

grain and pay the price, is valid, and delivery may be by means of a warehouse receipt. Unlawful intent by both parties is necessary to invalidate; such intent by one party only is not sufficient. It is requisite that the vendor presently owns the property sold. *W. M. Bell Co. v. Emberson*, 182 W 433, 196 NW 861.

A contract of sale or purchase for future delivery, legitimate on its face, cannot be declared void as a wagering contract by evidence that it was so understood by one of the parties. To render it void there must be proof that both parties considered it a wager on differences. *Williar v. Irwin*, 11 Biss. 57.

241.25 History: 1901 c. 390 s. 1; Supl. 1906 s. 2319c; 1925 c. 4; Stats. 1925 s. 241.25.

The object of ch. 390, Laws 1901, was to protect banks against payments made from accounts before they had notice of the assignment. It was not intended to invalidate the assignment between the parties, or to make the assignor's death operate as a cancellation of the assignment where the bank had not been notified. *Stacks v. Buten*, 141 W 235, 124 NW 403.

A written direction by a depositor accompanied by his pass book and deposit receipts to his bank, to convert into cash his liberty bonds held by the bank and to pay the proceeds and the balance on deposit to a designated person was revocable; and the bank made itself liable to him by delivering the funds after he had canceled his previous written instructions and had directed the cashier to keep all of his property then in the bank's possession. *Gruszka v. Mitchell Street S. Bank*, 185 W 620, 200 NW 680.

241.27 History: 1939 c. 161; Stats. 1939 s. 241.27.

241.28 History: 1969 c. 117; Stats. 1969 s. 241.28.

CHAPTER 242.

Uniform Fraudulent Conveyance Act.

Editor's Notes: (1) The uniform fraudulent conveyance act was adopted by ch. 470, Laws 1919. That chapter repealed secs. 2320, 2323 and 2324, Stats. 1917. For notes to these sections see Wis. Annotations, 1914, p. 885.

(2) For foreign decisions construing the "Uniform Fraudulent Conveyance Act," consult *Uniform Laws, Annotated*.

On creditors' actions see notes to various sections of ch. 128.

Colorable transfers, fraudulent conveyances, and preferences in state and federal liquidation proceedings. *Heller*, 1939 WLR 360.

242.01 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—1; 1925 c. 4; Stats. 1925 s. 242.01.

The term "assets" of a debtor, as defined in 242.01 (1), is construed to mean property in the debtor's name, or property the title to which would be in him if a fraudulent conveyance were set aside. Where the debtor in consideration of love and affection for his daughter paid money to a grantor for a conveyance of land directly to the daughter, the land was not an asset of such debtor and was

not subject to the terms and regulations of the uniform fraudulent conveyance act; and a judgment creditor of such debtor was not entitled to attach the land. *Dorrington v. Jacobs*, 213 W 521, 252 NW 307.

A mortgagee is a creditor and a mortgagor is a debtor, within the statutory definition of creditor and debtor. *Marshall & Ilsley Bank v. Stepke*, 228 W 39, 279 NW 625.

242.02 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—2; 1925 c. 4; Stats. 1925 s. 242.02.

An actual sale and conveyance of exempt property is not subject to attack by creditors as fraudulent, and it is only when a transfer is merely colorable, that is in reality not a conveyance at all, and that is made for the purpose of enabling the transferor to claim a double exemption that the law interferes. *Kopf v. Engelke*, 240 W 10, 1 NW (2d) 760, 2 NW (2d) 846.

242.03 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—3; 1925 c. 4; Stats. 1925 s. 242.03.

A wife's inchoate right of dower is a valuable right, and a release of it was a valid consideration, to the extent of such value, for a mortgage executed to the wife for the purchase price of her husband's land, when he was insolvent and she had knowledge of such insolvency. In such a case an existing indebtedness between husband and wife may be considered. *Share v. Trickle*, 183 W 1, 197 NW 329.

"Fair consideration" may go either to the seller or to his creditors. An insolvent corporation's transfer of assets to a new corporation, which agreed to pay the obligations of the former equal to the value of the assets, was a fair consideration. *Farmers' Ex. Bank v. Oneida M. T. Co.* 202 W 266, 232 NW 536.

