

CHAPTER 577

ASSIGNMENT FOR BENEFIT OF CREDITORS

577.01 REQUISITES.

HISTORY. 1876 c. 44 s. 1; G.S. 1878 c. 41 s. 23; G.S. 1894 s. 4227; R.L. 1905 s. 4611; G.S. 1913 s. 8326; G.S. 1923 s. 9782; M.S. 1927 s. 9782.

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1. Nature of proceeding

The jurisdiction over assignments for benefit of creditors granted by Laws 1876, Chapter 44, is vested in the several district courts. The proceedings are entirely judicial. *Clark v Stanton*, 24 M 232; *Kingman v Barton*, 24 M 295; *Swart v Thomas*, 26 M 141, 1 NW 830; *Leuthold v Young*, 32 M 122, 19 NW 652.

The statute is a regulation and not a grant of power, a mere regulation of common law assignments for benefit of creditors. Such assignments are the voluntary acts of the debtor. No statutory authority can exact them and when made, they partake of the nature of a contract. *Leshner v Getman*, 28 M 93, 9 NW 585; *Simon v Mann*, 33 M 412, 23 NW 856; *In re Bird*, 39 M 520, 40 NW 827; *Lanpher v Burns*, 77 M 407, 80 NW 361; *Lucy v Freeman*, 93 M 274, 101 NW 167.

This statute is not, like the insolvency law of 1881, a bankruptcy act. *In re Mann*, 32 M 60, 19 NW 347.

Where an action is brought by third persons against an assignee in a voluntary assignment for the benefit of creditors to recover property, the assignment proceeding is not construed to be an action pending, in respect to the cause of action alleged in the complaint. *Leuthold v Young*, 32 M 122, 19 NW 652.

An assignment for the benefit of creditors is not void because the assignee named is not a freeholder of this state. *Simon v Mann*, 33 M 412, 23 NW 856.

The existence of a bankruptcy act does not suspend the right to make a voluntary assignment for the benefit of creditors. When an insolvent debtor assigns all his property for the benefit of all his creditors (and not for the benefit merely of those filing releases), the surplus, if any, to be repaid to him only after payment in full of his debts, creditors cannot be required to file releases as a condi-

tion of sharing in the assets. Whether it be considered a common-law assignment, as regulated by General Statutes 1878, Chapter 41, or one under the insolvency act of 1881, it must be executed in accordance with the terms of the trust as declared in the instrument. In re Bird, 39 M 520, 40 NW 827.

The object of the statute is to protect creditors of the assignors and regulate the duties of assignees. Its aim is to secure an equal distribution of the debtor's property without preference and to place the estate and the assignee under the control of the court so as to insure a faithful administration of the trust. Strong v Brown, 41 M 304, 43 NW 67; Lucy v Freeman, 93 M 274, 101 NW 167.

The property assigned is in custodia legis; and the assignee is an officer of the court. Thomas Co. v Drew, 69 M 69, 71 NW 921.

An instrument transferring to certain directors of defendant bank, real estate, shares of stock, and a mortgage to secure the payment of an obligation or debt which the grantor, the managing officer of the bank, admitted he incurred 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. Nelson v Poss, 172 M 149, 214 NW 787.

Fraudulent conveyance of chattels. 24 MLR 838.

2. Insolvency law of 1881

Laws 1881, Chapter 148, Sections 1 to 13, last printing in any compilation. General Statutes 1913, Sections 8336 to 8352, not printed in later compilations.

Laws 1881, Chapter 148, is a bankruptcy act and differs from Laws 1876, Chapter 44, which is an act merely regulatory of common law assignments. In re Mann, 32 M 60, 19 NW 347.

An assignment under the insolvency act of 1881 is not void because the assignee named is not a freeholder of the state. Simon v Mann, 33 M 412, 23 NW 856.

Where a general assignment of all corporate assets for the benefit of creditors has been made, either under the assignment law of 1876, or the insolvency law of 1881. Creditors who subsequently commence an action under General Statutes 1878, Chapter 76 (section 316.05), are not entitled, as a matter of right, to have a receiver appointed to supersede the assignee and to take the assets out of his hands. International Trust v American Loan, 62 M 501, 65 NW 78, 632.

The federal bankruptcy act of 1898 superseded the state insolvency law of 1881 from July 1, 1898, the date of its passage, except as to proceedings pending on that date. Foley v Sawyer, 76 M 118, 78 NW 1038; Moore v Bettingen, 116 M 144, 133 NW 561.

To constitute an effective assignment under the insolvency act of 1881, it must affirmatively appear from the face of the instrument that it was executed under the provisions of that act; otherwise it will be presumed to be merely a common-law assignment under the act of 1876, in which event it is void unless the assignee named is a resident freeholder. Lanpher v Burns, 77 M 407, 80 NW 361.

