assumes to contract as owner, though in fact he is not, which fact the broker knows, and within the time allowed for performance proves unable to perform the contract. Goldman v. Schmidt, 209 W 71, 244 NW 586.

Where an agent is employed to procure a purchaser at a specified price, but one is procured who is not willing to pay the price named, the owner may sell to the purchaser produced at a lower figure, without rendering himself liable for a commission, provided there is no fraud or bad faith on his part and the agent is unable to induce his client to pay the price demanded. Smith v. Koch, 247 W 551, 20 NW (2d) 566.

Under a listing contract providing that the owners of the listed real estate would pay a commission to the broker if the property was sold during the life of the contract, or if it was sold within 6 months after the termination thereof to anyone with whom the broker had negotiated during the life of the contract, "and whose name you have filed with me in writing" prior to the termination of the contract, the act of the broker in supplying the owners with a written offer to purchase, bearing the name of the offeror, and leaving it with the owners overnight, sufficiently complied with the requirement of the listing contract as to "filing" so as to render the owners liable to the broker where the owners, after refusing the first offer, sold the property through another to the same offeror within 6 months after the termination of the listing contract. L. W. Smith & Co. v. Romadka, 261 W 374, 52 NW (2d) 797.

As to the meaning of "negotiated" in a contract, see Munson v. Furrer, 261 W 634, 53 NW (2d)697.

A real estate broker's listing contract on a printed form supplied by himself must be most strongly construed against the broker in case of any ambiguity or doubt. Under a listing contract providing that a commission is due on a sale by the owners within 6 months after termination to anyone with whom the broker negotiated, and whose name the broker has filed with the owners in writing prior to termination, both of such conditions must concur in order for a commission to be due on any sale made during the 6-month period. Actual notice by the owners of negotiations had between the broker and the subsequent purchaser is not a substitute for nor compliance with the filing requirement. Dunn & Stringer Inv. Co. v. Krauss, 264 W 615, 60 NW (2d) 346.

The evidence suggested the conclusion that the plaintiff-broker had furnished a buyer within the provisions of a listing contract. Wauwatosa Realty Co. v. Bishop, 6 W (2d) 230, 94 NW (2d) 562.

Where an oral contract for the payment of a commission on the sale of real estate was void but the broker, in settling with the sellers, withheld and deducted a commission from the proceeds of the sale with the full knowledge, consent, and approval of the sellers, it amounted to a voluntary payment which could not subsequently be recovered by the sellers. Geis v. McKenna, 10 W (2d) 16, 102 NW (2d) 101.

## CHAPTER 241.

### Fraudulent Contracts.

**241.01 History:** R. S. 1849 c. 76 s. 1; R. S. 1858 c. 107 s. 1; R. S. 1878 s. 2306; Stats. 1898 s. 2306; 1925 c. 4; Stats. 1925 s. 241.01; 1969 c. 283.

**Editor's Note:** This section is repealed, effective July 1, 1971, by ch. 283, Laws 1969. See the editor's note printed ahead of ch. 700 for information as to the provision in the new property law which replaces it.

The sale of goods to a creditor with an arrangement that the vendor should have the privilege of reclaiming them would create a trust for the benefit of the vendor and render the sale void as to creditors if the value of the goods exceeded the amount of the vendee's claim. Grant v. Lewis, 14 W 487.

The conveyance of land by an insolvent debtor as a gift, in trust for his own benefit, is void as against creditors whether or not the grantee has knowledge. Manseau v. Mueller, 45 W 430.

A conveyance of realty and personalty by a father to his son upon condition that the latter give his parents one-half the buildings, one-half of all crops raised during their lives and one-third of the avails of the land to the one surviving, that he pay specified sums to his sister and brother after the parents' death, and that he pay a mortgage upon the realty creates a trust, and is void as against the father's creditors, notwithstanding the son had previously made advances to the father. Severin v. Rueckerick, 62 W 1, 21 NW 789.

A voluntary conveyance made by a judgment debtor to a third person of substantially all his nonexempt property, upon a trust and benefit reserved to himself, is fraudulent as a matter of law. Faber v. Matz, 86 W 370, 57 NW 39.

Where a debtor made a voluntary conveyance to his wife of his real estate, charging the same with his support during his life time, and also conveyed all his personal property without consideration, the transfers were fraudulent against creditors. Stapleton v. Brannan, 102 W 26, 78 NW 181.

A fraudulent conveyance is made void, not merely voidable by sec. 2306, Stats. 1921. Goetz v. Newell, 183 W 559, 198 NW 368.

An assignment of a right of action to secure a promissory note did not create a trust for the benefit of the assignor which was void as against creditors, since it did not inure to the benefit of the assignor. Jones v. Krueger, 1 W (2d) 27, 82 NW (2d) 910.

156.125, relating to burial agreements, is an exception to the prohibition in 241.01. Grant County Service Bureau v. Treweek, 19 W (2d) 548, 120 NW (2d) 634.

Where a contract was made for the purchase of a season's output of lumber and advances on such contract were to be made, a provision giving the vendors "the privilege of retaining any stock included in this contract provided no advances have been made on the same" does not make it a conveyance in trust for the use of the person making the same under sec. 2306, R. S. 1878. Stelling v. Jones L. Co. 116 F 261.