The fact that a debt in satisfaction of which a debtor executes a conveyance is barred by the statute of limitations does not in itself render the conveyance fraudulent although such fact is a circumstance bearing on whether the conveyance was fraudulent in fact. *Banking Comm. v. Buchanan*, 227 W 544, 279 NW 71.

242.03 excludes from the definition of "fair consideration" such executory promises by the grantee to pay the balance of the purchase price as are not in the form of negotiable instruments and already negotiated to holders in due course. (Contrary view in *Farmers Exchange Bank v. Oneida Mfg. Co.* 202 W 266, overruled.) A grantee may not safely continue to make payments to his fraudulent grantor after learning that the conveyance to him was one designed to hinder, delay or defraud creditors of the grantor, since the fraudulent conveyance is subject to being set aside by creditors of the grantor. *Angers v. Sabatinelli*, 235 W 422, 293 NW 173.

Under the uniform fraudulent conveyance act the discharge of a debt of another does not constitute a "fair consideration" for a conveyance by one who is not legally responsible therefor. *Neumeyer v. Weinberger*, 236 W 534, 295 NW 775.

242.04 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—4; 1925 c. 4; Stats. 1925 s. 242.04.

The presumption that conveyances made by a person who was insolvent or was thereby rendered insolvent were fraudulent as to his creditors, without regard to his actual intent, arises only when the fact of insolvency is established. *Miller v. Lange*, 234 W 460, 290 NW 618.

Where a decedent executed chattel mortgages on practically all of his personal property to his mother-in-law and 2 daughters to secure notes given to them for antecedent debts, and the value of the property so mortgaged was several times greater than the total indebtedness to be secured thereby, the mortgages were given without a "fair consideration" as defined in 242.03, and, since the mortgagor was thereby rendered insolvent, and there remained in his hands nothing of value to enable him to engage in his business, his real property being mortgaged to secure indebtedness greatly in excess of its value, the 3 mortgages in question were fraudulent under 242.04 and 242.05 without regard to his actual intent. *Estate of Rasmussen*, 238 W 334, 298 NW 172.

242.05 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—5; 1925 c. 4; Stats. 1925 s. 242.05.

A conveyance or charge cannot be adjudged fraudulent as against creditors or purchasers solely on the ground that it was not founded on a valuable consideration; but it does not follow that gross inadequacy of consideration is not a circumstance in connection with other facts to prove fraudulent intent. *Fernhaber v. Stein*, 182 W 61, 195 NW 906.

242.06 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—6; 1925 c. 4; Stats. 1925 s. 242.06.

242.07 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—7; 1925 c. 4; Stats. 1925 s. 242.07.

A deed, by a decedent's husband to the decedent's son, of lands which the husband had received by deed from his deceased wife with the understanding that it was given for the sole purpose of having him convey the property to the son on the wife's death, was not fraudulent as to the husband's creditors, since the husband acted in the circumstances merely as an intermediary through which the title passed from the wife to the son, and the husband had not obtained any credit on the strength of his apparent ownership of the property. *Popp v. Froelich*, 223 W 168, 270 NW 38.

A conveyance for the purpose of defrauding creditors is void as against the creditors, yet it is valid as between the parties and conveys good title to the grantee as against the grantor. A fraudulent grantee is under a moral duty to reconvey, and the reconveyance in the execution of this duty should be favorably regarded in equity as a conscientious effort to reinstate the original status; and creditors of the fraudulent grantee have no grounds of complaint because they have no right to ask him to hold property to which he has no moral right. *Marshall v. Marshall*, 230 W 504, 284 NW 541.

One seeking to set aside conveyances because made with intent to hinder, delay and defraud creditors had the burden to prove

such intent by clear, satisfactory and convincing evidence. Findings that conveyances of shares of stock by a husband to his wife, made at different times several years prior to the commencement of an action to set aside the conveyances and made at a time when he was a man of substantial wealth with a large income, were made with intent on his part to hinder, delay and defraud his creditors, are held contrary to the great weight of the evidence. *Miller v. Lange*, 234 W 460, 290 NW 618.