3. Application

An assignment not good under the insolvency law of 1881 may be held good under the assignment act of 1876. McConnell v Rakness, 41 M 3, 42 NW 539; Lanpher v Burns, 77 M 407, 80 NW 361.

The statute regulating common-law assignments has no application to state banks in liquidation. O'Malley v Drivers State Bank, 181 M 1, 231 NW 407.

4. Non-resident

Under the assignment law of 1876, the assignee named therein must be a resident and freeholder of this state. Simon v Mann, 33 M 412, 23 NW 856; Lanpher v Burns, 77 M 407, 80 NW 361.

A non-resident debtor owning property in this state cannot make an assignment unless he clearly comes under the proviso of having carried on business

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within the borders of the state. *Smith v Bean*, 46 M 138, 48 NW 687; *Rollins v Rice*, 60 M 358, 62 NW 325.

5. Formal requisites

An assignment for benefit of creditors executed and acknowledged by one of two partners, the other absent in Holland having consented, is a sufficient execution. *Williams v Frost*, 27 M 255, 6 NW 793.

Provisions as to formal execution are mandatory. The statute being imperative, the notarial seal is essential. *DeGraw v King*, 28 M 118, 9 NW 636.

A general assignment for the benefit of creditors made in another state, and valid by its laws, will be recognized here as valid. *Paige v Sexsmith*, 31 M 136, 16 NW 700.

An acknowledgment by a surviving partner held sufficient. *Hanson v Metcalf*, 46 M 25, 48 NW 441.

The deed of assignment made by the president of the corporation was invalid, the deed not having been properly acknowledged. *Bennett v Knowles*, 66 M 4, 68 NW 111.

An assignment for benefit of creditors must be the personal act of the assignor. He cannot delegate an agent, by power of attorney or otherwise, authority to decide for him the question of his insolvency, and select an assignee. He must exercise his personal judgment. *Minneapolis Trust v School District*, 68 M 414, 71 NW 679.

A failure to comply with the provisions of this section does not render the assignment void, but merely voidable at instance of creditors and subsequent purchasers in good faith. It is good between the parties. *Lucy v Freeman*, 93 M 274, 101 NW 167.

6. Partnerships

Where an assignment is of partnership property only, is attacked for fraud, proof that one of the copartners had previously assigned, to the same assignee, portions of his individual property, on a secret trust in his own favor, is not admissible to establish such fraud; otherwise, if the assignment be of all the property, joint and individual, of the partners. The assignment to one who cannot read or write is rebuttable evidence of fraud. *Guerin v Hunt*, 6 M 375 (260).

Except in extraordinary cases of emergency, one partner has not the power to assign the entire partnership property; and although an assignment made by one partner may be rendered valid by ratification of the non-executing partner, such ratification cannot take away the rights of creditors who have attached the property assigned, intervening the time of the original execution of the assignment and the ratification. *Stein v Baldwin*, 13 M 412 (381).

Where the partnership property was assigned, the instrument executed by one partner only was sufficient, the other party being in Holland. *Williams v Frost*, 27 M 255, 6 NW 793.

The recitation in the deed of assignment covered all partnership property and individual assets as well. *Security Bank v Beede*, 37 M 527, 35 NW 435.

An assignment may be made by the surviving partner. *Hanson v Metcalf*, 46 M 25, 48 NW 441.

A deed of assignment by partners in order to be valid must, on its face, be sufficient to assign, not only the partnership property, but also all the non-exempt separate property of each partner. *Farwell v Brooks*, 65 M 184, 68 NW 5.

If the members of a copartnership in good faith solely to secure their debts to one or more, but not all, of their creditors, transfer by bill of sale or otherwise, the firm property, reserving to themselves the right of redemption, the conveyance is a mortgage, and a valid security, except in insolvency proceedings, even though the mortgagee knew of the insolvent condition of the partners, and the transfer covers all partnership property. *Dyson v St. Paul National*, 74 M 439, 77 NW 236.

7. Filing

The provisions of the statute are mandatory, and unless the assignee shall, within five days after the filing of the inventory by the assignor, file a bond, his interest in the property assigned ceases. *Kingman v Barton*, 24 M 295.

The omission of the assignor to file an inventory within time specified, does not defeat the proceedings initiated, nor avoid the trust created, nor affect the title of the assignee. (Distinguished from *Kingman v Barton*, 24 M 295.) *Swart v Thomas*, 26 M 141, 1 NW 830.

At common law, or under the statute, a garnishment is not superseded or dissolved when filing of the deed of assignment takes place more than ten days after the garnishment proceedings are instituted. *Fairbanks v Whitney*, 36 M 305, 30 NW 812.

