CHAPTER 512

SALE OF GOODS

FORMATION OF THE CONTRACT

NOTE: The law relating to the sale of goods is a subdivision of the law of contracts. Every sale embodies elements of an offer and acceptance, competency of parties, legality of object, and construction; is governed by similar formalities; applies the same rules of evidence; is concerned with the same limitations of time; and is affected by a similar doctrine of estoppel.

Law of sales has existed from time immemorial and the subject has been discussed by Benjamin, Meecham, and many other text book writers. For the most part, the earlier laws relating to sales were treated under the subject of contracts and the statutes related to sales in particular places or at certain times, or to particular objects.

With the great increase in commerce and the modern method of facilitating exchange and distribution of commodities, the application of the law of sales became interstate or international in character, necessitating a code on the subject.

The first important code was the "Sale of Goods Act" adopted by the English Parliament in 1893. This Act not only codified the existing laws but in many instances departed from the local practice. Innumerable existing laws, decrees, and court decisions were rendered obsolete. In America the National Conference of Commissioners on Uniform State Laws proposed a uniform act relating to the sale of goods in 1906. This Act has been adopted by 38 states. It was adopted in Minnesota in 1917.

Great changes in the business world have occurred since 1906, and our present law of sales is in many ways out of date. The American Law Institute, acting with the National Conference on Uniform State Laws, has prepared a model act which will be submitted to Congress and to the legislatures of the several states for adoption.

For notes of decisions in other states, see Uniform Laws Annotated, Volume 1.

512.01 CONTRACTS TO SELL AND SALES.

Plaintiff and defendant entered into a contract wherein defendant purchased a definite quantity of oil of any weight or weights defendant should designate within certain lists, the weight governed the price. The contract was severable, and for that part where a definite quantity and price was agreed upon the seller may recover as damages the difference between the price of the goods to himself and the price defendant agreed to pay. On that part of the contract indefinite as to weight and price, there can be no recovery. Wilhelm Co. v Brattrud, 197 M 626, 268 NW 634.

An option is an offer to sell coupled with an agreement to hold the offer open for acceptance for a specified time. It secures the privilege to buy and is not of itself a purchase. The owner does not sell his property; he gives to another the right to buy at his election. Where there is an obligation to buy the contract is one of sale. Where one intention appears in one clause of the instrument and a conflicting intention appears in another clause, that intention should be given effect which appears in the principal and more important clause. Oleson v Bergwell, 204 M 450, 283 NW 770.

In order to render it enforceable, an agreement for the modification of a bilateral, executory contract must be for a valuable consideration. Johnson v Northern Oil Co. 212 M 249, 4 NW(2d) 82.

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

Where a contract is bilateral, there must be a mutuality of consideration. The court takes notice that contracts are generally entered into in good faith, with a view to performance. Provision in a contract between a manufacturer of hog cholera serum and virus and a retailer of the former's products, reserving the right in the manufacturer to approve orders did not render the contract invalid. Marrinan v Fort Dodge Co. 47 F(2d) 459.

Purchase for value and estoppel. 6 MLR 87.

Uniform fraudulent conveyance act. 7 MLR 453.

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

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

Uniform warehouse receipts act. 12 MLR 640.

Bills of acceptance in auctions "without reserve". 15 MLR 375.

Uniform conditional sales act. 16 MLR 690.

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

Necessary definiteness of consideration. 21 MLR 330.

Quasi-contractual recovery. 21 MLR 529.

Distinction between sale and consignment. 22 MLR 1063.

512.02 CAPACITY; LIABILITIES FOR NECESSARIES.

The contract of an infant is simply voidable, and in law there is a marked distinction between his executed contract and his contract merely executory. As to an executory contract he may always interpose his infancy as a defense in an action for its enforcement, and he is not bound by such a contract unless he has affirmed or ratified it after he has arrived at maturity by some sufficient act or deed. Nichols v Snyder, 78 M 502, 81 NW 516.

The relation existing between the parties, the younger brother's financial situation and physical and mental condition at the time of the transfer, his knowledge of the value of the stock he transferred, and the elder brother's own version of the exercise of his influence, showed that the parties did not deal on equal terms, and threw on the defendant the burden of establishing that no undue advantage had been taken by him. To establish a ratification it must be shown that the person ratifying acted with full knowledge of all material particulars and circumstances. Imperfect and incomplete information is not sufficient. The mere submission to an injury after the act inflicting it is completed generally, and in the absence of other circumstances, cannot take away a right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of such right. Shevlin v Shevlin, 96 M 399, 105 NW 257.

During his infancy plaintiff bought and sold stock through the defendant stockbroker at a loss. Within two days of seven months after reaching his majority he brought this action to disaffirm and to recover his loss. The jury properly found that he had not disaffirmed within a reasonable time. Kelly v Furlong; 194 M 465, 261 NW 460.

Liability for depreciation on disaffirmance of contract to purchase personal property; effect of misrepresentation of age. 17 MLR 442.

FORMALITIES OF THE CONTRACT

512.03 FORM OF CONTRACT OR SALE.

Where the authorized agent of defendant agreed with plaintiff to purchase, at a price fixed, all the cabbage he could get and load, such contract constitutes at least an offer to purchase, and, to the extent the other party has, before revocation,

acted on it by supplying cabbage according to its terms, it becomes a completed and binding contract. Bundy v Meyer, 148 M 252, 181 NW 345.

Where it is apparent upon the face of a written instrument that it contains but a part of the agreement entered into by the parties, parol evidence may be received to show the entire contract. Harding v Texoleum Co. 154 M 55, 191 NW 394.

