

CHAPTER 513

FRAUDS

STATUTE OF FRAUDS

NOTE: Fraud is infinite and is manifolded in such endless variety of form and phase that courts hesitate to define it except as it applies to concrete instances. Bigelow says: "Fraud consists in endeavor to alter rights by deception touching methods, or circumstances not touching motives." Black says: "It consists of some deceitful practice or wilful device resorted to with intent to deprive another of his right, or in some manner to do him injury."

It deals with deception and circumvention. It is effected by both subjective and objective means. Fraud may be active or constructive. It is distinguished from negligence by being active and intentional.

The parent of all statutory law on the subject of frauds is the statute of limitations of James I, adopted and enacted in 1623. (21 Jac. I, c. 16). Although the law on the subject of frauds is now largely statutory, resort generally must be had to the common law when construction is necessary.

513.01 NO ACTION ON AGREEMENT, WHEN.

1. Generally
2. Contracts not to be performed within one year
3. Promises to answer for another
4. Agreement upon consideration of marriage
5. Promises discharged in bankruptcy

I. Generally

Deceased orally promised to devise all property owned by him at his death to appellant in exchange for her promise to give him a home and such care as he required for the balance of his life. Appellant performed her agreement but deceased died intestate. Upon appeal from the probate court, the trial court properly held (1) as to the realty, the agreement is within the statute of frauds, (2) the contract is an entirety and must be enforced as such, (3) the probate court has no jurisdiction to grant specific performance, (4) upon appeal from the probate court, the district court functions as an appellate court and the question relating to specific performance was not presented; and (5) the contract being void, damages for breach thereof cannot be recovered in any court. Estate of Roberts, 202 M 217, 277 NW 549.

Where a person, knowing that a testator in giving him a devise or bequest, intends it to be applied for the benefit of another, either expressly promises, or by his action at the time implies that he will carry the testator's intention into effect, and the property is left to him in the faith on the part of the testator that such promise will be kept, the promisor will be held as a trustee *ex maleficio*. *Ives v Pillsbury*, 204 M 142, 283 NW 140.

Where decision hinges on oral evidence to establish that which the statute of frauds and the statute of wills require to be in writing, the oral evidence to establish the facts claimed must be clear, unequivocal, and convincing. *Ives v Pillsbury*, 204 M 142, 283 NW 140.

A completed gift cannot be revoked by the donor. A present gift reserving to the donor the income for life is a valid gift *inter vivos* although the enjoyment is postponed until donor's death. A direction to deliver at death of the donor definitely fixes the time of delivery. Delivery of negotiable bonds to a depository

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for named beneficiaries in execution of the donor's intention to make gifts without designation of the capacity in which the depository receives the same is a valid delivery sufficient to complete the gifts. *Larkin v McCabe*, 211 M 11, 299 NW 649.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint herein states facts from which it may be inferred that defendant will be unjustly enriched unless rendered while permitted to perform their part of the oral agreement. *Pfuhl v Sobrowsky*, 211 M 439, 1 NW(2d) 421.

Notwithstanding the provisions of section 541.17, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run that, if plaintiff would wait until after the statute has run, he would make an arrangement or settlement of plaintiff's claim and that plaintiff would not lose anything by waiting, upon which the plaintiff relied. *Albachten v Bradley*, 212 M 359, 3 NW(2d) 783.

A claim to the value of the estate in lieu of specific performance is one for the recovery of damages for breach of an oral agreement to convey real estate. Assuming sufficient consideration for and part performance of such a contract, an action at law in damages for a breach thereof will not lie. The doctrine of part performance is purely an equitable doctrine, unrecognized at law, and accordingly will not sustain an action at law for damages based on a contract within the statute of frauds. *Hallock v Anderson*, 221 M 31, 20 NW(2d) 884.

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) 45.

The taking of possession by the purchaser, acting under an oral contract for the transfer of an interest in land, coupled with the making of part payment of the purchase price, in reliance upon and with unequivocal reference to the vendor-vendee relationship, without proof of irreparable injury through fraud, is sufficient to avoid the statute. *Shaughnessy v Eidsmo*, 222 M 141, 23 NW(2d) 363.

A contract conferring an option to purchase is nothing more than an irrevocable and continuing offer to sell, and conveys no interest in land to the optionee, but vests in him only a right in personam to buy at his election. *Shaughnessy v Eidsmo*, 222 M 141, 23 NW(2d) 363.

One may contract with another to give him his property at his death; and in a proper case, if he fails to do so, an action in the nature of one of specific performance may be maintained and title to the property be vested in the promisee or charged with a trust in his favor. An agreement not to marry which is merely incidental to an otherwise valid and reasonable contract for personal services does not render the contract for personal services illegal or void. While a peculiar personal and domestic relation between the parties, and services of a kind and character that cannot be measured in money justifies specific performance, services of a less peculiar character and for which reasonable compensation can be made in money are not sufficient to justify such relief. *Matteson v Gullickson*, 222 M 369, 24 NW(2d) 704.