**241.02 History:** R. S. 1849 c. 76 s. 2; R. S. 1858 c. 107 s. 2; R. S. 1878 s. 2307; Stats. 1898 s. 2307; 1925 c. 4; Stats. 1925 s. 241.02.

1. Agreement not to be performed within one year.
2. Special promise to answer for debt of another.
3. Agreement on consideration of marriage.
4. Expressing the consideration.
5. Note or memorandum signed by the party charged.

*1. Agreement Not to be Performed Within One Year.*

An agreement is not void if it be such that it might be performed within a year. White v. Hanchett, 21 W 415.

The agreement must show by its terms that it is not to be performed within a year; it is not enough that by mere possibility it may not be. A promise to pay for services by bequest is not within the statute. Jilson v. Gilbert, 26 W 637.

An agreement to support another during his life may be performed within the year. Heath v. Heath, 31 W 223.

An agreement of hiring for a period longer than one year is void if not in writing; but the person rendering service can recover upon quantum meruit. Salb v. Campbell, 65 W 405, 27 NW 45.

If an oral agreement by its terms is not to be performed within one year, yet if it be fully executed by one party it is valid. Washburn v. Dosch, 68 W 436, 32 NW 551.

An executed agreement extending beyond a year the time for the payment of the principal due on a note is analogous to a parol sale and delivery of goods which are not to be paid for until after the expiration of a year, and it is not within the statute. Grace v. Lynch, 80 W 166, 49 NW 751.

An oral agreement for the construction of a soldiers' monument, providing for a model to be completed in 18 months, the second stage of the work to be completed in 18 months more, is void, as not by its terms to be performed in a year. Conway v. Mitchell, 97 W 290, 72 NW 752.

Any excess of one year from the date of agreement until the date of a full performance will defeat the contract, although the period covered by the agreement extends only one year from the time of the commencement of performance. Chase v. Hinkley, 126 W 75, 105 NW 230.

A lease of land is not within sec. 2307, Stats. 1898, so that such a lease for one year with the term to begin in the future, is valid. Baumgarten v. Cohn, 141 W 315, 124 NW 288.

The statute of frauds has no application to an ordinary contract of employment accompanied by an offer of increased wages if the service continues beyond one year, because no contract for the increased wage exists until actual performance by the employe. Zwolanek v. Baker M. Co. 150 W 517, 137 NW 769.

An oral agreement between A and B, partners with others in the operation of a bus line, and C who was operating a sanatorium, that if the former would purchase the interest of their partners the latter would extend for four years the existing contract with the firm for the conveyance of patients to the sanatorium, would treat therein no patients except those so conveyed, and would protect A and B from interruptions of the business, was void because not to be performed within one year. The actual purchase by A and B pursuant to the agreement did not take it out of the statute. Kindervater v. Till, 155 W 585, 145 NW 214.

An agreement is not within sec. 2307 (1), Stats. 1913, if its terms permit performance within one year. Foley v. Marsch, 162 W 25, 154 NW 982.

An oral agreement made more than a year before it was to be performed was not void on that account if it was reiterated within such year. Huebner v. Huebner, 163 W 166, 157 NW 765.

241.02 (1) applies to agreements extending the time of payment of a promissory note, and a 4-year extension of the time of payment in consideration of an increased interest rate if not in writing is void. Braasch v. Bonde, 191 W 414, 211 NW 281.

The oral agreement of the proprietor of a garage to pay to mechanic at expiration of 5-year period amount representing difference between what mechanic received and what he could earn in Milwaukee or some other city, provided mechanic would stay with him for 5-year period was void. An agreement to pay extra compensation to a mechanic after 5 years was not validated by the mechanic's performance by remaining at garage. Estate of Hippee, 200 W 373, 228 NW 522.

An oral agreement modifying a land contract by providing for the procuring of a loan from a third party and for payments on the loan in lieu of the payments stipulated in the land contract is void because not to be performed within one year, where not based on an executed consideration. Vaudreuil Lumber Co. v. Culbert, 220 W 267, 263 NW 637.

Where an employe orally contracted for one year's employment, which was to begin as soon as the employe could sever his connections with his then employer, but which could not possibly begin on the day the oral agreement was made, and the employe reported for work 5 days later, the agreement was void. The making of a contract is an event, within the meaning of the rule that on an issue of limitation, where time is to be computed from a certain event, the date of that event must be included. Where the employe continued the employment after the expiration of the one-year period, such continuation did not operate to renew the employment for a further period of one year, but operated only as a hiring for an indefinite period, terminable at any time at the will of either party. Brown v. Oneida Knitting Mills, 226 W 662, 277 NW 653.

Where a promoter's contract employing a manager and extending over a period of more than one year was in writing and satisfied the statute, the corporation's adoption of the contract bound the corporation without any writing. Meyers v. Wells, 252 W 352, 31 NW (2d) 512.

An agreement for hire for an indefinite term is a valid contract although not in writing.

Kirkpatrick v. Jackson, 256 W 208, 40 NW (2d) 372.

An oral agreement whereby one party promised to support the decedent and his wife for life and the decedent was to leave all his property to such party, and the promise to support was secured by the latter's note, was void under 240.06, 241.02 (1) and 235.01 (2), Stats. 1941, and specific performance could not be required and no damages could be recovered for its breach by the decedent in willing his property to others, but the party who furnished the support in performance of the void contract was entitled to restitution of the value thereof from the estate of the decedent. Adams v. Congdon, 259 W 278, 48 NW (2d) 469.