An assignment under the insolvent law of 1881 does not become operative for any purpose until filed in the office of the clerk of district court. *Gridley v Myers*, 73 M 308, 76 NW 41.

8. Conflict of laws

A general assignment made in another state, and valid by its laws, will be recognized in this state as valid, and as effectually transferring personal property. *Paige v Sexsmith*, 31 M 136, 16 NW 700.

In proceedings under Laws 1881, Chapter 148, upon petition of creditors for the appointment of a receiver of the estate of a non-resident insolvent, doing business and owning property here, upon the ground he conveyed personal property in this state, preferring one creditor, the question of the preferential character of the act, and as to whether or not it was an act of insolvency, must be determined by our laws, not by the laws of the domicile of debtor where the conveyance was executed. *In re Howes*, 38 M 403, 38 NW 104.

A resident of Pennsylvania owning lands in Minnesota and many other states, executed to one in his state a voluntary deed of assignment, valid in that state. Later the assignee was discharged, and a successor appointed. The statute of Pennsylvania entered into and became a part of the contract of assignment. The discharge was legal, and the appointment of the successor vested title in him, and is so recognized in this state. *Stohl v Mitchell*, 41 M 325, 43 NW 385.

Under the insolvency law of 1881, an assignment may be executed out of the state, and even by a non-resident. *Smith v Bean*, 46 M 138, 48 NW 687.

The rule that voluntary conveyances of personal property valid by the laws of the state where made, pass title wherever the property may be situated is applicable to the case of voluntary assignment for benefit of creditors. *Corey v Cutler*, 55 M 18, 56 NW 255.

Our insolvency statute is not applicable to a non-resident having no property in this state. *McKibbin v Ellingson*, 58 M 205, 59 NW 1003.

Where an assignment is made in another state by a resident thereof, and is not repugnant to the laws of this state, nor of the laws where made, is voluntary, and in the nature of a common-law assignment and the deed of assignment is executed as deeds of conveyance are executed here, and it purports to convey land, it is as good as a conveyance of such land, at least as against every one but creditors of the assignor. *Thompson v Ellenz*, 58 M 301, 59 NW 1023.

A court of equity in this state has the power and will restrain one of its own citizens of whom it has jurisdiction from prosecuting an action in a foreign jurisdiction, whenever the facts of the case make it necessary to do so to enable the court to do justice, and prevent one citizen from obtaining an inequitable advantage of another. *Hawkins v Ireland*, 64 M 339, 67 NW 73.

Under the general rule that the operation of statutory law is limited to the state of its enactment, it is held that the grain and warehouse statutes of this state have no force or effect upon transactions had in a sister state, and cannot be invoked to sustain the grain receipts here in question. *Swedish American v First National*, 89 M 109, 94 NW 218.

Conflict of laws as to contracts. 10 MLR 500.

9. Voidable for fraud

A deed of trust to sell land for the benefit of the grantor's creditors which authorizes the trustee to sell on credit is void in toto as against creditors. *Greenleaf v Edes*, 2 M 264 (227); *Benton v Snyder*, 22 M 247.

Until the filing of the proper affidavit, the summons in garnishee proceedings cannot be properly issued, and do not bind an assignee of the debt from the garnishee to the defendant when such assignee gives proper notice. *Black v Brisbin*, 3 M 360 (253).

A creditor who, without notice of the fraud in the assignment, accepts a benefit under it, cannot impeach it without returning the benefit received. *Scott v Edes*, 3 M 377 (271).

As an attempted assignment for the benefit of creditors, it was void, because it dictated to the creditors the terms upon which they should receive benefits under it. *Banning v Sibley*, 3 M 389 (282).

An assignment for the benefit of creditors requiring that the trustee "shall and do, as soon as convenient, sell and dispose of all the lands, goods and chattels" is not void as to creditors. *McClung v Bergfield*, 4 M 148 (99).

If a voluntary assignment purporting to be for the benefit of creditors shows upon its face an intent to hinder, delay, and defraud creditors, it will be declared void as to them. This intent may appear: As by providing that the goods or property may be sold on credit; that the debtor retains a part of the property for his own use, requiring creditors to discharge their debts in full as a condition of sharing; or by showing debtor had sufficient property for the payment of his debts in full. *Burt v McKinstry*, 4 M 204 (146).

Where the intent of an assignor was to prevent a forced sale of the property in order that his business might continue and goods sold at retail, the assignment is void. *Gere v Murray*, 6 M 305 (213).

To impeach for fraud it is competent to show the manner in which the assignee conducts the business; that he cannot read or write, or that a debt directed to be paid has already been paid. *Guerin v Hunt*, 6 M 375 (260).