The fact that the vendor admitted the making of the oral contract for the sale of the land does not prevent her from taking advantage of the benefits of the statute of frauds in defense of an action for specific performance of the contract. *Holste v Baker*, 223 M 321, 26 NW(2d) 473.

Undisclosed principal's right to specific performance as it relates to the statute of frauds. 1 MLR 463.

Parties in pari delicto; trust proved by parol. 2 MLR 544.

Parol license, executed by licensee at large expense; irrevocable. 3 MLR 540.

Future interests in property. 4 MLR 308; 318.

Verbal agreement to construct party wall when fully performed. 4 MLR 370.

Parol evidence rule; implied terms not rebuttable. 5 MLR 226.

Quasi-contracts, oral contract for services, and recovery for time lost, as they relate to the statute of frauds. 5 MLR 567.

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Right of real estate to recover in quantum meruit. 6 MLR 167.

Part performance of oral lease for term of more than one year; insufficiency to take out of statute. 6 MLR 529.

Possession and improvements as insufficient to take parol gift out of the statute of frauds. 6 MLR 604.

Creation of easements by oral contract as distinguished from licenses. 7 MLR 252.

Adverse possession under parol gift; statute of frauds; statute of limitations; holding adversely as agent of disseisor. 7 MLR 342.

Performance of contracts, computation of time, and doctrine of de minimis, as they relate to the statute of frauds. 7 MLR 356.

Oral promise to vendor to pay for property of which another is to receive the benefit. 8 MLR 628.

Effect of agreement to pay debt of another. 9 MLR 269.

Indemnity contracts and the statute of frauds. 9 MLR 401.

Specific performance of oral contract to purchase where contract is partly performed. 10 MLR 74.

Enforceability of foreign contracts. 10 MLR 269.

Conflict of laws as to contracts. 10 MLR 498.

Oral agreement to give a mortgage as constituting an equitable mortgage. 10 MLR 541.

Validity of oral antenuptial agreement when reduced to writing after marriage. 11 MLR 78.

Suretyship cases. 12 MLR 716.

Oral contract for sale of real estate; part performance; estoppel as basis for taking contract out of statute. 13 MLR 519, 744.

Statute of frauds relating to contracts. 14 MLR 746.

Effect of the statute. 14 MLR 760.

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

Promise to make a gift of realty where promisee entered into possession and made improvements. 15 MLR 825.

Validity of account stated where original obligation is within the statute of frauds. 16 MLR 98.

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

Recovery for services rendered under oral contract. 16 MLR 875.

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

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

Constructive trust in case of agency to buy real estate. 17 MLR 734.

Statute of frauds relating to contracts. 17 MLR 746.

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

Necessity of purchaser's acceptance of vendor's memorandum. 18 MLR 362.

Oral agreements for dealing in land. 19 MLR 581, 601.

Fraud or unequivocal reference theory as a basis for doctrine of part performance; oral contracts. 21 MLR 224.

Oral agency to purchase land excepted from the statute. 24 MLR 718.

Constructive trusts and analogous equitable remedies. 25 MLR 667.

Effect of statute of frauds on oral agreement to extend security of mortgage to debt not originally embraced therein. 26 MLR 279.

Action for damages on partly performed parol contract. 30 MLR 208.

Check as down payment on oral contract to convey land. 30 MLR 647.

Suretyship and the statute of frauds. 31 MLR 1.

Promise to pay discharged debt; waiver of benefit of future discharge. 31 MLR 491.

2. Contracts not to be performed within one year

A verbal agreement to extend the terms of a lease for the period of one year, such year to commence at a future time, is within the statute of frauds and as such unenforceable. In the instant case part performance in preparation of the land was sufficient to avoid the bar of the statute. *Atwood v Frye*, 199 M 596, 273 NW 85.

Some comments on the section of the Minnesota statute of frauds relating to contracts. 14 MLR 746.

Effect of statute of frauds on oral agreement to extend security of mortgage to debt not originally embraced therein. 26 MLR 279.

3. Promises to answer for another

Effect of agreement to pay debt of another. 9 MLR 269.

Indemnity contracts and the statute of frauds. 9 MLR 401.

4. Agreement upon consideration of marriage

Ante-nuptial agreement by parties to a marriage that the contemplated marriage is to be terminable at some future time or is to be effective only for a limited purpose is void as contrary to public policy. *Safranski v Safranski*, 222 M 358, 24 NW(2d) 834.

5. Promises discharged in bankruptcy

To revive a debt which has been paid by judgment in bankruptcy, an oral promise is sufficient, but it must be clear and unequivocal. If such promise is based upon a condition, then it must be shown that such condition has been complied with. In the instant case the maker of a promissory note agreed to pay the debt if the payee would give him time. In the absence of proof that the offer was accepted, and a definite time fixed, such offer did not justify a finding that the debt had been revived. *Smith v Stanchfield*, 84 M 343, 87 NW 917.

