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UNIFORM FRAUDULENT CONVEYANCE ACT IN MINNESOTA\textsuperscript{50}

BY DONALD E. BRIDGMAN\textsuperscript{51}

Section four states substantially the pre-existing law in Minnesota, as in the majority of states. It is as follows:

"Section 4. [Conveyances by Insolvent.] Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration."

A small number of states\textsuperscript{52} still follow the doctrine of \textit{Reade v. Livingston},\textsuperscript{53} that if a person has any debts, although he has sufficient assets remaining to meet his debts, and is not insolvent, yet a voluntary conveyance is constructively fraudulent; and in such states the Uniform Act will produce an important change. Under Minnesota's former statute\textsuperscript{54} this doctrine has never been the law in this state.\textsuperscript{55} This statute stated that fraudulent intent should be a question of fact. However, the cases have held that where a person is insolvent and makes a voluntary conveyance, the necessary effect of his act is to defraud creditors, and the debtor will be presumed to have intended this necessary effect.\textsuperscript{56} Section 4 of the Uniform Act says that in such case the conveyance is fraudulent regardless of intent. This is a better method of reaching a similar result, since the act itself states the rule, without requiring a stretching by judicial construction. Furthermore, the decisions are in some confusion because the rule of presumptive fraud is not stated in all cases the same; and the Uniform Act introduces desirable certainty in the matter.

\textsuperscript{50}For first installment of the article see 7 MINNESOTA LAW REVIEW 453.
\textsuperscript{51}Minneapolis, Minn. Chairman of Committee on Uniform State Laws of Minnesota Bar Association.
\textsuperscript{52}Bigelow, Fraudulent Conveyances 207; 27 C.J. 547.
\textsuperscript{53}(1818) 3 John Ch. (N.Y.) 481.
\textsuperscript{54}Minn. G.S. 1913 sec. 7015.
\textsuperscript{55}Filley v. Register, (1860) 4 Minn. 391 (296).
It seems that the word “creditors” used without qualification in this section, denotes present or existing creditors, although not expressly so stated. Thus in section 5, “creditors” is used to denote present creditors as distinguished from “other persons who become creditors,” and in sections 6 and 7, “future creditors” are specifically mentioned. This corresponds to the former law in Minnesota and in most states, where a voluntary conveyance by an insolvent, presumptively fraudulent as to existing creditors, is not fraudulent as to future creditors, in the absence of fraudulent intent, although there is authority in some few states to the effect that subsequent creditors can also set aside such a conveyance, even without actual intent to defraud being present.

ASSIGNMENTS FOR BENEFIT OF CREDITORS

What about the validity as to creditors under the Uniform Act of assignments for benefit of creditors? This subject contains a number of rules of law as to what clauses in such assignments make them conclusively or presumptively fraudulent and what do not. There is no special provision in the act for these assignments for creditors; and it would therefore seem necessary to apply the general rules laid down in the various sections. Inasmuch as a debtor can easily employ an assignment for creditors to secure substantial benefits for himself, and seriously delay his creditors, the courts have been inclined to tolerate such an assignment only if it is so worded as to secure a sale of the debtor’s assets without delay and a distribution of the proceeds to apply on his debts. Clauses authorizing the trustee to carry on the business, permitting the debtor to remain in possession, or requiring releases from the creditors (except under the insolvency act) or otherwise calculated to benefit the debtor rather than the creditors, rendered such assignments fraudulent. But an assignment made in good faith by an insolvent in trust to sell the property promptly and distribute the proceeds pro rata among all the creditors was permitted, since,

68Bigelow, Fraudulent Conveyances 102, 103 note; 27 C.J. 524.
69Truitt v. Caldwell, (1859) 3 Minn. 364 (257).
70May v. Walker, (1886) 35 Minn. 194, 28 N.W. 252; McConnell v. Rakness, (1889) 41 Minn. 3, 42 N.W. 539.
71Gere v. Murray, (1861) 6 Minn. 305, (215, 221, 222.)
though it might delay some one creditor who was about to attach or levy execution, it was calculated to get a better price and secure a more equitable distribution of the assets, and to prove more beneficial to creditors as a class than if they commenced each one for himself to bring suit or to try and secure a preference.