As a defense to an allegation of fraud, it is competent to show that for some time prior to the assignment, the assignors were applying all available means in discharge of their liabilities. *Mower v Hanford*, 6 M 535 (372).

A judgment creditor may bring action to remove a cloud on debtor's property created by a conveyance made with intent to defraud such creditor without a return of an execution unsatisfied. *Banning v Armstrong*, 7 M 40 (24).

A creditor who, knowing the circumstances under which an assignment for the benefit of creditors was made, accepts a benefit under it, cannot thereafter attack it as fraudulent. *Richards v White*, 7 M 345 (271).

If the excess of assets over liabilities is so unreasonably large as to force the conclusion that the assignment was made for the benefit of the assignor, in protecting him from a forced sale, the assignment is deemed fraudulent. *Guerin v Hunt*, 8 M 477 (427).

Where the plaintiff's title depends on a deed of assignment, the validity of which is assailed on the ground of actual fraud in its execution, the question of fraud is properly submitted to the jury. *Blackman v Wheaton*, 13 M 326 (299).

An assignment fair on its face, but in fact executed by assignor to thereby effect a settlement with his creditors, is void, even though the assignee was without notice of such intent. *Bennett v Ellison*, 23 M 242.

Laws 1876, Chapter 44, simply regulates the mode of executing assignments and the manner of implementing them, leaving the question of their validity to be determined by existing rules of law. *Leshner v Getman*, 28 M 93, 9 NW 585.

An assignment is not void, though the named assignee is not a freeholder of the state. *Simon v Mann*, 33 M 412, 23 NW 856.

The only voluntary assignment is of all the debtor's property not exempt; and a voluntary assignment by a partnership of partnership property only is on its face, partial and not general, and consequently not a compliance with the statute. *May v Walker*, 35 M 194, 28 NW 252.

Employment of the assignor by the assignee in the conduct of the liquidation not fraudulent. Creditors who sell goods, accept dividends, and generally assent to continuing the business are estopped from claiming fraud. *Noyes v Beaupre*, 36 M 49, 30 NW 126.

10. Qualifications of assignee

The selection of an assignee who cannot read or write is a badge of fraud, but is not for that reason alone, void. *Guerin v Hunt*, 6 M 375 (260).

The statute of this state does not apply to assignments executed here by non-residents who have no property or place of business here, and the trusts created by the instrument are to be carried out elsewhere. *McKibbin v Ellingson*, 58 M 205, 59 NW 1003.

Under the evidence as to the relations and agreements between the president of the insolvent corporation and the chosen assignee, it was error in the trial court to refuse to remove the assignee on a petition of a minority of the creditors. *Re Mast, Buford & Burwell*, 58 M 313, 59 NW 1044.

11. Creditor releases

At common law and by statute here, a provision that the proceeds shall be applied towards the payment of such creditors only as shall release their claims, is fraudulent and invalid. *May v Walker*, 35 M 194, 28 NW 258; *Moore v Bettingen*, 116 M 142, 133 NW 561.

The deed of assignment created a trust for all creditors, whether they released their claims or not. *Re Bird*, 39 M 520, 40 NW 827; *Mullen v Ellington*, 70 M 290, 73 NW 146.

12. Defaults of assignee

After the court has acquired jurisdiction of the proceedings by the filing of a proper assignment, no defaults of the assignee will affect the validity of the trust or the jurisdiction of the court. *Perkins v Zarracher*, 32 M 71, 19 NW 385; *Strong v Brown*, 41 M 304, 43 NW 67.

13. Interpretation

General words of transfer are limited by subsequent words of description. *Guerin v Hunt*, 6 M 375 (260).

The statute is remedial and must be liberally construed. *Clark v Stanton*, 24 M 240; *Strong v Brown*, 41 M 304, 43 NW 67.

The schedule did not limit the operation of the deed. The effect of the record of the deed was not impaired by an omission of the schedule. *Strong v Lynn*, 38 M 315, 37 NW 448.

14. Collateral attack

If the assignment is void, creditors may seize the property on legal process as if no assignment had been made and set up its invalidity in an action by the assignee. *Lanpher v Burns*, 77 M 407, 80 NW 361.

15. Effect

Where a debtor delivers to a third person money to pay his creditor, the relation is one of principal and agent until the creditor assents, and until such assent, the debtor may revoke. An assignment for benefit of creditors is a revocation. *Simonton v First National*, 24 M 216.

It does not, under Laws 1876, Chapter 44, supersede a prior attachment or garnishment. *Fairbanks v Whitney*, 36 M 305, 30 NW 812.

The assignee represents the creditors with power to institute proceedings to set aside void transfers whether within or without the state. The creditors through the assignee have the rights of attaching creditors. *Swedish-American v First National*, 89 M 98, 94 NW 218.