An agreement between a manufacturer and a salesman relating to compensation, which provided for increased commissions after 5 years, but which was terminable at will, was a valid contract even though not in writing, and hence was not void. Kinzfogl v. Greiner, 265 W 105, 60 NW (2d) 741.

In applying the ordinary and approved meaning of the word "annual" to the evidence presented as to when commissions were payable to the plaintiff, the trial court had the right to conclude that commissions were payable at the end of the defendant employer's fiscal year, which was within one year from the date when the parties entered into their oral agreement, so that such agreement was not void. Horne v. Kenosha Lincoln-Mercury, Inc. 265 W 496, 61 NW (2d) 893.

The acceptance by the grantee of a deed providing for assumption of a mortgage debt imposes personal liability on the grantee. It does not violate 241.02 (1), because performance by the grantor does not extend beyond one year, and it does not violate 241.02 (2) even though not signed by the grantee, because it is not a promise to pay the grantor's debt but to pay to the third party the debt the grantee owes the grantor. Beacon F. S. & L. Asso. v. Panoramic Enterprises, 8 W (2d) 550, 99 NW (2d) 696.

An agency agreement, performance of which began immediately, and which amounted to an employment of the agent for an indefinite, unspecified period, was not void. Clarke Floor Machine Co. v. De Vere Chemical Co. 9 W (2d) 517, 101 NW (2d) 655.

Plaintiff's performance under an oral agreement from the time he started spending his time and money, constituted a valuable executed consideration for the defendant's promise to continue the contract, and the agreement although not to be performed within a year, was not within the statute of frauds. Nelsen v. Farmers Mut. Auto. Ins. Co. 4 W (2d) 36, 90 NW (2d) 123.

See note to 240.10, on transactions covered; exceptions, citing Purtell v. Tehan, 29 W (2d) 631, 139 NW (2d) 655.

The statute of frauds does not preclude oral cancellation of a prior written contract that is within the statute, where the subsequent agreement does not involve the retransfer of some subject matter which is within the statute. ABC Outdoor Advertising, Inc. v. Dolhun's Marine, Inc. 38 W (2d) 457, 157 NW (2d) 680.

An agreement whereby a stockholder and a broker agreed that on the disposition of stock held by a syndicate, the stockholder should receive the same price for his stock as the syndicate received was an agreement which might be "performed within one year." Backus v. Taplin, 81 F (2d) 444.

An employe who has rendered services under an oral agreement which is unenforceable because of the statute of frauds may recover for his services on a quantum meruit basis. Laursen v. O'Brien, 90 F (2d) 792.

An oral lifetime contract of employment as a salesman is void. Dow v. Shoe Corp. of America, 176 F Supp. 916.

An oral contract for a distributorship, between plaintiff and a company acquired by defendant corporation, even though adhered to for 20 years, was one which could have been performed within one year and was not within the statute of frauds. Metropolitan Liquor Co. v. Hueblein, Inc. 305 F Supp. 946.

*2. Special Promise to Answer for Debt of Another.*

It is not sufficient that the original debtor leaves property with the guarantor with which to pay the debt; the latter's subsequent promise to the creditor is void. Emerick v. Sanders, 1 W 77.

Waiver of demand and notice by the indorser is not within the statute. Worden v. Mitchell, 7 W 161.

A promise by the owner of a house to pay for material sold to a contractor is within the statute. McDonald v. Dodge, 10 W 106.

A novation is not within the statute. Cook v. Barrett, 15 W 596.

An oral promise to a creditor of a corporation to pay the debt if he would procure passage of a corporate resolution authorizing it is void. Osborn v. Farmers' L. & T. Co. 16 W 35.

An oral guaranty of a note by the payee or indorsee, on sale thereof, is valid. Wyman v. Goodrich, 26 W 21.

If goods be sold to A solely at the request and on the credit of B the debt is that of the latter only and is not within statute. Champion v. Doty, 31 W 190.

An oral promise by A to B to indemnify B for indorsing C's note to B, upon the faith of which the indorsement is made, is valid. Vogel v. Melms, 31 W 306.

An oral promise by S to pay the employe of D, S having an agreement with D to pay such employe, and credit D on a debt of S, is valid. Balliet v. Scott, 32 W 174.

An agent's oral promise to take back goods sold by him for his principal if not satisfactory, in addition to the written engagement of the principals is valid. Hull v. Brown, 35 W 652.

A written promise expressing no consideration, attached to a lease, by which a stranger agrees to pay the rent, is void. Perry v. Spikes, 49 W 384, 5 NW 794.

Where a creditor takes in settlement the note of a third person with the debtor's guaranty of its payment, not stating the consideration, it is a promise by the debtor to pay his own debt in a particular way. Eagle M. & R. M. Co. v. Shattuck, 53 W 455, 10 NW 690.

A promise by a contractor to merchants to

pay checks issued to workmen, is not within the statute where such orders are taken on the faith of such promise and the sole credit is given to the contractor. West v. O'Hara, 55 W 645, 13 NW 894.

An oral promise to pay his own debt by paying a creditor's debt is valid. Hoile v. Bailey, 58 W 434, 17 NW 322.