513.03 GRANTS OF TRUSTS, WHEN VOID.

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

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

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

1. Generally

The instrument created a profit a prendre to hunt wild game on designated premises. Such profit a prendre is an "interest in realty" as distinguished from a mere license. It is not within the provisions of Minnesota Constitution, art. 1 s. 15. *Minnesota Valley Club v Northline Corp.* 207 M 126, 290 NW 222.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint states facts from which it may be inferred that

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defendant will be unjustly enriched unless plaintiffs recover the value of their services rendered while permitted to perform their part of the oral contract, less the benefits received during the time. *Pfuhl v Sabrowsky*, 211 M 439, 1 NW(2d) 421.

A written agreement whereby plaintiff and defendant undertook to purchase real property, each to make contribution, and each to own a half-interest and divide the profits, was a partnership in land, and, as such, was not within the statute of frauds and enforceable, although writing did not express the entire agreement between the parties. *Bakke v Keller*, 220 M 383, 19 NW(2d) 803.

One may contract with another to give him his property at his death; and in a proper case, if he fails to do so, an action in the nature of one for specific performance may be maintained; and if the relations between the parties is close and the service not measureable in money specific performance may be granted; but for services not so intimate and such that money compensation is adequate the amount may be determined and the property charged with a trust in favor of the applicant. *Matheson v Gullickson*, 222 M 369, 24 NW(2d) 704.

Undisclosed principal's right to specific performance of written contract for sale of real estate where owner gave agent verbal authority to sell. 1 MLR 463.

Parties in *pari delicto*. 2 MLR 544.

Parol license, executed by licensee at large expense, irrevocable. 3 MLR 540.

Future estates. 2 MLR 318.

Possession and improvements as insufficient to take parol gift of land out of statute of frauds. 6 MLR 604.

Adverse possession under parol gift, statute of frauds, statute of limitations, disseisee holding adversely as agent of disseisor. 7 MLR 342.

Easements, creation by oral contract, distinguished from licenses. 7 MLR 252.

Oral agreement to give a mortgage as constituting an equitable mortgage. 10 MLR 541.

Oral contract for conveyance of interest in realty, part performance, estoppel as basis for taking contract out of statute. 13 MLR 744.

Oral contract for sale of realty, part performance taking contract out of statute of frauds, mutuality of remedy. 13 MLR 519.

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

Specific performance, promise to make gift of realty where promisee entered into possession and made improvements. 15 MLR 825.

Sufficiency of signature to memorandum. 16 MLR 327.

Constructive trust in case of agency to buy real estate. 17 MLR 734.

Trusts, necessity of a writing for personal trusts. 17 MLR 313.

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

Requisites and sufficiency of writing, necessity of purchaser's acceptance of vendor's memorandum. 18 MLR 362.

Oral partnership agreements for the purpose of dealing in land as within the statute of frauds. 19 MLR 581, 601.

Fraud theory or unequivocal reference theory as basis for doctrine of part performance. 21 MLR 224.

Constructive trusts, oral agency to purchase land, excepted from statute of frauds. 24 MLR 718.

The Minnesota law of constructive trusts and analogous equitable remedies. 25 MLR 667.

Assignment of future rents, non-consensual suretyship. 26 MLR 880, 890.

Extension of mortgage to cover additional loan, effect on statute of frauds. 26 MLR 279.

Statute of frauds, consideration, check as down payment on oral contract to convey land. 30 MLR 647.

2. Contractual phases

See, *Welsh v Barnes*, 221 M 37, 21 NW (2d) 45, under section 513.01.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint states facts from which it may be inferred that defendant will be unjustly enriched unless plaintiffs recover the value of their services rendered while permitted to perform their part of the oral contract, less the benefits received during such time. *Pfuhl v Sabrowsky*, 211 M 439, 1 NW(2d) 421.

Evidence supports the finding that there was such part performance as to take the oral contract for deed out of the statute of frauds, and specific performance is ordered. *Augustin v Ziemer*, 221 M 565, 22 NW (2d) 925.

A contract conferring an option to purchase is nothing more than an irrevocable and continuing offer to sell, and conveys no interest in land to the optionee, but vests in him only a right in personam to buy at his election. Whether the option is separate or part of a lease it is a unilateral contract and as such it is, however long the time to run, not within the statute of frauds. A new contract comes into being upon the exercise of the option. *Shaughnessy v Eidsmo*, 222 M 142, 23 NW(2d) 362.

One may contract with another to give him his property at his death; and in a proper case, if he fails to do so, an action in the nature of one for specific performance may be maintained and title to the property be vested in the promisee or charged with a trust in his favor. *Matheson v Gullickson*, 222 M 369, 24 NW(2d) 705.

While the part performance of a land purchase contract was not sufficient to take the oral contract out of the statute of frauds, and while the plaintiffs may not recover in an action for breach of contract, an action will lie in quasi contract for the enhancement in value of the land due to such improvements. *Holste v Baker*, 223 M 321, 26 NW(2d) 473.

Under the facts in the instant case, the improvements made by the purchasers were not such a valuable improvement as to constitute sufficient part performance of an oral contract for the transfer of an interest in land. *Holste v Baker*, 223 M 321, 26 NW(2d) 473.

Check as a down payment on oral contract to convey land. 30 MLR 647.