A telegram by a seller offering a carload of potatoes to a buyer, and a telegram in response by the latter directing the seller to ship the car, constituted a sale without further confirmation. King v Ryan, 179 M 385, 229 NW 348.

Where the terms "measurement and acceptance" as used in the contract were ambiguous and where the contract is otherwise ambiguous the meaning intended by the parties was for the jury. Hayday v Hammermill Co. 184 M 8, 237 NW 600; Great Lakes Co. v. Borgen, 184 M 25, 237 NW 609.

Under the terms of the contract it was a breach of same to remove the piano from its place of use and place it in storage, and the seller properly declared the balance due. Morse v Nagris, 185 M 266, 240 NW 899.

Although the contract of sale reserved title in the seller until the milking machine was paid for, the purchaser had possession and control of the machine, and it was error in the trial court to charge the jury that the manufacturer was liable for damages caused by the death of cows on which the machine was used. The relation between the parties was that of seller and purchaser. Diddams v Empire Co. 185 M 270, 240 NW 895.

512.04 STATUTE OF FRAUDS.

Where a signature is not required by some positive rule of law, as, for example, in certain cases by the statute of frauds, a party may become bound by a contract by accepting it and acting upon it as a binding one, even though he did not sign it. Welsh v Barnes, 221 M 37, 21 NW(2d) 44.

Check as sufficient part payment. 4 MLR 369.

Silence as acceptance. 8 MLR 250.

Turning over management of a corporation as part performance sufficient to take an oral agreement to sell corporate stock out of the statute of frauds. 9 MLR 383.

Conflict of laws. 11 MLR 44, 51.

Statute of frauds relating to contracts. 14 MLR 746.

Application of the statute of frauds under the uniform sales act. 15 MLR 391, 406.

Sufficiency of signature to memorandum. 16 MLR 325.

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

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

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

Enforcement of oral contract to purchase stock. 20 MLR 569.

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

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

SUBJECT MATTER OF CONTRACT

512.05 EXISTING AND FUTURE GOODS.

An order for the manufacture of certain goods for delivery in the future, upon acceptance by the manufacturer becomes a binding contract between the parties. Greenhut v Oreck, 130 M 305, 153 NW 613.

Where a contract for the sale of pulpwood required measurement and acceptance at the point of delivery, in the absence of evidence that mere estimates as distinguished from actual scales or measurements of volume were resorted to, estimates made by the buyer's representative, the seller's representative, refusing to participate, should, in the absence of pleading and proof of fraud be considered final. Hayday v Hammermill, 176 M 315, 223 NW 614.

Purchase of hay did not include sweet clover. Wiseth v Goodridge, 197 M 261, 266 NW 850.

Where the agent of a sewing machine company contracted to purchase from the company "all parts and attachments," by "parts" was meant portions or pieces of machinery to be used for repairs; and by "attachments" mechanisms pertaining to the original machine. Wheeler v Lyons, 71 F. 374.

In the construction of a contract of sale which specified the quantity of the article or thing sold, such specification will be regarded as material and determinative, notwithstanding the qualification by "more or less" or "about" unless it is apparent or fairly inferable from other parts of the contract that a particular lot of goods was intended to be sold, or enough thereof to satisfy a particular need. United States v Pine River Logging Co. 89 F. 907.

Sales of corporate stock. 17 MLR 106.

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

512.08 DESTRUCTION OF GOODS CONTRACTED TO BE SOLD.

Goods destroyed after contract is made. 21 MLR 529, 534.

PRICE

512.09 DEFINITION AND ASCERTAINMENT OF PRICE.

A written memorandum of contract for the sole sale of a stock of merchandise, construed in connection with the oral negotiations between the parties leading up to the sale and their acts and conduct in completing the transaction after the memorandum was prepared and signed, makes the retail or inventory price of the goods, and not the wholesale or invoice price, the basis of computation of the purchase price. Sell v Leng, 149 M 200, 183 NW 135.

A written contract under which plaintiff managed automobile shows for defendant provided that the former was to have, in addition to salary, ten per cent of "net profits or net receipts". By resorting to extrinsic circumstances, the trial court properly determined that "invoice price" means wholesale cost. Wilmot v Minneapolis Automobile Assn. 169 M 140, 210 NW 861.

In the instant case as construed by the parties and upheld by the court, the present market replacement value of the equipment of a plant, as determined by an appraisal for which a contract of sale provided, is the cost of reproduction new. Metropolitan National Bank v Gopher Lath Co. 170 M 288, 212 NW 459.

Plaintiffs, who were producers of hogs, brought suit against the defendant to recover the amount of the processing tax under the provisions of 7 USCA, section 601, et seq., known as the agricultural adjustment act. A class suit cannot be maintained under section 540.02 where the sole relief sought is the recovery of money or damages arising out of distinct and separate transactions of each of the several plaintiffs with defendant. The money sought to be recovered is not a trust fund in which all similarly situated with plaintiffs share, so that an accounting in equity could be maintained. Thorn v Hormel, 206 M 589, 289 NW 516.

Satisfaction of the statute by earnest or part payment. 15 MLR 391, 422.

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

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

512.10 SALE AT A VALUATION.

Open price in contracts for the sale of goods. 16 MLR 733, 738, 741.

Quasi contractual recovery. 21 MLR 529.

CONDITIONS AND WARRANTIES

512.11 EFFECT OF CONDITIONS.

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

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

Contractual disclaimers of warranty. 23 MLR 784, 789.

Warranty of merchantable quality. 27 MLR 161.

512.12 EXPRESS WARRANTY DEFINED.

The burden of proof is on the party relying on a warranty to show the warranty and a breach thereof. This burden is not sustained where evidence essential to proof of a breach consists of opinions of witnesses based exclusively on statements made to them by others. Kavli v Leafman, 207 M 549, 292 NW 210.

