TITLE XXII.

Fraudulent Conveyances and Contracts.

CHAPTER 240.

FRAUDULENT CONVEYANCES AND CONTRACTS RELATING TO REAL ESTATE.

240.01 Conveyances, when void. Every conveyance of any estate or interest in land, or the rents and profits of lands and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

240.02 Conveyances not fraudulent, when. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended.

240.03 Conveyances with power of revocation, void. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

240.04 Such conveyances valid, when. Where a power to revoke a conveyance of any lands or the rents and profits thereof and to reconvey the same shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

240.05 Same subject. If a conveyance to a purchaser, under either section 240.03 or 240.04, shall be made before the person making the same shall be entitled to execute his power of revocation it shall nevertheless be valid from the time the power of revocation shall actually vest in such person in the same manner and to the same extent as if then made.

240.06 Conveyance of land, etc., to be in writing. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands or in any manner relating thereto shall be created, granted, assigned, surrendered or declared unless by act or operation of law or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same or by his lawful agent thereunto authorized by writing.

An instruction which assumed that a 3-year contract, constituting either a lease of land or an employment agreement, need not be in writing was error. An unwritten 3-year lease of land is invalid. Part performance does not make an oral lease within the statute of frauds fully enforceable. If the contract involved in the instant ejectment action should be found by a jury to be an oral 3-year, and hence invalid, lease of the plaintiffs' farm, rather than a valid oral contract for hire for an indefinite term, a defendant's counterclaim for breach of lease-contract could not be maintained even if there was sufficient performance by him, and his recovery would have to be on quantum meruit for services rendered. Under either finding defendant's recovery would be limited to services rendered to the date when the relationship of the parties was terminated, less offsets, if any, in the plaintiffs' favor. Kirkpatrick v. Jackson, 256 W 208, 40 NW (2d) 372.

Where a wife, joint optionee with her

husband under an option contract for the purchase of real estate, did not authorize the making of material alterations by the husband and the optionor, and the wife did not ratify the act of the husband by any writing nor by any conduct which might work an estoppel against her, and never did anything inconsistent with her asserted claim under the original option, she did not surrender her interest. To constitute a surrender of an interest, the act must be inconsistent with the continuance of the former estate or interest, and must be actually accepted and acted on by the other party. Formality of writing is necessary to ratify agent's act. Wyman v. Utech, 256 W 234, 40 NW (2d) 378.

If an agent fraudulently purchases with his own money property which he is orally employed to purchase for his principal, a constructive trust is created by operation of law which need not be in writing. Shevel v. Warter, 256 W 503, 41 NW (2d) 603.

The doctrine of part performance can be invoked only where fraud would result from not enforcing the oral agreement. Under some circumstances the party pleading the statute of frauds is estopped to assert it as a defense, as where he has induced the other party to change his position, because of the oral agreement, to such an extent that he has no adequate remedy at law and could not be restored to the situation in which he was when the agreement was made. Beranek v. Gohr, 260 W 282, 50 NW (2d) 459.

Where a mortgagee did not materially change his position, because of an oral agreement whereby the mortgagor was to convey the mortgaged farm to the mortgagee in consideration of a satisfaction of the mortgage, but merely took possession of the farm and rented it to a tenant, and continued to hold the mortgage and appeared to have an adequate remedy by foreclosing the same, there was not a sufficient part performance of the oral contract to overcome the defense of the statute of frauds against the enforcement thereof. Beranek v. Gohr, 260 W 282, 50 NW (2d) 459.

Where A, a party to a bilateral written agreement required by statute to be in writing, has knowledge that after A had signed the agreement B, the other party to the agreement, had made material changes therein before B also signed it, and with such full knowledge A thereafter accepts any benefits from B as performance under the altered agreement, A is thereby estopped from raising the defense of the statute of frauds so as to claim that such alterations invalidated the agreement. Expenditures of approximately $16,000, almost the equivalent of 2 years' rent, made by a lessee in moving its machinery and stock to the leased premises and installing the same therein in reliance on the provisions of a 3-year written lease, would be sufficient to invoke the doctrine of part performance and bar the lessors from raising the question of violation of the statute of frauds and claiming that the lessee was in possession under a mere month-to-month tenancy so as to be subject to ejectment on one month's notice. Pick Foundry, Inc. v. General Door Mfg. Co. 262 W 311, 55 NW (2d) 407.

It is not essential that the acts relied on as constituting part performance be rendered pursuant to the terms of the parol agreement in order to be effective to deprive the opposite party of the benefit of the statute of frauds, the doctrine of part performance applying with equal force to acts done on the faith of the parol agreement and to those in the performance of its terms and conditions. Pick Foundry, Inc. v. General Door Mfg. Co. 262 W 311, 55 NW (2d) 407.