3. Leases

The rule that equity will impose a constructive trust upon land obtained by bad faith in favor of the party equitably entitled to it, resting as it does on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity, justifies the imposition of such a trust on land acquired by defendant as the result of information received at a time when he was, for all practical purposes, an agent for plaintiff and under an obligation, by reason of his employment, to report such information. Such is the case even though the tract in question was of a type only occasionally purchased by his employer and notwithstanding the absence of a finding that plaintiff would have purchased the land had he known of it. *Whitten v Wright*, 206 M 423, 289 NW 509.

The doctrine of part performance rests upon fraud. The underlying principle is that where one of the contracting parties has been induced or allowed to alter his situation on the faith of an agreement within the statute to such an extent that it would be a fraud on the part of the other party to set up its invalidity, equity will make the case an exception to the statute. Equity will not permit the statute of frauds, the purpose of which was to prevent fraud, to be used as a means of committing it. *Schaefer v Thoeng*, 199 M 610, 273 NW 190.

Deceased orally promised to devise all his property at his death to plaintiff in exchange for a home and care. Plaintiff fully performed her part of the agree-

ment. Deceased died intestate. The contract is an entirety and within the statute of frauds. *Umbreit v Carley*, 202 M 217, 277 NW 549.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint herein states facts from which it may be inferred that defendant will be unjustly enriched unless plaintiffs recover the value of their services rendered while permitted to perform their part of the oral contract, less benefits received during such time. *Pfuhl v Sabrowsky*, 211 M 439, 1 NW (2d) 421.

513.05 LEASES; CONTRACTS FOR SALE OF LANDS.

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

1. **Generally**

An oral unilateral contract for the purchase of an interest in land is within the prohibition of section 513.05, which renders void every contract "for the sale of any lands, or any interest in lands," not evidenced by a writing. The policy of this section is to protect against frauds and perjuries by denying force to oral contracts of certain types which are peculiarly adaptable to those purposes. *Alamoe Realty Co. v Mutual Trust Co.* 202 M 457, 278 NW 902.

While an action for damages for breach of an oral contract to transfer title to land does not lie, the complaint in the instant case states facts from which it may be inferred that the defendant will be unjustly enriched unless plaintiffs recover the value of their services rendered while permitted to perform their part of the oral contract, less the benefits received during such time. *Pfuhl v Sabrowsky*, 211 M 439, 1 NW(2d) 421.

A claim to the value of the estate herein in lieu of specific performance is one for the recovery of damages for breach of an oral agreement to convey real estate. Assuming sufficient consideration for and part performance of such a contract, an action at law in damages for a breach thereof will not lie. The doctrine of part performance is purely an equitable doctrine, unrecognized at law, and accordingly will not sustain an action at law for damages on a contract within the statute of frauds. *Nelson v Anderson*, 221 M 25, 20 NW(2d) 882; *Hallock v Anderson*, 221 M 30, 20 NW(2d) 884.

A purchaser of land under an oral contract who has given a promissory note or check representing the consideration in whole or in part of the purchase money cannot defeat an action on such instrument upon the ground that the agreement is void or voidable under the statute of frauds, provided the party to whom it was given is ready, willing, and able to perform the parol agreement in accordance with its terms. *Phelan v Carey*, 222 M 1, 23 NW(2d) 11.

Where evidence barely sustains the trial court's finding, the plaintiff, a real estate broker, whose right to commission depended upon his procuring a purchaser ready, willing and able to purchase defendant's property, failed to procure such customer. The agent was not entitled to a commission. *Hare v Bauer*, 223 M 285, 26 NW(2d) 359.

An oral contract for the leasing of real estate located in Minnesota for more than a year, does not comply with the statute of frauds of that state and though unenforceable, it is not void and the lessee cannot recover the earnest money he has paid on the lease while the lessor is ready, willing, and able to perform. *York v Washburn*, 129 F. 564.

Specific performance and undisclosed principal. 1 MLR 463.

Optional sale; rescission. 2 MLR 387.

Requirement that contracts to pay commission to real estate brokers be in writing; recover on quantum meruit. 6 MLR 167.

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

Frauds relating to contracts. 14 MLR 746.

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

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

Part performance of an oral lease within the statute of fraud. 16 MLR 446.

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

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

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

2. Memorandum

The plaintiff claims that the provisions for a termination ending with or without cause could not be changed except in writing because of the statute of frauds and unless upon consideration. If the change was no more than a waiver, the statute of frauds does not trouble though there was no writing and no consideration. However, in the instant case the letter was a writing and considering the course of business and the intent of the letter signing by the representative of the sub-lessor was a sufficient execution and the change of the contract was a corporate act. *Oakland Motor Co. v Kremer*, 186 M 471, 243 NW 673.

The statute of frauds, it is true, requires a writing when real estate is in question, and the title to land cannot be transferred, or its assertion precluded, under ordinary circumstances by an act in pais or an oral declaration. Nevertheless, a party may, without writing, so conduct himself with reference to it that he will be estopped from afterward asserting a claim thereto. *Roberts v Friedell*, 218 M 97, 15 NW(2d) 496.

Where a signature is not required by some 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.