Where defendants having timber hired M to cut it, and he was to deliver it to them free from liens, an oral promise by them to pay H., an employe of M., for his labor, relying upon which he refrained from asserting a lien upon the logs, is valid. Griswold v. Wright, 61 W 195, 21 NW 44.

The owner of a building being erected made an oral promise to a subcontractor to pay the amount due him, and relying upon this promise the latter did not file a claim for a lien to which he erroneously supposed himself to be entitled. The supposed existence of the lien, and forbearing to file the same as a prima facie incumbrance, are a sufficient consideration moving to the promisor to take the case out of the statute. Hewett v. Currier, 63 W 386, 23 NW 884.

Attorneys were employed by a village to prosecute violations of excise laws, and afterwards the village was enjoined from paying for their services. The president of the village then requested them to proceed, agreeing personally to pay them for past and future services. The president's promise was void as applied to past services. Hooker v. Russell, 67 W 257, 30 NW 358.

Defendant employed F on his farm to work during the season. F owed plaintiff, and in May defendant orally promised to pay the debt if F would work 60 days longer. F assented and continued to work for 60 days. The agreement was void, there being no release of F and no new consideration moving to defendant. Willard v. Bosshard, 68 W 454, 32 NW 538.

If the original debtor is not released from liability a promise by a third person to pay the debt, in consideration that the creditor will release a lien which he holds upon the property of the debtor, when no benefit accrues thereby to such third person by such release, is void unless in writing. Gray v. Herman, 75 W 453, 44 NW 248.

Unless the defendant unconditionally promised the plaintiff before the goods were delivered to a third person that he would pay for them, and the plaintiff parted with them on the faith of such promise, there could be no recovery. Hopkins v. Stefan, 77 W 45, 45 NW 676.

A receiver who applies to the mortgagee for leave to sell the mortgaged property and use its proceeds in the course of the performance of his duty, and promises both in his official and personal capacity to pay therefor, is not bound by such promise, if he personally derives no benefit from the consent to so sell. Bray v. Parcher, 80 W 16, 49 NW 111.

A surety upon the bond of one who has been arrested and who has fled the state is interested in legal proceedings instituted to vacate the order of arrest, and his promise to pay an attorney employed to conduct such proceedings in his own behalf need not be in writing. Murphy v. Gates, 81 W 370, 51 NW 573.

A person who assumes the liability of another in consideration of the transfer of property to him is not within the statute. Green v. Hadfield, 89 W 138, 61 NW 310.

The lessor of land who has stipulated in the lease to furnish the money necessary to carry it on is not bound by a subsequent oral promise to the lessee to pay the sum due a laborer employed by the lessee on the farm. Rietzloff v. Glover, 91 W 65, 64 NW 298.

"Debt" imports a sum of money arising upon contract and not a mere claim for damages. Rietzloff v. Glover, 91 W 65, 64 NW 298.

A new consideration is essential to the validity of a guaranty of a note which is a subsisting obligation when the guaranty is made. Bank of Commerce v. Ross, 91 W 320, 64 NW 993.

When an incoming partner in consideration of being received agrees by parol to assume, with the previous partner, the existing debts of the latter, such agreement is valid in favor of the creditors without an acceptance of it by them. J. & H. Clasgens Co. v. Silber, 93 W 579, 67 NW 1122.

If founded on a new and sufficient consideration, moving from a creditor to a promisor, a writing is unnecessary to support a promise to answer for the debt of another. Twohy M. Co. v. Ryan D. Co. 94 W 319, 68 NW 963.

An agreement with an attorney to pay him for services to be rendered in defense of a third person, if made before any substantial work is done, is not void. James v. Carson, 94 W 632, 69 NW 1004.

A promise to pay a mortgage as part of the consideration of a conveyance of the mortgaged property is not within the statute. Morgan v. South Milwaukee L. V. Co. 97 W 275, 72 NW 872.

A promise to pay a sum limited by the amount of a debt to another as the purchase price of goods received by the promisor is not within the statute. Lessel v. Zillmer, 105 W 334, 81 NW 403.

Where one person agrees to pay debts of another as part of the consideration for a transfer of property, it is not a promise to answer for the debt, default or miscarriage of another person. Fosha v. O'Donnell, 120 W 326, 97 NW 924.

Where a written contract provided that advancements should be made by one party to certain loggers, which advancements were to be deducted from the contract price, and such contract was transferred and it was agreed verbally that the assignor of the contract should continue the advancements until the transfer was complete, this was not an agreement to answer for the debt of another. McCord v. Edward Hines L. Co. 124 W 509, 102 NW 334.

In order to render a promise to pay a debt of another an original and not a collateral promise, it must appear that the agreement was in reality to pay such person's own indebtedness. Kaufer v. Stumpf, 129 W 476, 109 NW 561.

The signing of a note as a joint maker after maturity is a sufficient compliance with sec.

2307, Stats. 1898. Jansen v. Kuensie, 145 W 473, 130 NW 450.

An oral contract to guarantee the payment of notes which might be purchased from the guarantor is void. Francois v. Cady L. Co. 149 W 115, 135 NW 484.

Turning over to a bank certain accounts for collection under an oral agreement that the bank might apply the proceeds upon a debt owing to it by a third party was not a promise to answer for the debt of another. So far as separate bills had been collected and so applied the contract as to them had been fully executed. Johnson v. Bank of Sun Prairie, 155 W 603, 145 NW 178.

