

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

notes, and these, agreeing with each other, are received without objection, this is also a compliance. *Bacon v. Eccles*, 43 W 227.

A principal is not bound by an agreement made in his name by a person claiming to be his agent, unless such person had, at the time of making it, power to bind him and did bind him; nor can such principal, if he was not then bound, afterwards affirm the agreement so far as to bind the other party without his assent. *Atlee v. Bartholomew*, 69 W 43, 33 NW 110.

The note or memorandum of sale required by sec. 2327, R. S. 1878, may be signed by an agent of the buyer. *Hawkinson v. Harmon*, 69 W 551, 35 NW 23.

**243.06 History:** 1943 c. 49; Stats. 1943 s. 243.06.

## CHAPTER 245.

### Marriage.

**245.001 History:** 1959 c. 595 s. 4; Stats. 1959 s. 245.001.

**Legislative Council Note, 1959:** This section is new. The treatment of chapters 245 to 248 as a code assures uniform interpretation consistent with the declaration of legislative policy expressed in sub. (2) which emphasizes the importance to society of stability in marriage. The language of sub. (2) is in conformity with supreme court decisions, notably, *Fricke v. Fricke*, 257 W 124, 126 (1950), and the code is to be liberally construed in light of this language as provided in sub. (3). (Bill 151-A)

**245.002 History:** 1959 c. 595 s. 4; Stats. 1959 s. 245.002; 1961 c. 505.

**Legislative Council Note, 1959:** This new section clarifies the meaning of clergyman. The definition was taken from *In re Swenson*, 183 Minn. 602 (1931). (Bill 151-A)

**245.01 History:** R. S. 1849 c. 78 s. 1; R. S. 1858 c. 109 s. 1; R. S. 1878 s. 2328; Stats. 1898 s. 2328; 1925 c. 4; Stats. 1925 s. 245.01; 1959 c. 595 s. 5.

There must be an agreement between the parties that they will hold toward each other the relation of husband and wife; otherwise there can be no lawful marriage. *Williams v. Williams*, 46 W 464, 1 NW 98.

A marriage contract differs from ordinary contracts in that it cannot be modified or abrogated by the parties themselves and, once entered into, a valid marriage contract continues until changed by law or by the death of one of the parties. *Estate of Campbell*, 260 W 625, 51 NW (2d) 709.

**245.02 History:** R. S. 1849 c. 78 s. 2; R. S. 1858 c. 109 s. 2; R. S. 1878 s. 2329; Stats. 1898 s. 2329; 1917 c. 218 s. 3; 1917 c. 539; 1917 c. 671 s. 27; 1917 c. 678 s. 4; Stats. 1917 s. 2329, 2339n-5; 1925 c. 4; Stats. 1925 s. 245.02, 245.16; 1953 c. 8; 1959 c. 595 s. 6, 7; Stats. 1959 s. 245.02; 1961 c. 505; 1969 c. 352.

**Legislative Council Note, 1959:** As to (1): This is a restatement of present law, except that the minimum marriageable age for females has been raised from 15 to 16 to conform to laws of surrounding states. (Bill 151-A)

Sec. 2329, R. S. 1878, abrogates the common-law rule as to ages of consent. *Eliot v. Eliot*, 77 W 634, 46 NW 806.

A marriage entered into by persons below the age of consent and above the age of 7 years who are capable of consummating the marriage is voidable and not void. A plaintiff does not by his fraudulent conduct estop himself from setting up his nonage. The equitable rule does not apply to an action to annul a voidable marriage. *Swenson v. Swenson*, 179 W 536, 192 NW 70.

Under 245.16, Stats. 1945, it is necessary to have the consent of both parents where a party to a marriage is between the ages of 18 and 21 if a male, and between the ages of 15 and 18 if a female, except that the consent of but one parent is necessary where such parent has the actual care, custody and control of said party. 34 Atty. Gen. 76.

**245.03 History:** R. S. 1849 c. 78 s. 3; R. S. 1858 c. 109 s. 3; R. S. 1878 s. 2330; Stats. 1898 s. 2330; 1901 c. 271 s. 1; 1905 c. 456 s. 1; Supl. 1906 s. 2330; 1909 c. 323; 1911 c. 239 s. 1, 2; 1913 c. 709; 1917 c. 218 s. 2; 1919 c. 309; 1925 c. 4; Stats. 1925 s. 245.03; 1927 c. 473 s. 42b; 1935 c. 214 s. 7; 1935 c. 379; 1953 c. 63; 1959 c. 595 s. 8; 1959 c. 690 s. 1.

The remarriage of one of the parties does not create an absolute legal presumption of the dissolution of a former marriage. Without such dissolution a second marriage is void ab initio. *Williams v. Williams*, 63 W 58, 23 NW 110.

Notwithstanding an order for a judgment of divorce the parties to the suit continue to be husband and wife until judgment is actually entered pursuant to the order. If for any purpose the judgment, when entered, takes effect from the date of the order therefor, it will not operate to make an act a crime which was not a crime when it was committed, or, if then a crime of one grade, to make it a crime of a higher grade. *State v. Eaton*, 85 W 587, 55 NW 890.

A woman who marries a man who is within the prohibited degree of consanguinity acquires only such rights in his property as are given her by will; she takes nothing by virtue of law. *Dicke v. Wagner*, 95 W 260, 70 NW 159.

The marriage of a divorced person resident of this state, performed outside of the state, was absolutely void if within one year after the divorce. *Severa v. Beranak*, 138 W 144, 119 NW 814.

See note to section 247.37, citing *White v. White*, 167 W 615, 168 NW 704.

The test of mental capacity to enter into a marriage contract is not whether that capacity measures up to the requirements for training children, but whether the party understands and realizes the immediate transaction and consents thereto. The fact that the party is under guardianship does not constitute incapacity to marry. *Roether v. Roether*, 180 W 24, 191 NW 576.

Under 225.03, Stats. 1945, a marriage with an epileptic is void. In view of this statute and 245.04 (1), and an Illinois statute declaring a marriage of nonresidents in Illinois void if the marriage would be void if contracted in the state of their residence, a mar-