16. Title of assignee

The assignee holds legal title and all the equitable interest of the assignor in respect to the property covered by the assignment. *Caldwell v Bruggerman*, 4 M 270 (190); *Donohue v Ladd*, 31 M 244, 17 NW 381; *Ryan v Ruff*, 90 M 169, 95 NW 1114.

The assignee is not a purchaser for value and his innocence of fraudulent intent will not cure that of or on the assignor. *Gere v Murray*, 6 M 305 (213); *Bennett v Ellison*, 23 M 242; *Leshner v Getman*, 28 M 93, 9 NW 585.

A general assignment effectually transfers the personal property of the assignor wherever the same may be situated. *In re Paige v Sexsmith*, 31 M 136, 16 NW 700; *Corey v Cutler*, 55 M 18, 56 NW 255.

Property of the assignor, not included in the schedule, passes to the assignee and may be disposed of by him. *Strong v Lynn*, 38 M 315, 37 NW 448.

The assignee takes the property free from the statutory interests of the wife of the assignor. *Merrill v Security Trust Co.* 71 M 61, 73 NW 640.

Except as otherwise provided by statute, an assignee stands in the shoes of his assignor, and what would be a defense against the assignor will be a good defense against the assignee. *Dickson v Kittson*, 75 M 168, 77 NW 820.

No beneficial interest vests in the assignee, and when the trust has been executed, or the proceedings terminated, if there remained any real estate not disposed of, it reverts to the assignor by operation of law. *Northwestern Mutual v Murphy*, 103 M 104, 114 NW 360.

17. Powers and duties of assignee

The assignee is bound to exercise due diligence and good faith in the administration of his trust. *Clark v Stanton*, 24 M 232; *In re Robbins*, 36 M 66, 30 NW 304.

He cannot delegate his trust but may employ attorneys and agents to assist him. *Langdon v Thompson*, 25 M 509.

It is the assignee's duty to protect, defend, and preserve the assigned property and make it available for the payment of claims. *Hunter v Cleveland Cooperative*, 31 M 505, 18 NW 645.

The assignee holds the surplus, if any, in trust for the assignor. *In re Mann*, 32 M 60, 19 NW 347.

An assignee is not required to invest the trust funds so that they may earn interest or return a profit. Interest is not chargeable to the trustee, unless there be some breach of trust. *In re Shotwell*, 49 M 170, 51 NW 909.

The assignee represents the creditors, not the assignor. *Walsh v St. Paul Furniture Co.* 60 M 397, 62 NW 383; *Thomas v Drew*, 69 M 69, 71 NW 921; *Kellogg v Kelley*, 69 M 124, 71 NW 924.

The authority of the assignee extends to the property of the assignor in other states. He receives the property belonging to the insolvent estate, converts it into money, and pays and discharges the debts by equal proportional distribution among the creditors, recognizing valid and subsisting contracts theretofore entered into by the assignor and instituting proceedings to set aside all such conveyances and transfers as are fraudulent or void as to creditors. *Swedish-American v First National*, 89 M 98, 94 NW 218.

Where a trustee of property for the benefit of creditors enters into a lease of a storeroom with a third party, such contract is not the contract of the assignor, but is the contract of the assignee. *Koehn v St. Paul Cooperative*, 156 M 113, 194 NW 112.

18. Generally

The assignor must convey, and title must pass, the entire interest in the property of the consignor to the assignee. *Banning v Sibley*, 3 M 389 (282).

The right to make a voluntary assignment for benefit of creditors is a common-law right, and exists independent of statute. If the insolvent debtor make an assignment in conflict with the policy of the federal bankruptcy act, it may be avoided by proceedings in involuntary bankruptcy. Except as against such pro-

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ceedings, the assignment would be as valid as if no bankruptcy act existed. In re Bird, 39 M 522, 40 NW 827.

As the deed of assignment required creditors to file releases in order to participate in a distribution, the assignment was invalid as to those who chose to ignore it, and a non-consenting creditor could sue the assignor and garnish the funds in the hands of the assignee. McConnell v Rakness, 41 M 3, 42 NW 539.

An assignment made by insolvent debtors must be executed, if at all, in accordance with the terms of the trust as declared in the deed of assignment. In re Fuller, 42 M 22, 43 NW 486; Mullen v Ellington, 70 M 290, 73 NW 146.

A preference by an insolvent debtor of one creditor over others is not unlawful, except as prohibited by the insolvent law of 1881, and is voidable only in proceedings under and in aid of that act. Mackeller v Pillsbury, 48 M 396, 51 NW 222.

When executed by the assignor and accepted by the assignee, the contract creates an irrevocable trust. Mackeller v Pillsbury, 48 M 396, 51 NW 222.