Though an oral promise is in form to pay the debt of another, if it is founded upon a new and valuable consideration moving from the creditor and promise to the promisor, and is beneficial to the latter, it is valid. W. C. Zachow Co. v. Grignon, 172 W 449, 179 NW 593.

An oral promise by a person to assume liability to a bank for advances to be made to a third person is void. State Bank of Eastman v. Rawson, 182 W 422, 196 NW 779.

An agreement by a purchaser of an entire stock of goods to apply the price upon specified obligations of the seller was not a special promise to answer for the debt of another but was an agreement as to the mode of payment. Hanson v. Knutson H. Co. 182 W 459, 196 NW 831.

A promise to answer for the debt of another, if founded on a new and sufficient consideration, need not be in writing subscribed by the promisor. Day v. Morgan, 184 W 595, 200 NW 382.

The fact that a person orally promising to pay the debt of another is incidentally benefited is not sufficient; the benefit must be shown to be the object or consideration of the promise. Iowa County Bank v. Graber, 189 W 277, 206 NW 835.

An oral promise to pay a judgment against another is void. Lutz v. Dunn, 189 W 325, 207 NW 713.

The owner of a note and mortgage offered it to plaintiff, and by a letter guaranteed the payment of interest and principal at maturity. In an action on the guaranty, which did not express a consideration as required by 241.02 (2) the promise was made upon a new and original consideration, namely the purchase of the securities, which was of benefit to the promisor, and was enforceable. O'Neil v. Russell, 192 W 141, 212 NW 278.

An agreement whereby a bank, holding a third mortgage on property, agreed to apply payments made to it by the mortgagor to taxes and interest on prior mortgages, was not a special promise by the bank to pay the debt of the mortgagor, but constituted a trust obligation as between the holder of prior mortgages, the bank, and the mortgagor, requiring a disposition of the money received pursuant to the terms of the agreement. Gutknecht v. Muscoda State Bank, 195 W 477, 218 NW 726.

An oral promise by an employer that a loan previously made to his employe shall stand as a loan to the employer is invalid, being in substance a promise to answer for the debt of another. Breuer v. Arenz, 202 W 453, 233 NW 76.

The promise of the owners and principal contractor to pay the employes of a subcontractor the amount the subcontractor owed them is an agreement to answer for the debt of another, and void, because not in writing. Limbach v. Schmalz, 208 W 396, 243 NW 480.

H. contracted with M. to drill a well on M.'s farm and began operations but on learning that the farm was heavily mortgaged H. prepared to quit the job. To induce him to continue the well W., who owned the mortgage, then promised orally to pay H. in full if he would complete the well. H. relying on W.'s promise finished the job. W.'s promise was not within the statute of frauds; the debt was his debt; he was liable to H. for the entire cost of the well. In re Williams' Estate, 230 W 344, 283 NW 805.

An agreement between the mortgagor and assignee of a chattel mortgage that the chattels should be sold by the mortgagor at an auction at which an agent of the assignee is to act as clerk, and that the proceeds should go first to pay the expenses of the sale and then the mortgage debt, is not a promise to answer for the debt of another and need not be in writing. Kramer v. Burlage, 234 W 538, 291 NW 766.

Building materials were purchased from the plaintiff by the administrator's tenant. The farm subsequently was acquired by the decedent's son from the estate. An oral promise by the son for the payment for the building material was void as an agreement to answer for the debt of another. Bowler Lumber Co. v. Raasch, 246 W 639, 18 NW (2d) 366.

Where a tourist cabin project was being financed for the owners by a bank under a loan which contemplated that the loan would provide for plumbing and heating, and the installation augmented the value of the mortgage security given by the cabin owners to the bank, oral promises made by the bank to a contractor that he would be paid if he completed the installation were not void as promises to answer for the debt of another. Elder v. Sage, 257 W 214, 42 NW (2d) 919.

A note signed by persons who had borrowed money, and by a third person who was an accommodation maker 3 weeks after the money was loaned, did not satisfy the statute of frauds as an agreement to pay the debt of another. Estate of Vogel, 259 W 73, 47 NW (2d) 333.

Where the alleged obligation was that of a corporation, any subsequent promise of its president, if not in writing, to pay such obligation, would be void. Otto v. Black Eagle Oil Co. 266 W 215, 63 NW (2d) 47.

A guaranty required to be in writing may be terminated by a subsequently executed oral agreement, supported by consideration, even if the original instrument of guaranty was executed under seal. Home Savings Bank v. Gertenbach, 270 W 386, 71 NW (2d) 347.

The promise of the buyer of corporate property to pay certain debts of the controlling stockholder, made as part of the purchase deal, was not void because not in writing. Gunnison v. Kaufman, 271 W 113, 72 NW (2d) 706.

The beneficial-consideration doctrine is not accepted as an arbitrary rule in Wisconsin. A determination from all the evidence must be made from the nature of the oral promise as a fact free from the mechanical application of generalized rules of assumed intention. The form of the promise, the nature of the consideration, the language of the promise used in light of the circumstances, the motive and object of making the promise, are all considerations in determining the nature of the promise but do not automatically determine it. If on such consideration the promise is in fact one to answer for the debt and default of another, it comes within the scope of the statute of frauds, otherwise it does not. Mann v. Erie Mfg. Co. 19 W (2d) 455, 120 NW (2d) 711.

