supreme court there was a reversal. Held, the evidence does not sustain an award, based on a rescission of the amount awarded, and since the defense pleaded and tried was breach of express warranty as to specified matters, it was error to submit to the jury the issue of implied warranty. Reliance v Flaherty, 211 M 233, 300 NW 603.

Emrich on March 10, 1933, brought suit under clause (a) to set aside certain chattel mortgages as fraudulent and establish a lien thereon. The case was tried September 9, 1933, and a decision was filed June 19, 1934, and on August 14, 1934, before a stay had expired the sandwich shop was adjudicated bankrupt. In the instant case between Erickson as trustee, and Emrich, it was held that no lien

attached by the bringing of Emrich's action and no lien had been perfected, and the claim of Emrich is not preferred. Erickson v Emrich, 78 F(2d) 858.

The assignment by the bankrupt of moneys to be earned in the future, and the scheduling of his sister as a creditor in a larger amount than was due her, are not acts on which a denial of bankrupt's discharge may be predicated. Strane v Schaeffer, 87 F(2d) 365.

Rights of creditors whose claims have matured. 7 MLR 537.

17 > Remedies of buyer; rescission for breach of warranty. 19 MLR 133.

Right to rescind and recover damages upon a breach of warranty. 21 MLR 111.

Rescinding buyer claims damages or expenses in addition to the price paid. 21 MLR 546.

Breach of warranty. 21 MLR 535.

Conditional seller fails to comply with the redemption and re-sale provisions of the uniform conditional sales act. 21 MLR 552.

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

Contractual disclaimers of warranty. 23 MLR 784, 795.

Effect on creditor's rights. 25 MLR 79.

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513.29 RIGHTS OF CREDITORS WHOSE CLAIMS HAVE NOT MATURED.

HISTORY. 1921 c. 415 s. 10; G.S. 1923 s. 8484; M.S. 1927 s. 8484.

A receiver cannot attack a chattel mortgage as void as to creditors because not recorded without showing that he occupies a status entitling him to assail it; and where his appointment is not under a statute giving him such right, or in a proceeding supplementary to execution or some analogous proceeding, he cannot attack it. Munck v Bank, 175 M 47, 220 NW 400.

Wittich on account of and in adjustment of family difficulties deeded the land in question to his wife. There was no consideration. Later the plaintiff surety made good his shortage as postmaster and recovered a judgment for the amount and brought action to set aside the transfer as fraudulent. Held, on this state of facts arising prior to the enactment of the uniform fraudulent conveyance act, a conclusion of law that the transfer was void is not sustained by the findings. National v Wittich, 184 M 44, 237 NW 690.

The uniform fraudulent conveyance act is aimed at the dishonest debtor and seeks to afford the creditor an orderly, efficient, and speedy remedy to reach debtor's property fraudulently conveyed. The act is remedial and should be liberally construed. By its terms it was not intended to impair or limit the old methods as means to make effective the rights of a judgment creditor. It is an extension of our former law so that a simple creditor may now sue where formerly judgment was a prerequisite. Lind v Johnson, 204 M 30, 282 NW 661.

Creditors whose claims have not matured. 7 MLR 547.

Fraudulent conveyances; who constitute creditors within section 3a(1) of the bankruptcy act. 17 MLR 657.

Comparison of Minnesota Law with American Surety Co. v O'Connor. 23 MLR 622.

Constructive trusts and analogous equitable remedies. 25 MLR 667.

513.30 CASES NOT PROVIDED FOR IN SECTIONS 513.20 TO 513.32.

HISTORY. 1921 c. 415 s. 11; G.S. 1923 s. 8485; M.S. 1927 s. 8485.

Right of grantor to have grantee's promise to recovery enforced. 24 MLR 872.

513.31 UNIFORMITY.

HISTORY. 1921 c. 415 s. 12; G.S. 1923 s. 8486; M.S. 1927 s. 8486.

The provision in section 513.31 does not change the rule commencing with Chaphard v Bayard, 4 M 533.

Comparison of the Lind and other cases. 23 MLR 623.
Protection afforded as "bona fide purchaser." 24 MLR 810.

513.32 CITATION.

HISTORY. 1921 c. 415 s. 13; G.S. 1923 s. 8487; M.S. 1927 s. 8487.