A creditor who assents to or affirms the provisions of a deed of assignment, having knowledge of the facts, is estopped from later objecting to it. Aberle v Schlichmeier, 51 M 1, 52 NW 974.

Assuming, without deciding, that in an action brought for that purpose, a deed of assignment may be corrected and reformed on the ground of mutuality of mistake, so as to conform to intention of the parties, such reformation cannot be had if it causes loss to any beneficiary. Cattrel v Citizens' Bank, 53 M 201, 54 NW 1111.

An assignee does not accept a leasehold interest by merely accepting the trust, but if he accepts the lease, he is liable for the rent while he holds such leasehold. As an officer of the court, he may go upon the premises and continue the business without thereby electing to take the lease. The landlord may take steps at any time to compel an election, reasonable time being allowable. Forepaugh v Westfall, 57 M 121, 58 NW 689; Nelson v Kalkhoff, 60 M 305, 62 NW 335.

Creditors are not entitled as a matter of right in an action to have a receiver appointed to enforce stockholder's liability to supersede an assignee appointed under the assignment law of 1876, or the insolvency act of 1881. International Trust v American Loan, 62 M 501, 65 NW 632.

Where the assignee made a sale of real estate in which all interested parties acquiesced, the discharge of the assignee by the court, he having fully administered his trust, is deemed an approval of such sale, as against an objection raised years later. Mitchell v Green, 125 M 25, 145 NW 404.

Where all the creditors assented to a trust deed, each creditor took a vested interest in the estate. As such a creditor's interest was subject to garnishment, where the interest is impounded until the closing of the estate. National Surety v Hurley, 130 M 393, 153 NW 740.

577.02 REAL ESTATE ASSIGNMENT MUST BE RECORDED.

HISTORY. 1887 c. 206 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 39 s. 23a; G.S. 1894 s. 4228; R.L. 1905 s. 4612; G.S. 1913 s. 8327; G.S. 1923 s. 9783; M.S. 1927 s. 9783.

Where a deed of assignment conveyed all real estate of the assignor, and referred as to description to a schedule annexed and declared the purpose to pass title to all assignor's real estate, though not enumerated in the schedule, the schedule did not limit the operation of the deed, and the effect of the record of the deed was not impaired by an omission of the schedule. Strong v Lynn, 38 M 315, 37 NW 448.

Laws 1887, Chapter 206, declaring assignments invalid as to real estate until recorded, is merely a registry act; an unrecorded assignment being valid as between the parties and others having notice. Paulson v Clough, 40 M 494, 42 NW 398; Thompson v Ellenz, 58 M 301, 59 NW 1023; Mead v Randall, 68 M 233, 71 NW 31; Noyes v American Freehold, 97 M 38, 105 NW 1125.

A certified copy of a deed of assignment may be filed with the register of deeds without being accompanied by a certificate that taxes have been paid. OAG Sept. 15, 1939 (363-B-7).

577.03 DUTY OF CLERK.

HISTORY. 1876 c. 44 s. 8; G.S. 1878 c. 41 s. 31; G.S. 1894 s. 4237; R.L. 1905 s. 4613; G.S. 1913 s. 8328; G.S. 1923 s. 9784; M.S. 1927 s. 9784.

The endorsement and record (of assignment, inventory, and bond) are not essential to the validity of the assignment. *Perkins v Zarracher*, 32 M 71, 19 NW 385.

577.04 SCHEDULE OF DEBTS AND ESTATE.

HISTORY. 1876 c. 44 s. 2; G.S. 1878 c. 41 s. 24; G.S. 1894 s. 4230; R.L. 1905 s. 4614; G.S. 1913 s. 8329; G.S. 1923 s. 9785; M.S. 1927 s. 9785.

Failure to file is not fatal to the validity of the assignment as to parties and others having notice; but the court may require the assignee to file or correct the inventory. *Swart v Thomas*, 26 M 141, 1 NW 830; *Perkins v Zarracher*, 32 M 71, 19 NW 385.

All property of the assignor is conveyed. The schedule does not limit the property conveyed by deed. *Strong v Lynn*, 38 M 315, 37 NW 448.

As to the value of schedules in an action in fraud. *Redding v Wright*, 49 M 322, 51 NW 1056.

577.05 ASSIGNEE'S BOND.

HISTORY. 1876 c. 44 ss. 3, 7; 1877 c. 67 s. 1; G.S. 1878 c. 41 ss. 25, 30; G.S. 1894 ss. 4231, 4236; R.L. 1905 s. 4615; G.S. 1913 s. 8330; G.S. 1923 s. 9786; M.S. 1927 s. 9786.