The equitable doctrine of part performance does not apply to oral promises to answer for the debt of another. Marshall v. Bellin, 27 W (2d) 88, 133 NW (2d) 751.

Subsection 2 of section 2307 of the Wisconsin Statutes. Glanz, 2 MLR 144.

*3. Agreement on Consideration of Marriage.*

An oral agreement between a man and woman that she would convey to him a tract of land, that he would provide for her support and comfort during life, pay her debts, take care of, manage and improve the land, and to that end they would marry and live together upon it, does not show that the marriage was the consideration of the agreement to convey, and is not within sec. 2307, R. S. 1878. Larsen v. Johnson, 78 W 300, 47 NW 615.

An oral antenuptial agreement is not validated by being reduced to writing and signed after the marriage. Rowell v. Barber, 142 W 304, 125 NW 937.

An alleged oral agreement by a prospective husband to execute a will leaving most of his estate to his prospective wife, if she would sign a written agreement waiving all rights to his property, was not validated by the subsequent execution of a written antenuptial agreement wherein each party waived all rights to the property of the other, since the antenuptial agreement did not on its face appear to be made pursuant to the alleged oral agreement, made no reference thereto, and in fact expressly excluded the prospective wife from having any interest in the property of the prospective husband. Will of Paulson, 252 W 161, 31 NW (2d) 182.

*4. Expressing the Consideration.*

"For value received," is a sufficient expression. Dahlman v. Hammel, 45 W 466.

A letter of guaranty saying that the bearer will purchase certain goods is a sufficient expression of the consideration. Young v. Brown, 53 W 333, 10 NW 394.

A guaranty reading, "I hereby guarantee account", held to sufficiently express the consideration, where it was shown that the account named was not an already existing account but one about to be contracted and which was not in fact contracted until after the guaranty was given. Waldheim v. Miller, 97 W 300, 72 NW 869.

An indorsement on a promissory note reading, "I hereby guarantee the payment of the within note," fails to express the consideration. The evidence was insufficient to show an actual consideration sufficient to take the guarantee out of the statute of frauds. An incidental benefit to a stockholder in having another stockholder go out and a new one come into the corporation is not sufficient to sustain a transaction. Commercial Nat. Bank v. Smith, 107 W 574, 83 NW 766.

A contract of guaranty under seal is good, even though it does not express the consideration, as the seal itself imports a consideration. Kuener v. Smith, 108 W 549, 84 NW 850.

A note agreeing to extend the guaranty for a certain time, not stating a certain amount, sufficiently expresses the consideration as to future sales. Coxe Brothers Co. v. Milbrath, 110 W 499, 86 NW 174.

Where a person agrees to assume one-half of another's liability under a guaranty, and where the consideration is not expressed, it is void. Klee v. Stephenson, 130 W 505, 110 NW 479.

A request in writing to allow a certain person to make overdrafts up to a certain amount sufficiently expressed the consideration. Miami County Bank v. Goldsberg, 133 W 175, 113 NW 391.

A written guaranty by a father on the agreement of his infant son for a course of instruction in a school was void because it failed to express the consideration. International T. B. Co. v. McKone, 133 W 200, 113 NW 438.

Where there were 2 paragraphs and the signatures of the principals were appended to the first and the sureties to the second, there was sufficient connection between the 2 to make an expression of consideration. Scollard v. Bach, 136 W 63, 116 NW 757.

The act of a guarantor, before the delivery of an order for goods, in signing his name at the foot of the order, guaranteeing the payment therefor, is a sufficient memorandum expressing the consideration; and oral evidence may be received as an aid in the interpretation of the writing, but may not be received to contradict it. Alltone Co. v. Cebell, 194 W 591, 217 NW 302.

A recital that guaranty of a lease was made for value received was sufficient compliance with the statute. A landlord's making of a lease was sufficient consideration for the guaranty of a tenant's obligation, in lieu of making a deposit. Weinsklar R. Co. v. Dooley, 200 W 412, 228 NW 515.

A transaction culminating in a will devising the testatrix' home to the owner of a note, executed by the testatrix' deceased husband and son, as in payment of the note, was a special promise by her to answer for the debt of her husband and son, which was void for failure to express the consideration for such promise; or, viewed as an agreement to convey land, was void under 240.08 for failure to express the consideration therefor. (Estate of McLean, 219 W 222, distinguished.) Estate of Burmania, 253 W 470, 34 NW (2d) 850.

A guaranty signed by a guarantor at the foot of a promissory note, and guaranteeing the payment of the note, was a sufficient memorandum expressing the consideration to comply with the statute of frauds, although the guaranty itself contained no recital of

consideration. In determining whether the consideration is sufficiently expressed so as to satisfy the statute of frauds, the entire instrument should be considered. A note and a guaranty, both signed under seal, import a consideration, and under such circumstances the guaranty is good even though no consideration is stated. Jacobi v. Cielinski, 262 W 100, 53 NW (2d) 718.

Where stockholders of a corporation guaranteed before delivery, in writing, to pay for goods sold to the corporation, consideration appears by implication from the terms of the guarantee. Chrysler Corp. v. Clark C. C. Co. 76 F Supp. 739.