Note delivered on purchase of real estate was a valid consideration where at the time the maker received from the payee a written instrument acknowledging receipt of the note in payment for real estate to be conveyed upon payment of the note. The memorandum of agreement to convey, where legal description is incomplete but sufficient to identify the property through collateral documents is a sufficient compliance with the requirements of section 513.05. *Kohagen v Joyce*, 221 M 83, 21 NW(2d) 232.

The execution of an earnest money contract by the vendor regularly manifests his acceptance of the vendee's financial responsibility and relieves the agent procuring such vendee from further liability on this issue. But the rule does not apply in the instant case where the agent fraudulently concealed from the principal the poor financial status of the prospective purchaser and his known inability to make the initial cash payments required. *Hare v Bauer*, 223 M 285, 26 NW(2d) 359.

In the matter of sale of tax-forfeited land at public auction, statutory rules relating to sale of real estate such as requirement of written memorandum, and similar, do not apply. OAG Feb. 13, 1945 (425-E).

3. Agent's authority

Where party serving as agent for undisclosed principal executes memorandum covering terms of agreement for conveyance of property without disclosing that he was acting as such agent, and no evidence presented that purchaser looked to him or depended on his individual responsibility, failure of undisclosed principal to sign memorandum as vendor does not render same insufficient under section 513.05. *Kohagen v Joyce*, 221 M 83, 21 NW(2d) 233.

Where a broker renders service in procuring a purchaser under such circumstances as to show that he expects to be paid for them as a matter of right and the

person for whom they are rendered does nothing to disabuse him of his expectation, but permits him to render the services, the broker is entitled to recover in quasi contract for the benefits thereby received by the party for whom the services were rendered. *Schimmelpfennig v Gaedke*, 223 M 542, 27 NW(2d) 418.

4. Contracts within or not within the statute

A written agreement whereby plaintiff and defendant undertook to purchase certain real property and which provided that each was to make certain contributions thereto and each was to have one-half interest therein and any profits derived therefrom constituted a partnership to deal in land; as such it was not within the statute of frauds and could be enforced, although the writing did not express the entire agreement between the parties. *Bakke v Keller*, 220 M 296, 19 NW(2d) 804.

513.06 SPECIFIC PERFORMANCE.

The early equity doctrine that if the right to specific performance of a contract exists at all it must be mutual, was based largely upon notions of expediency rather than upon any principle of abstract justice, and has been materially modified. The doctrine of the Minnesota court is that if a contract is supported by a valid consideration and there is no other reason why it should not be specifically enforced except the one of mutuality of remedy, it will be enforced. One of mutuality of remedy does not deprive a court of its jurisdiction but is addressed only to its discretion. *Peterson v Johnson Nut Co.* 204 M 300, 283 NW 561.

Specific performance will be granted to children who have fully performed on their part a contract made with their parent for the testamentary disposition of his estate consisting of real and personal property in the nature of a family settlement generally, as here, it appears that the parent and the children all had interests in the property which the children transferred to the parent under an agreement with the parent that he would leave the property to them at his death. The fact that a contract to make testamentary disposition of property is oral does not prevent specific performance if the usual conditions relating to specific performance obtain. Specific performance of a contract to make a will disposing of property may be granted in the district court by a judgment against the representative heirs, creditors and devisees, without interfering with the probate court's exclusive jurisdiction of estates of decedents. *Jannetta v Jannetta*, 205 M 266, 285 NW 619.

In a suit for specific performance of an oral contract to make a will disposing of property, the burden is upon plaintiff to show by full and satisfactory proof the fact of contract and its terms before specific performance can be granted. *Carlson v Carlson*, 211 M 297, 300 NW 900.

Plaintiff's remedy at law being inadequate, she is entitled to specific performance; and the contract being in writing, the usual rules in regard to specific performance apply; and, with land involved, equity will decree specific performance and include the personal property, regardless of the nature of the services. *Herman v Callaghan*, 212 M 350, 3 NW(2d) 587.

Where corporate stock is not sold on the market and as such has no established market value, and its actual value is conjectural or problematical, specific performance of an agreement to sell it may be enforced as there is no definite basis for assessing damages. Unless the remedy in damages is both adequate and certain, a party entitled to receive shares of capital stock has a right to require that they be issued to him. *Haglin v Ashl y*, 212 M 446, 4 NW(2d) 109.

The services by respondent as the maternal influence in the Dezie household upon behalf of decedent were so much of a personal and family nature that equity cannot say that their value can be estimated with reasonable accuracy; and added equity arises from the fact that the indebtedness forgiven in reliance upon the agreement can no longer be collected. Respondent is clearly entitled to receive the residence property after decedent's death. *Dill v Kucharsky*, 212 M 276, 3 NW(2d) 585.

The evidence is ample to support the trial court's finding that there was sufficient part performance to take the oral contract for deed out of the statute of frauds. *Augustin v Ziemer*, 221 M 565, 22 NW(2d) 925.

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Equitable relief has usually been denied where the court in its discretion has found the common law remedy to be adequate. In order to effect complete justice, especially where land is involved, there is no adequate substitute for specific performance; but where relief is sought to prevent the statute of frauds from itself becoming an instrument of fraud that, in the light of historical development and consistent with the purpose of the statute, it is submitted there is no occasion for requiring in addition to part performance a proof of irreparable injury. *Shaughnessy v Eidsmo*, 222 M 141, 23 NW(2d) 362.