The evidence, although revealing contradictions and discrepancies, was sufficient to support the trial court's finding of fair and adequate consideration with no fraudulent intent on the part of the grantees as against creditors of the grantor. *Kerbet v. Behling*, 265 W 288, 61 NW (2d) 205.

The giving of security in excess of the debt secured is not a badge of fraud unless the amount of the collateral given is unreasonably greater than the debt and the transaction is not explained. In general, a preference is a legitimate exercise of a debtor's rights and carries no inference of fraud. *Jones v. Krueger*, 1 W (2d) 27, 82 NW (2d) 910.

Where the husband has made a gift or transfer, without consideration, of a substantial portion of his property to a third person, in order to avoid payment of alimony or support money which might be ordered against him in a pending or expected divorce suit, or in order to escape or minimize the division of property in favor of the wife in case of divorce, the transfer is voidable as a fraud on the wife. Where such a transfer has been made, the trial court has power in the divorce action to make the transferee a party and to cancel the transfer, at least to the extent necessary to protect the rights of the wife and minor child. *Caldwell v. Caldwell*, 5 W (2d) 146, 92 NW (2d) 356.

242.08 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—8; 1925 c. 4; Stats. 1925 s. 242.08.

242.09 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—9; 1925 c. 4; Stats. 1925 s. 242.09.

Where a husband's conveyance to his wife was valid and binding as between them, and effected a severance and destruction of their joint tenancy in the property with its right of survivorship between them, neither the joint tenancy nor the right of survivorship was reestablished or restored by virtue of a subsequent adjudication that the conveyance was fraudulent and void as to the husband's creditors so as to entitle them to have it set aside to the extent necessary to satisfy their claims. Under 242.09 it was optional with the judgment creditor either to have the fraudulent conveyance set aside to the extent necessary to satisfy his claim, or, if he chose to disregard the conveyance, to attach or levy execution on the debtor grantor's interest in the conveyed property. *Campbell v. Drozdowicz*, 243 W 354, 10 NW (2d) 158.

A purchase of a homestead with nonexempt money or property and with the intention of defrauding creditors cannot be set aside unless it be shown that the grantor had notice of or participated in the fraudulent intent.

Leutermann v. Aschermann, 164 W 162, 159 NW 178.

Where a debtor assigned a land contract for fair consideration which was credited on his wife's chattel mortgage notes, to the holder of the wife's mortgage, this was not a fraud on creditors. Pauly v. Schultz, 199 W 107, 225 NW 745.

A judgment creditor can obtain a lien on land conveyed in fraud of creditors by levying on the land, and equity may remove a fraudulent transfer in aid of execution. The sheriff as representative of a judgment creditor could, in justification of a levy, allege that the plaintiff's title was fraudulent against the creditor. Tom O. Mason Co. v. Lindquist, 200 W 11, 227 NW 392.

Where property legally liable to execution has been fraudulently conveyed by the debtor, an action to set aside the conveyance as an obstruction to the creditor's lien is within the scope of the uniform fraudulent conveyance act, and the intervention of equity is not required for the purpose of setting aside the conveyance but is merely invoked in an action to quiet title for the purpose of removing the cloud created by the outstanding fraudulent conveyance. Dorrington v. Jacobs, 213 W 521, 252 NW 307.

The wife's knowledge of her bankrupt husband's intent to defraud creditors in making the conveyance to her and her acting in collusion with him to effectuate such fraudulent intent, as found by the trial court in the action by the trustee in bankruptcy to set aside the conveyance, preclude her from recovering whatever consideration was paid by her or holding the property as security therefor. Beat v. Mickelson, 221 W 176, 266 NW 244.

A daughter to whom parents conveyed land without consideration with intent to defraud creditors, but who did not participate in the parents' actual intent to defraud, was entitled only to a lien for the money advanced by her to pay off the mortgage on one of the parcels conveyed. Marshall & Ilsley Bank v. Stepke, 228 W 39, 279 NW 625.