*5. Note or Memorandum Signed by the Party Charged.*

A stranger to a contract cannot claim that it is invalid under the statute of frauds. It is a personal defense and can be taken only by a party. Draper v. Wilson, 143 W 510, 28 NW 66.

A subscription contract signed by the original stockholder constituted a sufficient memorandum of agreement which gave an option for the purchase of the stock, as regards a donee of the stock. And a letter from the donee requesting his receipt for a new certificate of stock constituted a sufficient memorandum to bind the donee under the provisions of the original certificate giving an option to purchase. Wisconsin Club v. John, 202 W 476, 233 NW 79.

In an action by a seller for breach of contract for sale of safety deposit boxes, letters between parties which referred one to another and related to the same subject matter sufficiently indicated their relationship to the same transaction to satisfy the statute. Zimmerman Bros. & Co. v. First Nat. Bank, 219 W 427, 263 NW 361.

The statute of frauds is satisfied where preliminary negotiations for the decedent's employment of the claimant as a housekeeper for $3 weekly always suggested additional substantial compensation for faithful and continuous service and culminated in a purported will signed by the decedent which, although ineffective as a will, evidenced a unilateral contract containing a promise, accepted by performance, to give all the decedent's property to the claimant provided she took care of him until his death. Estate of Lube, 225 W 365, 274 NW 276.

The minutes of a meeting of a city school board, showing the adoption of a resolution that the present contract of the superintendent of schools be renewed and that the secretary be instructed to draw up the contract and have the same signed by the proper officers, was only a memorandum evincing a purpose of the board to make a contract. It did not constitute a signed written contract, and it was not a memorandum of a contract "signed by the party to be charged," (in this case the school board) as required by the statute. (McCaffrey v. Lake, 234 W 251, applied.) Prodoehl v. Cudahy, 237 W 224, 296 NW 606.

Money paid under an oral agreement void because of the statute of frauds, may be recovered on the theory that it was paid without consideration because the law implies a promise of repayment when no rule of public policy or good morals has been violated. In actions on the theory of quasi contract, which are legal actions ruled by equitable principles, recovery is allowed on a quasi-contractual obligation when it is shown that the defendant has received a benefit from the plaintiff and that the retention of the benefit by the defendant is inequitable. Arjay Inv. Co. v. Kohlmetz, 9 W (2d) 535, 101 NW (2d) 700.

**241.025 History:** 1957 c. 438, 672; Stats. 1957 s. 241.025.

**241.03 History:** 1947 c. 313; Stats. 1947 s. 241.03; 1963 c. 158, 429.

**Legislative Council Note, 1963:** Language changed in sub. (1) to conform to terminology of commercial code. The stricken provision relative to public inspection of the filed contracts is covered by other provisions of the statutes, such as s. 18.01.

Subsection (3) clarifies the relationship of cropper contracts to ch. 409 of the commercial code. The landowner's interest created by a landowner-cropper contract is not to be treated as a security interest per se. (Bill No. 1-S)

**241.05 History:** R. S. 1849 c. 76 s. 5; R. S. 1858 c. 107 s. 5; R. S. 1878 s. 2310; Stats. 1898 s. 2310; 1925 c. 4; Stats. 1925 s. 241.05.

A creditor who receives a bona fide transfer of chattels in discharge of a pre-existing debt is a purchaser in good faith. Gleason v. Day, 9 W 498.

Sec. 5, ch. 107, R. S. 1858, does not apply to an assignment of choses in action. Livingston v. Littell, 15 W 218.

The question of possession has an important bearing in determining the good faith of a sale. Menzies v. Dodd, 19 W 343.

The presumption of fraud may be rebutted. Where, after a sale, there is no change of possession fraud is presumed; and the presumption becomes conclusive unless good faith is established by the person claiming under the sale. Williams v. Porter, 41 W 422.

The immediate delivery required is a delivery within such convenient time as is reasonably requisite for making it. The question of the reasonableness of the delivery cannot be left to the jury. Richardson v. End, 43 W 316.

The delivery contemplated by the statute must be actual and the change of possession continued. Manufacturers' Bank v. Rugee, 59 W 197, 18 NW 4.

A bill of sale absolute on its face may be shown by parol to be a mortgage. Manufacturers' Bank v. Rugee, 59 W 221, 18 NW 251.

As to evidence showing that defendants were guilty of conspiracy to obtain goods by fraud and to defraud creditors of their vendee, see Tucker v. Finch, 66 W 17, 27 NW 817.

The presumption of fraud arising from the want of a change of possession is rebutted by proof that the purchaser paid for the property all that it was worth, that it was bought openly in the usual course of business, and that it was bought without reference to the effect of the purchase upon the creditors of the vendor, or knowledge of his insolvency. Cook v. Van Horne, 76 W 520, 44 NW 767.

The delivery and possession contemplated by sec. 2310, Stats. 1898, is not that technical delivery which gives validity inter partes to a contract of sale in compliance with sec. 2308, but is such a delivery and change of possession that those familiar with the situation would naturally draw the inference of change of ownership. Missinskie v. McMurdo, 107 W 578, 83 NW 758.

The evidence supported a conclusion that there was good faith in the delivery and possession of a stock of goods. Fisher v. Herrmann, 118 W 424, 95 NW 392.

Where the purchaser proves that he paid full and adequate consideration the presumption of fraud arising under sec. 2310, Stats. 1898, is disproved. Griswold v. Nichols, 126 W 401, 105 NW 815.