False representation relied upon by purchaser that a used tractor was just what the buyer wanted, was in good shape and in condition to go to work, is actionable; but in the instant case the contract was that defendant should take the tractor "as it is," and the question of warranty under the circumstances was immaterial. Goldfine v Johnson, 208 M 449, 294 NW 459.

Agent's authority to warrant second-hand automobile. 10 MLR 162.

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

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

Goods not conforming to the contract. 21 MLR 540.

Waiver of warranties. 23 MLR 784.

Express warranties. 23 MLR 942.

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

Retailer's adoption of manufacturer's express warranty by resale of the goods. 25 MLR 246.

Implied and express warranty of fitness for the purpose not affected by buyer's allergy. 26 MLR 668.

Implied warranty of merchantable quality. 27 MLR 117, 122.

512.13 IMPLIED WARRANTIES OF TITLE.

There is an implied warranty of title applicable, in the absence of an express warranty, to all sales of personal property by the person in possession who assumes the right to sell it as his own. Jordan v Van Duzee, 139 M 103, 165 NW 877.

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

Implied and oral warranties and the parol evidence rule. 12 MLR 209; 14 MLR 20, 46; 19 MLR 725.

A synthesis of the law of misrepresentation. 22 MLR 939, 955, 976.

512.14 IMPLIED WARRANTY IN SALE BY DESCRIPTION.

A contract for the sale of jewelry specified "rolled gold plate"; and the contract further provided that if the jewelry failed to "wear well" or "sell readily", the seller would exchange the same and replace the articles thus deficient. The terms of the contract as to exchange applied only to articles not wearing well or selling readily. As to articles that did not correspond in quality and character

with those ordered, the retail merchant had the right to return the goods for credit. Loveland v Steenerson, 99 M 14, 108 NW 831.

In a written contract for the sale of lumber no grades were specified, but special reference was made to a certain price list, and the prices therein named for the different grades mentioned in the list were adopted as the price for lumber purchased. The character and quality of the lumber purchased was limited by the contract to the price list, and the contract was not rendered indefinite and unenforceable for the reason that a certain grade of lumber was not mentioned in the list. Hobe v McGrath, 104 M 345, 116 NW 652.

In a suit to recover damages for a breach of warranty in the sale of an automobile the opinion of the owner of personal property as to its value is admissible. Evidence that the car had been run more than 1,200 miles is also admissible. There was nothing improper in the jury finding for the plaintiff. The evidence sustains the verdict. Hoffman v Piper, 181 M 603, 233 NW 313.

Implied warranties in the sale of goods by trade name. 11 MLR 485, 493.

Implied and oral warranties and the parol evidence rule. 12 MLR 209; 14 MLR 20, 46; 19 MLR 725.

Goods do not conform to contract. 21 MLR 540.

Contractual disclaimers of warranty. 23 MLR 784, 790.

Implied warranties. 23 MLR 941, 944, 950.

Implied warranty of merchantable quality. 27 MLR 117, 123, 126.

Implied warranty in sale by description; effect of government certification. 31 MLR 502.

512.15 IMPLIED WARRANTIES OF QUALITY AND FITNESS.

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

Sale of diseased pork; implied warranty. 3 MLR 285.

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

Implied warranty through sale of water by municipal corporations. 5 MLR 326.

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

Implied warranty of merchantability. 11 MLR 486.

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

Liability of restaurants for injuries to guests from deleterious food. 13 MLR 265.

Articles sold under trade name. 15 MLR 479.

Sale of second-hand goods. 15 MLR 723; 18 MLR 91.

Consequential damages for breach of merchantability. 16 MLR 219.

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

Validity of statute prohibiting waiver of implied warranty of fitness. 17 MLR 206.

Implied warranties in non-sales contracts. 17 MLR 210.

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

Tort liability of manufacturers. 19 MLR 752.

Liability of restaurateur. 20 MLR 527.

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

Liability for innocent misrepresentation. 21 MLR 434.

Misrepresentations of opinions; fraud. 21 MLR 643.

A synthesis of the law of misrepresentation. 22 MLR 939.

Liability of retail dealers for defective food products. 23 MLR 585, 612.

Contractual disclaimers of warranty. 23 MLR 784.

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

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

Allergy of buyer. 26 MLR 668.

Implied warranty of merchantability quality. 27 MLR 117.

SALE BY SAMPLE

512.16 IMPLIED WARRANTIES IN SALE BY SAMPLE.

Shoes sold from samples carry an implied warranty that they are free from any defects rendering them unmerchantable and which are not apparent on reasonable examination of the sample. The merchantable condition of the shoes in the instant case was sufficiently made to appear by the testimony of experts without any testimony from those who wore the shoes. If unmerchantable, the purchaser has the right to rescind or he may accept them by conduct under the provisions of section 512.48. Whether the purchaser exercises his right to rescind within a reasonable time is a question of fact. Laganas Shoe Co. v. Sharood, 173 M 535, 217 NW 941.

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

Parol evidence rule and warranties. 19 MLR 731.

Contractual disclaimers of warranty. 23 MLR 784.

Implied warranties. 23 MLR 944; 27 MLR 117.

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

TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

512.18 PROPERTY IN SPECIFIC GOODS PASSES WHEN PARTIES SO INTEND.

A parent corporation and its wholly-owned subsidiary may for certain purposes and under proper circumstances be treated as separate entities, but a fur manufacturing company will not be permitted to organize a subsidiary sales company and transfer merchandise to it merely in order to use it as a device to evade the parent organization's tax responsibilities. Albrecht v Landy, 114 F(2d) 202.