Under the original act if the assignee failed to file a bond, it was held in *Kingman v Barton*, 24 M 295, that the assignee's interest in the property ceased. Since the enactment of Laws 1877, Chapter 67, it is now held that after proper acceptance of the trust by the assignee, the assigned property is not subject to attachment on account of his failure to file his bond within the statutory time; but he cannot dispose of any assets until he files a bond. The court may at any time require the filing of the bond. *Swart v Thomas*, 26 M 141, 1 NW 830; *Strong v Brown*, 41 M 304, 43 NW 67; *Thomas v Drew*, 69 M 69, 71 NW 921.

Where no inventory has been filed, and there has been no formal or express acceptance by the assignee before and independent of the filing of his bond, and before the expiration of 15 days from the date of the trust created thereby, the assignee must file his bond within said 15-day period. *Perkins v Zarracher*, 32 M 71, 19 NW 385.

Where the assignee seasonably executes a bond and delivers it to the judge of the district court for approval. His rights as assignee will not be affected by the fact that the judge retains possession of the bond until after the expiration of the time within which it should have been filed with the clerk. *Johnson v Bray*, 35 M 248, 28 NW 504.

Where an assignee is removed, his successor has authority to sue on the bond of the original assignee. *Prosser v Hartley*, 35 M 340, 29 NW 156; *Berryhill v Peabody*, 77 M 59, 79 NW 651.

Failure to obtain leave of court to sue on the bond of an assignee is not ground of general demurrer. *McCallister v Bishop*, 78 M 228, 80 NW 1118.

577.06 NOTICE TO CREDITORS.

HISTORY. 1876 c. 44 s. 4; G.S. 1878 c. 41 s. 26; G.S. 1894 s. 4232; R.L. 1905 s. 4616; G.S. 1913 s. 8331; G.S. 1923 s. 9787; M.S. 1927 s. 9787.

The publication pursuant to this section of notice of assignment for benefit of creditors is not constructive notice to debtors of assignor. If a debtor, without actual notice, pays his debt to the assignor, he is discharged of his debt. *Graham v Evans*, 39 M 382, 40 NW 368.

577.07 FRAUDULENT CONVEYANCES.

HISTORY. 1877 c. 142 s. 1; G.S. 1878 c. 41 s. 27; G.S. 1894 s. 4233; R.L. 1905 s. 4617; G.S. 1913 s. 8332; G.S. 1923 s. 9788; M.S. 1927 s. 9788.

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In this action to determine adverse claims to real property, the false record was properly attacked, and plaintiff's title as assignee adjudged paramount to the alleged lien. *Hunter v Cleveland Cooperative*, 31 M 505, 18 NW 645.

An assignee under the insolvency law of 1881 has this same power to avoid transfers and mortgages of chattels by the debtor assignor when creditors of the assignor could avoid them. *Merrill v Ressler*, 37 M 82, 33 NW 117; *Chamberlain v O'Brien*, 46 M 80, 48 NW 447.

In an action to set aside a conveyance executed in defraud of creditors, the complaint must state facts showing that the plaintiff occupies a status, either as creditor or as the representative of creditors, which entitles him to assail the conveyance. The mere allegation that he was appointed by the court receiver is not sufficient. *Sawyer v Harrison*, 43 M 297, 45 NW 434; *Tvedt v Mackel*, 67 M 24, 69 NW 475.

The assignee has authority to attack any fraudulent conveyance. *Chamberlain v O'Brien*, 46 M 80, 48 NW 447; *Gallagher v Rosenfield*, 47 M 507, 50 NW 696; *Mackeller v Pillsbury*, 48 M 396, 51 NW 222; *Clark v Richards*, 68 M 282, 71 NW 389; *New Prague v Schreiner*, 70 M 125, 72 NW 963; *Rossmann v Mitchell*, 73 M 198, 75 NW 1053; *Dickson v Kittson*, 75 M 168, 77 NW 820; *Davies v Dow*, 80 M 223, 83 NW 50.

An assignee is presumed to represent creditors of the assignor, and the burden is on the party asserting the contrary to prove it. *Shay v Security Bank*, 67 M 287, 69 NW 920; *Davies v Dow*, 80 M 223, 83 NW 50; *Oliver v Hilgers*, 88 M 35, 92 NW 511.

The assignee may replevin personalty transferred in fraud of creditors or sue the vendee for the value. *Rossmann v Mitchell*, 73 M 198, 75 NW 1053.

The creditors, through the assignee, have the rights of attaching creditors. He has power to institute proceedings, attacking fraudulent conveyances and transfers, within or without the state. *Swedish American v First National*, 89 M 98, 94 NW 218.

Outline of uniform fraudulent conveyance acts. 7 MLR 459.

Uniform fraudulent conveyance act; assignment for benefit of creditors. 7 MLR 531.

Chattel mortgages; uniform fraudulent conveyance act. 24 MLR 838.