Failure to change possession under sec. 2310, Stats. 1898, is not conclusive but may be overcome by other evidence. Hoeffler v. Carew, 135 W 605, 116 NW 241.

Sec. 2310, Stats. 1898, is inapplicable to conveyances of chattels by way of mortgage, governed by sec. 2313. Saint Louis C. P. Co. v. Christopher, 152 W 603, 140 NW 351.

A bill of sale from the mortgagors to the mortgagee of the mortgaged property could have been executed in good faith to discharge the mortgagors' debt. Black Hawk S. Bank v. Accola, 194 W 29, 215 NW 443.

An alleged conditional sale of an automobile, not accompanied by delivery or change of possession, is presumptively void as against a bona fide assignee of a subsequent conditional sales contract therefor and a buyer thereunder. Burnett County A. Co. v. Eau Claire C. L. & I. Co. 216 W 35, 255 NW 890.

An assignment of a trust certificate by a gratuitous assignor who after signing the certificate notified the obligor of the assignment, but did not deliver the certificate to the assignee, and himself retained possession of the certificate, constituted at most a revocable assignment and not a completed gift, so that on the death of the assignor, the assignee had no enforceable right to the trust certificate. (Northwestern Mut. Life Ins. Co. v. Wright, 153 W 252, distinguished.) Madison Trust Co. v. Skogstrom, 222 W 585, 269 NW 249.

In a replevin action against a sheriff and his sureties for the value of milk cows and other personal property, located on a farm owned by the plaintiff's husband, and taken and sold in execution of a judgment against the husband, testimony of both husband and wife that a bill of sale transferring the property from the husband to the wife was intended only as security for a debt due the wife required that the bill of sale be treated as a chattel mortgage, which was not valid against third persons under 241.08, Stats. 1939, since it was not filed or recorded and there was no visible relinquishment of the husband's ownership or change of possession of the property, and in such circumstances the plaintiff failed to prove her title or right to possession against the sheriff or a wrongful taking and detention by the sheriff. Rheingans v. Hepfler, 243 W 126, 9 NW (2d) 585.

There is sufficient delivery when logs purchased under a contract are branded by the purchaser and the piles of lumber when cut are marked with the name of the purchaser, where such contract covered the output of the lumber mill for a season. Stelling v. Jones L. Co. 116 F 261.

**241.06 History:** R. S. 1849 c. 76 s. 6; R. S. 1858 c. 107 s. 6; R. S. 1878 s. 2311; Stats. 1898 s. 2311; 1925 c. 4; Stats. 1925 s. 241.06.

**241.07 History:** R. S. 1849 c. 76 s. 7; R. S. 1858 c. 107 s. 7; R. S. 1878 s. 2312; Stats. 1898 s. 2312; 1925 c. 4; Stats. 1925 s. 241.07.

**241.09 History:** 1905 c. 148 s. 1; Supl. 1906 s. 2313a; 1925 c. 4; Stats. 1925 s. 241.09; 1945 c. 416; 1947 c. 411 s. 6; 1955 c. 437; 1965 c. 295; 1967 c. 92 s. 22; 1969 c. 276 s. 591 (1).

An assignment not signed by a wife was void. Porte v. Chicago & Northwestern R. Co. 162 W 446, 156 NW 469.

The secretary of state should not honor assignments of salaries of members of the legislature and other state officers unless assignments conform to 241.09, Stats. 1933. 23 Atty. Gen. 136.

241.09, Stats. 1939, does not apply to a request from an employe to his employer to furnish group insurance for such employe and take the amount of the premium for the insurance company from the employe's salary. 29 Atty. Gen. 1.

**241.24 History:** 1883 c. 81; Ann. Stats. 1889 s. 2319a; Stats. 1898 s. 2319a; 1925 c. 4; Stats. 1925 s. 241.24; 1963 c. 158.

**Legislative Council Note, 1963:** The history and judicial interpretation of this section indicates that it was intended to have only limited applicability. The above amendment makes this limited applicability clear and avoids confusion with some similar provisions of ch. 402 of the commercial code which have general applicability to all sales of goods. (Bill 1-S)

Defendant, a saloon keeper, gave plaintiff, a commission merchant, $800 as margin on 15,000 bushels of barley. Barley declined in price, and defendant was called upon for more margin. Afterwards the defendant gave plaintiff his note "for differences in barley." The contract may have been a gambling one, and the case should have been submitted to the jury. Lowry v. Dillman, 59 W 197, 18 NW 4.

Ch. 81, Laws 1883, refers only to written contracts and does not repeal the statute of frauds. Kerkhof v. Atlas P. Co. 68 W 674, 32 NW 766.

A partnership formed to conduct a mere gambling business on the Chicago Board of Trade without capital stock or account books was illegal and no contribution could be enforced for losses. Atwater v. Manville, 106 W 64, 81 NW 985.

Where purchases and sales for future delivery were made through a broker with no intent to receive or deliver, but with intent to gamble on the market price, the broker, if he had knowledge of the illegal intent, cannot recover for commissions or advances. Kassuba C. Co. v. Blodgett, 155 W 529, 145 NW 177.

A written contract for the sale and delivery of grain at a future day for a price certain, made with a bona fide intention to deliver the

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.