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

Expression of the terms of transactions; unity of parol evidence rule. 14 MLR 20, 34.

512.19 RULES FOR ASCERTAINING INTENTION.

Plaintiff, a manufacturer of farm tractors, sold a four-gang plow with the provision that it would be "reshipped" if not salable at defendant's place of business. As the plow could not be sold at the end of several months, defendant requested plaintiff to reship the plow which plaintiff neglected to do, and the tractor was destroyed by fire. The manufacturer sued to recover, but the verdict was for the defendant. Northern Rock Island Co. v Torgerson, 182 M 622, 235 NW 378.

Title passes when the parties intend that it shall pass. After the calendars had been manufactured, printed, and set aside in plaintiff's shipping room for defendants under contract, it was too late for the defendant to cancel the order or repudiate a contract. The title passed the moment when the calendars had placed upon them the name and advertising matter of the defendants. Dow v Bittner, 187 M 143, 244 NW 556.

The jury were justified in finding that the caskets sold by plaintiff to defendant were sold upon consignment and were returned to plaintiff within a reasonable time. Meany Casket Co. v McCarthy, 199 M 117, 271 NW 99.

Where a printed contract prepared by plaintiff for the sale by it to defendant of a steam thresher contained a warranty that the machine would do as good work as any made, but also a number of technical requirements to be observed by defendant making him liable for the price of the machine, even though it did not comply with the warranty, unless they were strictly followed, such as that he must report its failure to work after five days' trial to plaintiff in Pennsylvania and give it time to remedy the defect or substitute a new machine and return the machine if it failed to work to the place where he received it and accept another on the same terms, a written clause, added on demand of defendant, that "this machine is sold on this condition that the settlement for the rig is not to be made before after machine has been tried and fulfills its guaranty, and all kinds of grain threshed that a separator is made for, and party is satisfied that the rig works all right," superseded such provisions and became the test by which his obligation to accept the machine was determined; and, where a fair trial by defendant and experts of plaintiff demonstrated that the machine would not do good work, defendant was not bound to accept or pay for it because he did not comply with all of the technical provisions of the printed part of the contract. Geiser Mfg. Co. v Cassell, 171 F. 348.

After acquired property; act of appropriation; taking title "piece-meal". 7 MLR 67.

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

Unity of the parol evidence rule; the expression of the terms of the transactions. 14 MLR 20, 34, 38.

What constitutes acceptance. 15 MLR 391, 415.

Sale free of cost, insurance, and freight. Passage of title in C. I. F. or modified C. I. F. contracts. 16 MLR 600.

Standards in the milk industry. 22 MLR 789.

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

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

Title acquired from buyer who wrongfully secures property from a carrier without the bill of lading and resells it to innocent purchasers. 6 MLR 420.

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

512.21 SALE BY AUCTION.

Auctions "without reserve". 15 MLR 375.

TRANSFER OF TITLE

512.23 SALE BY A PERSON NOT THE OWNER.

Where the owner, although induced to do so by false representation, delivers property to another to be sold and such other sells it to a bona fide purchaser, the owner cannot recover from the purchaser. Crosby v Paine, 170 M 43, 211 NW 947.

The conditional sales contract of a new and unregistered automobile which remained in the possession and in the salesroom of the vendor, a retail dealer in automobiles, is subject to the provisions of section 513.12 which makes such a

sale as against creditors of the vendor and subsequent purchasers in good faith presumptively fraudulent unless the same is accompanied by immediate delivery followed by actual and continued change of possession. Drew v Feuer, 185 M 133, 240 NW 114.

If a purchaser in a cash sale of personal property evades payment upon obtaining possession of the property, the seller may immediately reclaim the property; the title in such case not passing to the purchaser, the delivery being conditioned upon payment. If payment is made by check, it is conditional, and the delivery of the property is also conditional; and, if the check is not good, the seller may retake the property. Gustafson v Equitable Loan Assn. 186 M 236, 243 NW 106.

Purchase for value and estoppel. 6 MLR 87.

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

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

Rights of bona fide purchaser. 24 MLR 804.

512.24 SALE BY ONE HAVING A VOIDABLE TITLE.

A reference in a note or bond to a mortgage or deed of trust given as security does not destroy the negotiability of the instrument unless it appears to have been the purpose of the parties to burden the instrument with the conditions of the mortgage or deed. If the reference is of such a nature as to subject the paper to the terms of an extrinsic agreement and to impress them upon it, its negotiability is destroyed. King v Joseph, 158 M 482, 198 NW 798, 199 NW 437.

If a purchaser in a cash sale of personal property evades payment upon obtaining possession of the property, the seller may immediately reclaim the property. If payment is made by check, it is conditional, and the delivery of the property is also conditional, and if the check is worthless, the seller may retake the property. The purchaser acquired no title. Gustafson v Equitable Loan, 186 M 236, 243 NW 106.

Vendor's right to rescind for fraud against a bona fide purchaser of a bill of lading issued and transferred before the goods are received by the carrier. 13 MLR 393.

Payment by worthless check; recovery of goods by original seller from innocent purchaser for value. 14 MLR 696.

512.25 SALE BY SELLER IN POSSESSION OF GOODS ALREADY SOLD.

Reliance on indicia of ownership; bona fide purchase of county warrants endorsed in blank. 8 MLR 526.

Prevention of multiplicity of suits. 16 MLR 690.

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

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

Rights of bona fide purchasers. 24 MLR 899.

512.32 WHO MAY NEGOTIATE A DOCUMENT.

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

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

Reliance on indicia of ownership. 8 MLR 528.