The underlying principle of a constructive trust is the equitable prevention of unjust enrichment which arises from fraud or the abuse of a confidential relationship. This section does not prevent a trust from arising by implication or operation of law, especially in view of 240.07. Masino v. Sechrest, 268 W 101, 66 NW (2d) 740.

240.07 Limitation of section 240.06. Section 240.06 shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament nor to prevent any trust from arising or being extinguished by implication or operation of law.

240.08 Contract for lease or sale to be in writing. Every contract for the leasing for a longer period than one year or for the sale of any lands or any interest in lands shall be void unless the contract or some note or memorandum thereof, expressing the consideration, be in writing and be subscribed by the party by whom the lease or sale is to be made or by his lawfully authorized agent.

Court finds consideration expressed in contract for sale of land. Taylor v. Bricker, 262 W 377, 55 NW (2d) 404.

Although estates and interests in lands cannot be created by an agent unless he is authorized in writing, an agent may bind his principal by a contract for the sale of land satisfying the statute of frauds, although his own authority as agent may have been by parol. Where the owner stopped the auction sale and discharged the auctioneer, thereby revoking the auctioneer's authority to give any memorandum, and the owner left the scene of the auction, the owner cannot complain that no memorandum of sale sufficient under the statute of frauds was given to the plaintiff, who was the high bidder when the sale was stopped. Zuhak v. Rose, 264 W 286, 58 NW (2d) 693.

A contract for the sale of real estate which described the property as lot "13A," etc., was sufficient in this respect to satisfy the statute of frauds where, although actually there was no land platted and recorded by such lot number, there was a platted and recorded lot 13, and the vendor showed the vendees a plat on which he had marked off a lot 13A from lot 13, and he took the vendees to the ground and showed them the location and the dimensions of the so-called lot 13A, since the statute is satisfied in respect to description if from the description given in the contract or memorandum, supplemented by other evidence, the property sold can be definitely ascertained. Parol evidence which explains the terms used in the contract, without altering them, is admissible for such supplementary purpose. Even if the statute of frauds would prevent enforcement of the contract by action against the vendees, this would not of itself entitle the vendees to repudiate the contract and recover a down payment. Schwartz v. Syver, 264 W 526, 59 NW (2d) 489.

A letter from the owner of certain land to a prospective purchaser, which contained an offer to sell but contained no expression of consideration, was not a valid contract for the sale of land or an interest therein, and hence did not create an enforceable agreement. Siler v. Read Investment Co. 273 W 255, 77 NW (2d) 504.

An offer to purchase, which, in addition to the legal description, stated "about 3½ acres" and gave the dimensions of 100 feet by 1,276 feet, which amounted to somewhat over 3 acres, was not inadequate or ambiguous as to description. George v. Oswald, 273 W 380, 78 NW (2d) 763.

A written offer to purchase land, providing for an earnest-money payment, a further payment "on day of closing of sale," and payment of the balance on the day of closing of the sale of the buyers' home "which should take place in about 90 days," and further providing that the instant transaction was "to be closed . . . on or before April 6," was not void as not complying with the statute of frauds. George v. Oswald, 273 W 380, 78 NW (2d) 763.

240.09 Specific performance. Nothing in this chapter contained shall be construed to abridge the powers of courts to compel the specific performance of agreements in case of part performance of such agreements.

240.10 Real estate agency contracts. Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate or negotiating lease therefor for a term or terms exceeding a period of three years shall be void unless such contract or note or memorandum thereof describing such real estate, expressing the price for which the same may be sold or purchased, or terms of rental, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller or tenant, be in writing and be subscribed by the person agreeing to pay such commission.

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.

For meaning of "negotiated" in 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 Investment Co. v. Krauss, 264 W 615, 60 NW (2d) 346.

A verbal agreement to pay a commission for selling real estate is void, and no recovery can be had by a salesman under such agreement on the ground that he was the "procuring cause" of the sale. No recovery can be had on quantum meruit. Otto v. Black Eagle Oil Co. 266 W 215, 63 NW (2d) 47.

A real-estate broker, performing services under a contract which was void and unenforceable for not being in writing, was not entitled to recover compensation under a mere verbal promise and written acknowledgment of obligation to pay subsequently made. (Elbinger v. Capitol & Teutonia Co. 208 W 163, distinguished.) Garvey v. Wenzel, 272 W 606, 76 NW (2d) 291.

Description in written contracts held sufficient. Kruger v. Wesner, 274 W 40, 74 NW (2d) 354.

Letters written to a broker after a written contract had expired did not extend the contract where they did not refer to the original contract and where the terms of sale were substantially different. Gilbert v. Ludtke, 1 W (2d) 228, 83 NW (2d) 669.