An oral lease of realty for a term of one year to commence in the future is within the statute of frauds, but a full performance thereof relieves the lease from the effect of the statute. *Shaughnessy v Eidsmo*, 222 M 156, 23 NW(2d) 362.

Although specific performance does not lie during the lifetime of the promisor, the court in the exercise of its equity jurisdiction may render analogous relief for the preservation of the rights of the promisee under an oral contract to bequeath property left at the promisor's death to protect the promisee against loss from the promisor's breach or threatened breach of contract, and for this purpose the court may impress the promisor's property with a trust in favor of the promisee, subject to certain rights of the promisor. *Matheson v Gullickson*, 222 M 369, 24 NW(2d) 705.

Where the parties to a written contract execute and deliver such instrument on the express condition that it shall not become binding or go into operative effect until a future day or until the happening of a future event, the parties thereto may by subsequent acts of performance, in recognition of and in reliance upon the written terms of such instrument, waive such condition and thereby bring the contract into immediate effect as written. *Confer v Winters*, 223 M 480, 27 NW(2d) 247.

Possession, making improvements, paying instalments, as part performance. 2 MLR 475.

Oral promise to purchase land for benefit of third party possession being had by third party. 5 MLR 388.

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

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

Specific performance as to whole where possession is taken and improvements made on the land. 10 MLR 74.

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

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

Oral contracts for the conveyance of realty. 21 MLR 224.

Actions for damages on partly performed parol contract. 30 MLR 208.

CONVEYANCES FRAUDULENT AS TO PURCHASERS

513.08 WHEN MADE TO DEFRAUD, VOID; EXCEPTION.

Whether defendant made a misrepresentation to induce plaintiff to enter into a contract and whether plaintiff in so doing relied upon the alleged misrepresentation are questions of fact for the trier of fact and not of law for the court, where, as here, the evidence with respect to those questions is in conflict. *Marshfield v Schmidler*, 221 M 486, 22 NW(2d) 553.

The evidence presented a jury question, and there was sufficient part performance of the executory contract to entitle plaintiffs to affirm and complete the contract and sue for damages for the fraud. *Burke v Johnson*, 221 M 274, 21 NW(2d) 805.

Chattel mortgages and conditional sales; presumption of fraud; recording acts. 24 MLR 832.

CONVEYANCES FRAUDULENT AS TO CREDITORS

513.12 SALE OF CHATTELS WITHOUT DELIVERY; FRAUD PRESUMED.

Is presumption of acceptance of legacy rebuttable; renunciation of benefits under a will is not "conveyance" by debtor to defeat creditors. 6 MLR 608.

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

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

Fraudulent conveyances; reservation of inconsistent dominion of assignor. 21 MLR 839.

Rights of bona fide purchasers at execution sales in case where there are chattel mortgages. 24 MLR 828, 832, 844.

Chattel mortgagor in possession with authority to sell; effect of recording act. 30 MLR 305.

513.15 FRAUDULENT INTENT QUESTION OF FACT.

In an action by a creditor to set aside as fraudulent a transfer of real estate, a finding of good faith, coupled with a refusal to find insolvency, is equivalent to a finding of solvency, and the appellate court will not reverse the action of the trial court. *Nat'l Surety v Wittich*, 186 M 93, 242 NW 515.

The solvency of a transferor when he transfers his property affords evidence against a claimed fraudulent purpose, and a finding that a transfer was made without intent to hinder, delay, or defraud existing or subsequent creditors implies good faith. *Andrews v Wicklund*, 207 M 404, 292 NW 251.

513.16 BONA FIDE PURCHASERS.

S entered into a contract with an attorney which provided that a portion of the attorney's contingent fees for prosecuting certain claims should be paid to S who was to procure evidence to substantiate all claims. Subsequently S made transfers of his interests in the fees. The transfers were attacked as being in defraud of creditors. The court properly found that the transferees acted in good faith and gave a sufficient consideration for what they got. *Schlecht v Schlecht*, 168 M 168, 209 NW 883.

The evidence sustains the finding that the conveyance left the grantor insolvent and that the grantee had knowledge that it was made for the purpose of hindering, delaying and defrauding the creditors of the grantor. *Larson v Tweten*, 185 M 366, 374, 241 NW 43, 47.

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

513.17 ASSIGNMENT OF DEBT.

Where in a garnishment the garnishee summons is served on the garnishee before the summons in the main action is issued and delivered to the officer for service, and a subsequent garnishment is regularly and lawfully made by a third party before the defect in the first garnishment has been waived, the plaintiff in the second garnishment is entitled to intervene in the first and claim the right of precedence in the fund or property in the hands of the garnishee. *Nash v Braman*, 210 M 196, 297 NW 735.

Not repealed by uniform fraudulent conveyance act. 7 MLR 549, 530.

Collection of assigned receivables. 25 MLR 203.