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

PERFORMANCE OF THE CONTRACT

512.41 SELLER MUST DELIVER AND BUYER ACCEPT GOODS.

Defendant purchased lumber for a building and specified fir. The plaintiff delivered hemlock. The finding that defects in the building resulted from the use of the hemlock is sustained by the evidence. As the building was completed before defendant learned of the substitution, he must retain the hemlock and is entitled to the damages resulting from its inferior quality. Midland Lumber v Bean, 180 M 531, 231 NW 206.

Under a contract for shipment from India of sugar in April or May, but not specifying the time of delivery, and under which the seller impliedly gave assurance that it would be so shipped as to create reasonable expectation of arrival in New York and delivery on cars by September 30, an offer of delivery in October was under the circumstances within reasonable time. Lamborn v Log Cabin Products Co. 291 F. 435.

Tort liability of manufacturers. 19 MLR 752.

Liability of restaurateur for defective food. 20 MLR 527.

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

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

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

512.42 DELIVERY AND PAYMENT ARE CONCURRENT CONDITIONS.

Where a seller of goods undertakes to make a shipment to the buyer and fails to obey shipping instructions and as a result the buyer fails to receive prompt notice of the arrival of the shipment and demurrage charges accrue which he is obliged to pay, the seller is liable to make reimbursement. Dreyer v Fruen, 148 M 443, 182 NW 520.

Where one person takes an order for goods under circumstances creating a present contract to sell according to which payment and delivery are concurrent conditions, the right to payment is assignable. Dworsky v Unger, 212 M 244, 3 NW (2d) 393.

Implied conditions; dependent and independent covenants. 17 MLR 419, 425.

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

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

512.43 PLACE, TIME AND MANNER OF DELIVERY.

As a general rule a contract to furnish a specified amount of goods at a specified time to be shipped and delivered as ordered constitutes a contract to be performed within a reasonable time; and what is a reasonable time for the performance of such a contract depends upon the intention of the parties as evidenced by the circumstances of the particular case. In determining that question a general custom of the trade may be considered, and in the instant case it was error to exclude evidence of such custom. Toresdahl v Armour, 161 M 266, 201 NW 423.

Failure of plaintiff to order and give notice covering the quantity of cement deliverable the first of two seasons at least 30 days before October 15 was equivalent to a failure to take and receive, and justified the defendant in rescinding the contract. Alpena Portland Cement Co. v Backus, 156 F. 944.

Under a contract for shipment from India of sugar in April or May, but not specifying the time of delivery, and under which the seller impliedly gave assurance that it would be so shipped as to create reasonable expectation of arrival in New York and delivery on cars by September 30, an offer of delivery in October was under the circumstances within reasonable time. Lamborn v Log Cabin Products Co. 291 F. 435.

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

Dependent and independent covenants. 17 MLR 427.

512.44 DELIVERY OF WRONG QUANTITY.

The state weights are not made final or conclusive by either the statute or the contract. The certificate of the state weighmaster at Duluth showed the car of coal contained 83,500 pounds; there was no showing of a loss in transit. The evidence justified a finding that the car contained only 52,750 pounds on arrival. The lower court properly held that the correct weight was 52,750 pounds. Carnegie v Midland Co. 148 M 438, 182 NW 515.

Effect of breach after past performance. 5 MLR 335.

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

512.45 DELIVERY IN INSTALMENTS.

Instalment contracts; renunciation. 1 MLR 507, 510.

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

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

512.46 DELIVERY TO A CARRIER ON BEHALF OF THE BUYER.

Delivery of goods by the seller to a carrier for transportation to the buyer agreeable to the contract between them raises a presumption that the property in the goods by that act passes to the buyer. Banik v Chicago Co. 147 M 175, 179 NW 899.

Where a seller of goods undertakes to make a shipment to the buyer and fails to follow shipping instructions and as a result the buyer fails to receive prompt notice of the arrival of the shipment and demurrage charges accrue which he is obliged to pay, the seller must reimburse the buyer. Dreyer v Fruen, 148 M 443, 182 NW 520.

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

512.47 RIGHT TO EXAMINE THE GOODS.

Clause in the contract which required purchaser of material to inspect same at delivery point and which further provided that the purchaser "may reject" defective material before incorporation thereof into its electric distribution system provides an exclusive remedy for defective material furnished and requires the purchaser to reject same before incorporation, into the electric distribution system. DeWitt v Itasca-Mantrap Assn. 215 M 551, 10 NW(2d) 715.

512.48 WHAT CONSTITUTES ACCEPTANCE.

Upon unloading a portion of a carload of material the defective condition was discovered and the goods were not accepted but loaded back on the car. The unloading of a portion of the defective material did not constitute an acceptance thereof. Hydraulic Brick Co. v Haynes, 128 M 401, 151 NW 140.

See, DeWitt v Itasca-Mantrap Assn. 215 M 551, 10 NW(2d) 715, noted under section 512.47.

What constitutes acceptance. 15 MLR 415.

Rescission for breach of warranty. 19 MLR 133.

512.49 ACCEPTANCE DOES NOT BAR ACTION FOR DAMAGES.

The retention and use of trucks purchased did not estop the purchaser from bringing suit for breach of warranty or from presenting a counter-claim for a breach

of warranty in a suit by the seller for purchase price of the property. The defendant had the right to retain the trucks and sue for a breach of warranty, or he might have elected to wait until sued for the purchase price and counter-claim for the breach. Donaldson v Carstensen, 188 M 443, 247 NW 522.

The sale of a truck under its trade-name did not exclude an implied warranty of fitness for the work for which it was bought nor did the express warranties in the conditional sales contract. While the seller was attempting to remedy the defects in the brakes, the reasonable time in which the buyer could rescind did not commence to run, but the evidence justified the jury in finding that the buyer gave notice of election to rescind before the seller retook the truck. Federal Motor v Shanus, 190 M 5, 250 NW 713.