Applied to a situation where a grantee innocently makes part payments on the purchase price prior to learning of the fraudulent purpose of the conveyance, 242.09 (2) permits the innocent grantee in such case to have a lien on the premises as security for these payments. A grantee guilty of no actual fraud is entitled, as a condition upon relief to any creditor of the grantor seeking to set aside the conveyance, to a lien for sums expended by the grantee in the maintenance of the property or for the purpose of preventing tax liens even after he has learned of the fraudulent purpose of the transaction but before any action by creditors to set aside the conveyance. Angers v. Sabatinelli, 235 W 422, 293 NW 173.

An action cannot be maintained to set aside a conveyance as fraudulent to creditors unless the plaintiff has been injured by the conveyance, fraud without injury not being enough. Kopf v. Engelke, 240 W 10, 1 NW (2d) 760, 2 NW (2d) 846.

242.10 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—10; 1925 c. 4; Stats. 1925 s. 242.10.

In an action against a corporation, and an

assignee under an assignment for the benefit of its creditors, and others, by a purchaser of land who claimed to have been deprived of acquiring good title by reason of fraud in such assignment, a cross complaint of a defendant creditor against other defendants, relying on the same facts as the plaintiff, and asking that certain mortgages and the obligations secured thereby be declared void, was consistent with an action to set aside alleged fraudulent conveyances and obligations, although also asking for relief sounding in conspiracy, so that the trial court properly proceeded with the trial on the theory of an action under the uniform fraudulent conveyance act, authorized by 242.10. Angers v. Sabatinelli, 246 W 374, 17 NW (2d) 282.

Where diversity of citizenship exists an action under ch. 242, Stats. 1945, may be brought in federal court. Houseware S. Corp. v. Quaker S. Co. 70 F Supp. 747.

242.11 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—11; 1925 c. 4; Stats. 1925 s. 242.11.

242.12 History: 1919 c. 470 s. 2; Stats. 1919 s. 2320—12; 1925 c. 4; Stats. 1925 s. 242.12.

242.13 History: 1919 c. 470 s. 3; Stats. 1919 s. 2320—13; 1925 c. 4; Stats. 1925 s. 242.13.

CHAPTER 243.

General Provisions Relating to Fraudulent Conveyances and Contracts.

243.01 History: R. S. 1849 c. 77 s. 2; R. S. 1858 c. 108 s. 2; R. S. 1878 s. 2321; Stats. 1898 s. 2321; 1925 c. 4; Stats. 1925 s. 243.01.

243.02 History: R. S. 1849 c. 77 s. 3; R. S. 1858 c. 108 s. 3; R. S. 1878 s. 2322; Stats. 1898 s. 2322; 1925 c. 4; Stats. 1925 s. 243.02.

One who purchases claims of creditors after a fraudulent conveyance is made is an assignee within sec. 2322, R. S. 1878, which cannot be restricted to assignees holding claims at the date of the transfer. Sutton v. Hasey, 58 W 556, 17 NW 416.

243.03 History: R. S. 1849 c. 77 s. 6; R. S. 1858 c. 108 s. 6; R. S. 1878 s. 2325; Stats. 1898 s. 2325; 1925 c. 4; Stats. 1925 s. 243.03.

243.04 History: R. S. 1849 c. 77 s. 7; R. S. 1858 c. 108 s. 7; R. S. 1878 s. 2326; Stats. 1898 s. 2326; 1919 c. 470 s. 4; 1925 c. 4; Stats. 1925 s. 243.04.

An instrument reciting the ownership of lands, and that the record title was in the name of G. F., but that J. W. had certain interests therein, is a "conveyance" within sec. 7, ch. 108, R. S. 1858, and is valid under sec. 6, ch. 106, R. S. 1858. White v. Fitzgerald, 19 W 480.

243.05 History: R. S. 1849 c. 76 s. 8; R. S. 1858 c. 107 s. 8; R. S. 1878 s. 2327; Stats. 1898 s. 2327; 1925 c. 4; Stats. 1925 s. 243.05.

If a broker by whom a sale is negotiated, being an agent of both parties, makes an entry of the terms in his books, his signature there-to will satisfy the statute. If such broker delivers to the parties the usual bought and sold