Negotiable and non-negotiable choses in action and corporate stocks, creditors' remedies relating thereto. 30 MLR 616.

CONVEYANCES FRAUDULENT AS TO CREDITORS

513.18 SALE OF CHATTELS WITHOUT DELIVERY; FRAUD PRESUMED.

A corporation, though insolvent, may where it has possession and contract of its property and in the absence of fraud or statutory restriction, prefer one of

its general creditors over the others by a deed of trust on its property as by a mortgage or otherwise in the same manner as may an individual creditor, so long as the preferment does not deprive the corporation of the power to continue in its due course of business. *Farmers v Kotz*, 222 M 153, 23 NW(2d) 577.

Bulk sales act, right of purchaser to subrogation. 5 MLR 479.

Bulk sales act, as it relates to chattel mortgages. 5 MLR 557.

Scope of fraudulent conveyance act. 7 MLR 455.

Bulk sales act applying to sales of partner's interests to co-partner. 11 MLR 669.

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

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

Protection sales acts, remedy of creditors. 18 MLR 225.

FRAUDULENT CONVEYANCES

A uniform fraudulent conveyance act was recommended and promulgated by the national conference of commissioners on uniform state laws, in 1918; and has been adopted by the following states: Arizona, California, Delaware, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming. Minnesota adopted and enacted the uniform act through L. 1921, c. 415, and section 14 of the act expressly repealed R.L. 1905 ss. 3495, 3498, and G.S. 1913 ss. 7010, 7013.

513.20 DEFINITIONS.

Sections 513.20 to 513.32 are remedial and should be liberally construed. It does not impair or limit prior methods of making effective the rights of a judgment creditor and does not impair creditors' rights in general. *Lind v Johnson*, 204 M 30, 282 NW 661.

Testimony that a transfer of money by husband to his wife was made in part in consideration of an antecedent debt and in part as the proceeds of insurance on property belonging to the wife, sustains a finding that the transfer was not fraudulent as to creditors. *Kummet v Thielen*, 210 M 202, 298 NW 245.

The rights and obligations of corporate stockholders as well as the ultra vires character of corporate acts are determined by the laws of the state of the corporation's origin; but the contract rights between the corporation and its creditors are determined by the law of the state in which the contract was made; and the law of the state in which real estate is situated determines the validity of transfers thereof. Creditors whose claims arise subsequent to the execution of the mortgage given to secure a bona fide indebtedness cannot attack the mortgage as preferential, and the contract between the corporation, its stockholders, and the holders of a mortgage in the present case entitles the creditors who furnished the material for the improvement and repair of the mortgaged property to priority over the mortgage. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162, 459.

Merely stating that defendant foreclosed its mortgage for the purpose of defrauding plaintiff of its priority and without showing any wrongful conduct on the defendant's part, is not sufficient, and where it was undisputed that the mortgagee had a right to foreclose the mortgage and the proceedings were valid, the fact that the mortgagor remained in possession after foreclosure was not proof of any fraudulent intent or fraudulent agreement as respects the mortgagor's judgment creditor. *Twin Ports Oil v Whiteside*, 218 M 78, 15 NW(2d) 125.

Uniform fraudulent conveyance act. 7 MLR 453, 530.

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

Waiver of fraud by ratification. 14 MLR 299.

The law of fraudulent conveyances. 16 MLR 122.

Liability of partners. 17 MLR 359.

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

Uniform fraudulent conveyance act. 23 MLR 616.

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

Duration of lien. 24 MLR 664.

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

Chattels. 24 MLR 829.

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

Effect on creditors' rights. 25 MLR 80.

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

513.21 INSOLVENCY DEFINED.

See, *Kummet v Thielen*, 210 M 202, 298 NW 245, under section 513.20.

513.22 FAIR CONSIDERATION DEFINED.

See, *Lind v Johnson*, 204 M 30, 282 NW 661, under section 513.20.

See, *Kummet v Thielen*, 210 M 202, 298 NW 245, under section 513.20.

Debtor's transfer of unexempt property to wife in exchange for conveyance from her of real estate in which debtor claimed homestead, is fraudulent. 2 MLR 392.

Marriage as a valuable consideration for conveyance. 2 MLR 468.

513.23 CONVEYANCE BY INSOLVENT.

The solvency of judgment debtor at the time the transfers of his business and assets were made did not preclude a finding that the transfers were fraudulent but his solvency was a persuasive item of evidence sufficient with other evidence and circumstances to justify a finding that the transfers were made in good faith. *Andrews v Wicklund*, 207 M 404, 292 NW 251.

The defendant wife having obtained title to an undivided half interest in the homestead of plaintiff by a misrepresentation and in violation of the confidential or fiduciary relationship existing between them, held such title in trust for him. *Crowley v Crowley*, 219 M 341, 18 NW(2d) 40.

See, *Erickson v Wells*, 217 M 361, 15 NW(2d) 162, 459, under section 513.20.