Substantial part performance of an executory contract of sale before discovery by the purchaser of the deceit practiced upon him by the vendor takes the case out of the rule applicable to contracts wholly or substantially executory, and the purchaser may affirm and complete the contract without barring his right to an action in tort. Kohinik v Beckman, 212 M 11, 2 NW(2d) 125.

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

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

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

Failure of price-fixing method. 21 MLR 563.

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

Inspection. 27 MLR 153.

512.51 BUYER'S LIABILITY FOR FAILING TO ACCEPT DELIVERY.

Refusal of buyer to accept goods; seller's measure of damages. 21 MLR 716.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS

512.52 DEFINITION OF UNPAID SELLER.

Payment by check is a conditional payment of a cash sale and seller may recover the merchandise, no title having passed. Gustafson v Equitable Loan, 186 M 236, 243 NW 106.

Price fixed by third party. 16 MLR 733, 785.

512.53 REMEDIES OF AN UNPAID SELLER.

Stoppage in transitu. 13 MLR 702.

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

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

Prospective inability to perform. 20 MLR 388.

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

UNPAID SELLER'S LIEN

512.54 WHEN RIGHT OF LIEN MAY BE EXERCISED.

Prospective inability of parties. 20 MLR 388.

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

Presumption of fraud. 24 MLR 840.

512.56 WHEN LIEN IS LOST.

Stoppage in transitu. 13 MLR 704.

Foreclosure of lien. 17 MLR 47, 80.

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

STOPPAGE IN TRANSITU

512.57 SELLER MAY STOP GOODS ON BUYER'S INSOLVENCY.

Liability of seller for freight upon stoppage in transitu. 1 MLR 94.

Stoppage in transitu. 13 MLR 702.

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

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

512.58 WHEN GOODS ARE IN TRANSIT.

Stoppage in transit. 13 MLR 702.

RE-SALE BY THE SELLER

512.60 WHEN AND HOW RE-SALE MAY BE MADE.

Prospective inability of buyer. 20 MLR 388.

RESCISSION BY THE SELLER

512.61 WHEN AND HOW THE SELLER MAY RESCIND THE SALE.

Where goods are being sold for cash a buyer's check in payment of a purchase is a conditional payment, and if it proves to be no good, the seller may retake the goods. Case v Bargabos, 143 M 8, 172 NW 882; Gustafson v Equitable Loan, 186 M 236, 243 NW 106.

A check or draft given to a creditor is presumed not to operate as payment unless paid, and in the instant case the check would have been good if presented within two months after its issuance; but as the creditor negligently failed to present it, the loss falls upon him. Pohl v Johnson, 179 M 398, 229 NW 555.

Warranties and the parol evidence rule. 12 MLR 222.

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

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

ACTIONS FOR BREACH OF THE CONTRACT

REMEDIES OF THE SELLER

512.63 ACTION FOR THE PRICE.

The complaint was in the ordinary form of action for goods sold and delivered to defendant. In fact defendant made an original agreement with plaintiff directing plaintiff to deliver the goods to a third person and agreed to pay for them. The goods were delivered on the sole credit of defendant. There was no variance. Kutina v Combs, 180 M 467, 231 NW 194.

Title passes where the parties intend that it shall; and when calendars are manufactured, printed, and set aside in plaintiff's shipping room, the title passed to the buyer at the moment the name and advertisement of the buyer was printed on the calendars. Dow v Bittner, 187 M 143, 244 NW 556.

Where the buyer of goods under a conditional sales contract has possession of the goods and defaults in payment therefor, the seller may (1) reclaim the property, (2) treat the sale as absolute and sue for the unpaid price, or (3) enforce his lien upon the property by lawful sale thereof. Reese v Evans, 187 M 568, 246 NW 250.

The purchaser, having pleaded in defense that the fire escapes purchased did not comply with the warranty of the plaintiff as to suitability for the purpose for which they were installed, had the burden of proof to establish such failure of suitability. Patter Co. v Bemidji Hospital, 188 M 32, 246 NW 470.

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

Where one person takes an order for goods under circumstances creating a present contract to sell according to which payment and delivery are concurrent conditions, the right to payment is assignable. Dworsky v Unger, 212 M 244, 3 NW(2d) 393.

In action by seller of machinery, including smelters, for balance of purchase price of goods, in which the seller claimed, as against contention that the machinery was defective, that the failure of the machinery was due in part to defective foundations, with which seller had nothing to do, and that the buyer participated in designing the machinery, the smelters being manufactured by seller only on special orders, letters from buyer to seller, stating that the drawings for the double smelter were made in seller's office, and a telegram from seller to buyer, asking buyer's superintendent to come to seller's office, where the seller would help him design the smelters and the machinery, held admissible to show that buyer consented to changes, and accepted the machinery substantially different from that specified in the contract with full knowledge of the changes. Minnesota & Ontario Paper Co. v Swenson Evaporator Co. 281 F. 623.

Price fixed by third party. 16 MLR 733, 785.

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

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

Prospective inability of buyer. 20 MLR 388.

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

Refusal of buyer to accept goods; seller's remedy. 21 MLR 723.

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

Where a contract to purchase a new car, on which a used car was traded in, contained a provision that in case the contract was canceled prior to delivery of the new car, the vendor was to be paid his reasonable charges for repairing the old car, the vendor was entitled to recover such charges where the vendee repudiated the contract and repossessed the repaired used car. Pioneer Garage v Hallquist, 211 M 106, 300 NW 403.

Open price in sales contracts. 16 MLR 737.