577.08 PROOF OF CLAIMS; ORDER OF PAYMENT.

HISTORY. 1876 c. 44 s. 5; 1877 c. 67 s. 2; G.S. 1878 c. 41 s. 28; G.S. 1894 s. 4234; R.L. 1905 s. 4618; G.S. 1913 s. 8333; G.S. 1923 s. 9789; 1925 c. 256; M.S. 1927 s. 9789.

(1) In an action to wind up an insolvent banking corporation, the state of Minnesota is a preferred creditor. *State v Bell*, 64 M 400, 67 NW 212; *American Surety v Pearson*, 146 M 342, 178 NW 817; 1934 OAG 34, Aug. 1, 1933 (29b-4).

The claim of the state is not preferred; they may file as a general creditor. *State v Northern Trust*, 70 M 393, 73 NW 151.

On dissolution of a partnership, the father sold to the son who agreed to pay the father \$8,000, with annual interest, at the son's election any time during the father's life, or to his personal representatives within five years after the father's death. The son was declared bankrupt. It was held that the claim of the father against the son, notwithstanding the bankruptcy, was not a present and enforceable liability, but a deferred and contingent one, and not provable in the son's estate. *In re Hartman*, 166 F 776.

States claim for binding twine has priority in liquidation of a bankrupt estate. *In re Western Implement Co.* 171 F 81.

Debt of bankrupt to the state by reason of receipt of fees for hunting and fishing licenses was entitled to priority. *In re Newman*, 47 F(2d) 1073.

(2) Continuance of payment of workmens compensation by an operating receiver. 19 MLR 253, 26 MLR 260.

(3) Where the language of the assignment follows generally that of the statute in respect to distribution, it will be construed in connection with the general

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rules of law applicable to the marshaling of assets. *Hanson v Metcalf*, 46 M 29, 48 NW 441.

(4) The creditor, before he has exhausted his security or surrendered it to the trustee, is entitled to file his claim and have the amount and validity of the security determined, but he is not entitled to share in dividends until he has so exhausted or surrendered his security. *Swedish-American v Davis*, 64 M 250, 66 NW 986; *First National v Pope*, 85 M 433, 89 NW 318.

The court made an order directing the assignee to pay a certain judgment after payment of fees and expenses; the full bench fixed the amount allowable as fees. An appeal was taken from both orders. It was proper to subordinate the judgment to the assignee's claim for fees for his and his attorney's services. *Hay v Bacon*, 80 M 188, 83 NW 134.

Relative rights of secured and unsecured creditors. 8 MLR 235.

577.09 PAYMENT OF DIVIDENDS; LIST OF CREDITORS.

HISTORY. 1876 c. 44 s. 9; G.S. 1878 c. 41 s. 32; G.S. 1894 s. 4238; R.L. 1905 s. 4619; G.S. 1913 s. 8334; G.S. 1923 s. 9790; M.S. 1927 s. 9790.

577.10 POWERS OF COURT; REMOVAL AND DISCHARGE.

HISTORY. 1876 c. 44 s. 6; 1877 c. 67 s. 3; G.S. 1878 c. 41 s. 29; 1885 c. 82; G.S. 1894 s. 4235; R.L. 1905 s. 4620; G.S. 1913 s. 8335; G.S. 1923 s. 9791; M.S. 1927 s. 9791.

Removal of assignee. *Goncelier v Foret*, 4 M 13 (1); *Guerin v Hunt*, 6 M 375 (260); *Clark v Stanton*, 24 M 232; *Strong v Brown*, 41 M 304, 43 NW 67; *In re Nitolin*, 55 M 130, 56 NW 587; *McKibbin v Ellingson*, 58 M 205, 59 NW 1003; *In re Mast, Buford & Burwell*, 58 M 313, 59 NW 1044; *In re Nicolin*, 59 M 323, 61 NW 330; *Minneapolis Trust v School District*, 68 M 414, 71 NW 679; *Berryhill v Peabody*, 71 M 59, 79 NW 651; *American Surety v Nelson*, 77 M 402, 80 NW 300.

The court should disallow unauthorized claims without reference to any agreement between assignee and assignor. *Clark v Stanton*, 24 M 232.

Supervisory power of the court. *Clark v Stanton*, 24 M 232; *Kingman v Barton*, 24 M 295; *Swart v Thomas*, 26 M 141, 1 NW 830; *Strong v Brown*, 41 M 304, 43 NW 67; *State ex rel v Young*, 44 M 76, 46 NW 204.

An assignment for the benefit of creditors, properly executed and accepted, creates a valid trust which cannot be revoked by the assignor, or by the joint act of the assignor and assignee, or by the court on their application. *Mackellar v Pillsbury*, 48 M 396, 51 NW 222.