Where trustee in bankruptcy sought to set aside transfers of bankrupt's property in alleged fraud of creditors, and on defendant's motion for dismissal the pleadings, with attached exhibits and affidavits, and state court records, adduced to sustain a plea of res judicata, covered wide fields suggesting evidence of issues of law and of fact, and the general allegations, on motion, that plaintiff was estopped from asserting any interest in property involved and that issues he presented were res judicata did not sufficiently identify issues of law and fact that may have been decided, order of dismissal was error. *Sprague v Vogt*, 150 F(2d) 795.

Fraudulent conveyance relating to purchase of life insurance by insolvent. 6 MLR 170.

Presumption of intent. 23 MLR 616.

Rights of insurance beneficiaries. 23 MLR 616.

513.24 SPECIFICATIONS OF LEGAL FRAUD.

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

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

Presumptions of intent; right of insurance beneficiaries. 23 MLR 618.

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Presumptions of fraud in chattel mortgages. 24 MLR 835.

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

513.25 CONVEYANCE BY A PERSON ABOUT TO INCUR DEBTS.

There was an antecedent debt owing by a husband to his wife which was the consideration for the transfer of the property to her; and that such a part payment of an antecedent debt results in a preference does not constitute fraud as against attacking creditors in an action to set aside the transaction. *National Surety v Wittich*, 184 M 21, 237 NW 585.

In an action to set aside a mortgage foreclosure on the ground of fraud, plaintiff must set forth the facts constituting the alleged fraud. Merely stating that defendant foreclosed its mortgage for the purpose of defrauding plaintiff of its property without showing any wrongful conduct on defendant's part is not sufficient. *Twin Ports Oil Co. v Whiteside*, 218 M 78, 15 NW(2d) 125.

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

513.26 CONVEYANCE MADE WITH INTENT TO DEFRAUD.

The solvency of a transferor when he transfers his property affords evidence against a claimed fraudulent purpose, but it is only an item of evidence to be considered with other facts and circumstances, in passing upon the question of good faith; and the finding in the instant case that the transfer was made without intent to hinder, delay, or defraud existing or subsequent creditors implies good faith on the part of the transferor. *Andrews v Wicklund*, 207 M 404, 292 NW 251.

Transfer of land by parents to daughter, held under the circumstances, not to be in fraud of creditors. *Blodgett v Hollo*, 210 M 299, 298 NW 249.

Transfer of money to wife, in the instant case, not in fraud of creditors. It was in payment of an existing debt. *Kummet v Thielen*, 210 M 302, 298 NW 245.

Defendant having obtained title to an undivided half interest in the homestead of plaintiff by misrepresentation and in violation of the confidential or fiduciary relationship existing between them, held such property in trust for him. In an action to set aside the grantee should be joined. *Crowley v Crowley*, 219 M 341, 18 NW(2d) 40.

A consideration is essential to the validity of a mortgage; but the fact that defendant intended to hinder and defraud his creditors, if any, does not bar him from asserting that the mortgage was without consideration, because he was not attempting to enforce the mortgage but to avoid its being given any legal force and effect. *Turpin v Hayek*, 219 M 589, 18 NW(2d) 592.

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

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

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

Presumptions of fraud. 24 MLR 832.

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

Creditor's rights. 25 MLR 79.

513.28 RIGHTS OF CREDITORS WHOSE CLAIMS HAVE MATURED.

See, *Andrews v Wicklund*, 207 M 404, 292 NW 251, under section 513.26.

Judgment creditor claiming that his debtor has made a transfer in fraud of creditors may disregard the transfer and levy upon the property. *Brennan v Friedell*, 215 M 499, 10 NW(2d) 355.

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Rights of creditors whose claims have matured. 7 MLR 537.

Fraudulent conveyance within bankruptcy act. 17 MLR 657.

Remedies of buyer; rescission for breach of warranty. 19 MLR 133.

Right to rescind and recover damages upon a breach of warranty. 21 MLR 111.

Rescinding buyer claims damages or expenses in addition to the price paid. 21 MLR 546.

Breach of warranty. 21 MLR 535.

Conditional seller fails to comply with the redemption and re-sale provisions of the uniform conditional sales act. 21 MLR 552.

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

Contractual disclaimers of warranty. 23 MLR 784, 795.

Effect on creditor's rights. 25 MLR 79.

Negotiable and non-negotiable choses in action and corporate stocks, creditors' remedies in relation thereto. 30 MLR 616, 634.

513.29 RIGHTS OF CREDITORS WHOSE CLAIMS HAVE NOT MATURED.

Creditors whose claims have not matured. 7 MLR 547.

Fraudulent conveyances; who constitute creditors within section 3a(1) of the bankruptcy act. 17 MLR 657.

Comparison of Minnesota Law with American Surety Co. v O'Connor, 23 MLR 622.

Constructive trusts and analogous equitable remedies. 25 MLR 667.

513.30 CASES NOT PROVIDED FOR IN SECTIONS 513.20 TO 513.32.

Measure of damages in action for fraud in the sale of corporate securities. 23 MLR 205.

Right of grantor to have grantee's promise to recovery enforced. 24 MLR 872.

513.31 UNIFORMITY.

Comparison of the Lind and other cases. 23 MLR 623.

Protection afforded as "bona fide purchaser." 24 MLR 810.