Lost profits as element of damages. 17 MLR 194.

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

512.65 WHEN SELLER MAY RESCIND CONTRACT FOR SALE.

Where the contract for purchase of cement covered two years, failure of plaintiff to order and give the notices provided for covering the quantity deliverable the first year within the time designated was equivalent to failure to take and receive, and justified the defendant in rescinding the contract. Alpena Cement Co. v. Backus, 156 F. 944.

REMEDIES OF THE BUYER

512.66 ACTION FOR CONVERTING OR DETAINING GOODS.

In a suit by the owner the usual measure of damages for conversion is the value at the time of taking, with interest; but when the conversion is by the mortgagee the measure is the difference between the value at the time of taking and the mortgage lien, with interest. Carlson v Schoch, 141 M 236, 170 NW 195.

Upon a sale by a manufacturer of his own product there is implied a warranty of freedom from latent defects affecting fitness or merchantability. Notwithstanding the above guaranty it was competent to show by parol evidence that the particular defect of which defendant complains was called to his attention at time of purchase. Anderson v Van Doren, 142 M 237, 172 NW 117.

Wrongful concealment of facts by one party is ground for the other to have a release set aside and sue for the value of the property converted. Norris v Cohen, 223 M 471, 27 NW(2d) 277.

An action for money had and received will lie whenever one person has possession of money which in equity belongs to another and ought to be delivered to him; and where an employee retained the proceeds of merchandise sold he was liable in conversion. Norris v Cohen, 223 M 471, 27 NW(2d) 277.

Quasi contracts in sales cases. 21 MLR 529.

512.67 ACTION FOR FAILURE TO DELIVER GOODS.

The expense above the contract price necessarily incurred in procuring the goods which, in the ordinary course of business, would have been ordered from the manufacturer by March 1, if he had not repudiated the contract, may be recovered as damages; but it was error to include in the damages the increased cost of goods which would not have been ordered until after that date. Scott v Stevenson Co. 130 M 152, 153 NW 316.

The measure of general damages upon a breach by a vendor of an executory contract to sell goods at an agreed price is the difference between the contract price and the market value at the time and place of delivery; and special damages, such as expected profits from a resale, may be recovered if, at the time of making the contract, the buyer has an existing contract of resale and the purchase is made for the purpose of filling it and the goods cannot be otherwise procured and the seller is appraised of these facts when the contract is made. Dreyer v Fruen, 148 M 443, 182 NW 520.

Defendant contracted to sell and deliver to plaintiff, during the first six months of 1920, all or any part of 42,000 square yards of paving blocks, at such times as ordered by the city engineer. Although in the nature of an option, the city by this contract purchased the right to compel the deliveries contracted for. City of Mpls. v Republic Creosoting Co. 161 M 178, 201 NW 414.

A mistake of one contracting party, with knowledge of it by the other, is as much a ground for relief as mutual mistake. Rigby v Nord, 208 M 88, 292 NW 751.

The findings of the trial court that defendant agreed to sell plaintiff a new Plymouth car for delivery on or about May 1, 1939; to take in plaintiff's used car and credit him with $250; and that defendant breached his contract are sustained by the evidence. Stanton v McHugh, 209 M 458, 296 NW 521.

Generally, combining a lawful demand with one not required by contract renders demand for performance insufficient. Ewing v Von Nieda, 76 F(2d) 177.

Resale contract of vendee as affecting measure of damages. 16 MLR 591.

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

512.68 SPECIFIC PERFORMANCE.

Where corporate stock is not sold on the market and as such has no established market value, and its actual value is conjectural, specific performance of an agree-

ment to sell it may be enforced, as there is no definite basis for assessing damages. Haglin v Ashley, 212 M 446, 4 NW(2d) 109.

In the absence of delivery or other proof that defendants as vendors assented to become bound contractually by a supposed contract for deed, this action in specific performance will not lie. Pogreba v O'Brien, 223 M 430, 27 NW(2d) 145.

Mutuality of remedy. 17 MLR 823.

Specific performance; oral contract to devise lands. 31 MLR 496.

Equity; statute of frauds; oral contract to convey land; unequivocal reference theory as the basis for the doctrine of part performance. 31 MLR 497.

512.69 REMEDIES FOR BREACH OF WARRANTY.

1. Generally
2. Rescissions
3. Damages

1. Generally

Plaintiff should not have judgment non obstante, because, even though the right of rescission is gone, it is likely that on another trial evidence might be forthcoming showing defective installation or work of the fan to such an extent that an award of damage therefor may be justified. Reliance Co. v Flaherty, 211 M 233, 300 NW 603.

Clause in contract which required purchaser of material thereunder to inspect same at delivery point, and which provided that purchaser "may reject" defective material before incorporation thereof into its electric distribution system, provides an "exclusive" remedy for defective material furnished and requires purchaser to reject same before incorporation thereof into the system. De Witt v Itasca-Mantrap Co. 215 M 551, 10 NW(2d) 715.

The power of avoidance for fraud or misrepresentation is lost if after acquiring knowledge thereof, the injured party unreasonably delays manifesting to the other party his intention to avoid the transaction. In the instant case there was no unreasonable delay and no waiver. Johns v McGenty, 222 M 84, 23 NW(2d) 289.

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

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

Wilful breach of non-essential stipulation in sales contract as bar to recovery for breach of warranty. 14 MLR 557.

Notice of breach of warranty, sufficiency. 15 MLR 480.

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

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

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

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

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

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

Breach of warranty. 21 MLR 535.

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

Recoupment by buyer. 21 MLR 562.

Notice within reasonable time. 21 MLR 614.

Contractual disclaimers of warranties. 23 MLR 794.

Effect on creditor's rights. 25 MLR 79.

Statute of limitations relating to torts applicable to action for breach of warranty. 25 MLR 390.

2. Rescissions

The burden of proof is on the party relying on a warranty and a breach thereof. The burden is not sustained where evidence essential to proof consists of opinions of witnesses based exclusively on statements made to them by others. Kavli v Leifman, 207 M 549, 292 NW 210.

Where, notwithstanding alleged breaches of guaranties of an engine which the contract of sale made conditions precedent to any liability for the price, the buyer elected to keep and use it, the seller could sue on the contract of sale, and was not required to proceed upon a quantum meruit, but the amount of the plaintiffs recovery may be reduced if the jury found the engine failed to fulfill the guaranties, the burden of proof for such failure resting on the defendant. Crescent Milling Co. v Strait, 227 F. 805.

3. Damages

A judgment entered pursuant to an order sustaining a demurrer to a complaint on the ground that it failed to state a cause of action because of defective pleading, in that it alleged alternative facts constituting a good cause and facts which did not, is not a bar to a subsequent action in which defective pleading is corrected so as to state a good cause of action. Rost v Kroke, 195 M 219, 262 NW 450.

A judgment for the drug clerk who sold contaminated mineral oil from a dispensing jug is not a bar to recovery of damages from the proprietor of a drug store who, the jury might have found, either by himself or by his servants had permitted the contamination of the mineral oil, for the quality of which he is responsible under the statute, there being no evidence that the selling clerk was solely responsible for the contamination. Berry v Daniels, 195 M 366, 263 NW 115.

The burden of proof is on the party relying on a warranty to show the warranty and a breach thereof. This burden is not sustained where evidence essential to proof of a breach consists of opinions of witnesses based exclusively on statements made to them by others. Kavli v Leifman, 207 M 549, 292 NW 210.

Where a complaint in a single cause of action sought damages upon the theory of breach of warranty in the sale of a used car and for negligence in servicing it, and it appears that the written warranty accompanying the sale specifically excluded tires and eliminated promises or understandings not specified in writing, the action of the trial court in compelling an election between breach of warranty and the charge of negligence was without prejudice to the plaintiff. McLeod v Holt Motor Co. 208 M 473, 294 NW 479.

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

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

Jury was justified in finding defendant held himself out as owner of the bakery where impure food products were purchased and plaintiff and his wife relied upon such apparent ownership in making the purchases. Cermak v Sevcik, 215 M 203, 9 NW(2d) 508.

A retail automobile dealer, taking a used truck in trade and undertaking to repair and recondition it for resale, owes a duty to the public to use reasonable care in making tests to detect defects, and is charged with knowledge of patent or discoverable defects. Egan v Bruner, 102 F(2d) 373.

Although the purchaser did not buy from the manufacturer and there is no direct contractual relation between them, a manufacturer who places on the market an article which is dangerous, under the name of one which is not dangerous, may be liable for an injury resulting to a purchaser using it as intended to be used. Riggs v Standard Oil Co. 130 F. 199.

512.70 INTEREST AND SPECIAL DAMAGES.

Consequential damages for breach. 16 MLR 220.

Remedies of buyer after rescission. 21 MLR 113.

INTERPRETATION

512.71 VARIATION BY EXPRESS AGREEMENT.

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

Where clear and unambiguous, the provisions of a written contract cannot be modified or affected in meaning because of customs of the trade at variance therewith. Great Lakes Co. v. Seither, 220 F. 28.

Parties dealing with particular warranty contractually. 12 MLR 209, 214.

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

Contractual disclaimer of warranty. 23 MLR 785.

Implied warranty of merchantable quality; disclaimer. 27 MLR 117, 157.

512.73 RULE FOR CASES NOT PROVIDED FOR BY THIS CHAPTER.

If the parties were mistaken only as to some point which did not affect the substance of the transaction, or go to the root of the matter involved, no case for rescission is presented. A mistake relating merely to the attributes, quality or value of the subject of sale, or respecting a matter of inducement to the making of the contract, is not sufficient to authorize a court to rescind the contract at the suit of the aggrieved party, where the means of information were open alike to both parties and there was no concealment of facts or imposition. Costello v Sykes, 143 M 109, 172 NW 907.

In a suit for rescission because of misrepresentation of the vendor, it is not necessary that an intent to deceive existed; nor is it material whether plaintiff sustained damage. The right to rescind exists whenever the vendee did not get substantially what he had a right to believe and did believe he was purchasing. Saupe v St. Paul Trust, 170 M 366, 212 NW 892.

A clause in a contract, to the effect that any representations of plaintiff's agent not included in the contract were not binding, is ineffectual to preclude one who has been fraudulently induced to enter the contract from asserting fraud. National Equipment v Volden, 190 M 596, 252 NW 444, 835.

The retention of title by the seller in a conditional sales contract is not a lien, but a reservation of title; and by taking possession of the property under such contract the seller waives his right to sue for the purchase price. The purchaser's only remaining interest in the property is the right to redeem. C. I. T. Corp. v Cords, 198 M 338, 269 NW 825.

False representation, relied upon by purchaser, that a used tractor was just what the buyer wanted, was in good shape and in condition to go to work is actionable; and buyer's independent investigation before sale, without more, may suggest, but does not establish, nonreliance on seller's false representations. It is enough if the latter were a substantial inducement to purchase. Goldfine v Johnson, 208 M 449, 294 NW 459.

Vendor's right to rescind for fraud against a bona fide purchaser of a bill of lading issued and transferred before the goods are received by the carrier. 13 MLR 393.

512.74 UNIFORMITY.

Laws uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them. M.S.A., section 645.22.