It would seem that under sections 3 and 4 of the Uniform Act all assignments for benefit of creditors leaving the debtor without assets to meet his debts, would be fraudulent and could be set aside by any non-assenting creditor, because of lack of "fair consideration." There is no transfer of property, or satisfaction of antecedent debts to constitute "fair consideration" under section 3 (a) unless in connection with the assignment, sufficient creditors release their debts to constitute a fair equivalent. Nor does there seem to be "fair consideration" under section 3 (b) for an assignment in trust to sell for benefit of creditors, since the words "to secure an antecedent debt," would naturally refer to a mortgage or pledge of property, where the debtor has a beneficial interest or equity that creditors may reach. The courts are inclined to treat a conveyance in trust to sell and pay debts as something quite different from a mortgage.

If, however, it should be held that there is "fair consideration" for an assignment in trust for benefit of creditors, then the validity of such assignments would apparently turn on the existence of actual intent to defraud under section 7 of the Uniform Act, and the various clauses formerly making such assignments void would appear to be evidence or presumptive evidence of fraudulent intent because they have the effect to defraud.63

While the Uniform Act changes the law, if it declares assignments for benefit of creditors void as to creditors in the absence of sufficient release of debts, yet the practical importance of such a change would not seem to be very great. At present, making a general assignment for benefit of creditors is an act of bankruptcy;64 and creditors can upset such an assignment, if they do not regard it as fair and beneficial, by throwing the debtor into bankruptcy. If such an assignment is fraudulent under the Uniform Act, it simply gives the creditors another

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63It is possible that it might be held that the Uniform Act does not apply to assignments for benefit of creditors at all, and that the law on the subject remains unchanged.
64Bankruptcy Act, sec. 3 a(4).
alternative method of upsetting the assignment, the right to reach and apply on their debts the property assigned.

"Section 5. [Conveyances by Persons in Business.] Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent."

This section states a case of constructive fraud against both present and future creditors. That is, the conveyance is fraudulent regardless of actual intent. It is to be noted that not all conveyances without fair consideration are fraudulent under the section when a person is engaging in a hazardous business. He may give away his property, providing he does not leave an unreasonably small capital remaining.

The section appears to state the weight of authority and probably represents the former law in Minnesota, although there seem to be no cases in this state on the point. There are cases in Minnesota laying down the rule that if the effect of a conveyance is to defraud subsequent creditors it is void as to them, that intent to defraud subsequent creditors may be implied, which will serve the same as actual intent. Doubtless the Minnesota court would have held that a conveyance by one in a hazardous business leaving him with too small a capital, implied an intent to defraud both present and subsequent creditors, which is the result reached in most states, and in effect the same as the Uniform Act. In regard to making such a conveyance, Jessel, M. R. said in a leading case:

"The grantor virtually says: 'If I succeed in business, I make a fortune for myself. If I fail, I leave my creditors unpaid. They will bear the loss.' That is the very thing which the Statute of Elizabeth was meant to prevent."

"Section 6. [Conveyances by a Person about to Incur Debts.] Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur
debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.\textsuperscript{97}

It is to be noted that this section, in contrast to the two preceding sections, requires a state of mind in the debtor, but that belief that he will incur debts beyond ability to pay, makes the conveyance fraudulent as well as intent to incur debts and to convey the property so as not to pay them. There has been considerable doubt as to the law on the matter,\textsuperscript{88} and there appear to have been no cases in Minnesota directly in point. Under this section, if a person of extravagant habits, who believes he is likely to incur debts, settles his property on members of his family so that the property may be protected from his creditors in case he does incur such debts, the settlement is fraudulent and void as to future creditors, although the primary intent of the debtor is to provide for his family against the likelihood of his incurring debts. A spendthrift may not thus put his property beyond the reach of his creditors. Indeed, the section goes further, and declares that the conveyance is fraudulent, regardless of the intent of the spendthrift in making it, if he believes he will incur debts he cannot pay. The section clears up a doubtful point, and probably makes some change in the law.

There is authority to the effect that where there is secrecy in the conveyance, and the debtor remains in apparent ownership so that future creditors would likely be misled, the conveyance is fraudulent as to future creditors, without actual intent.\textsuperscript{99} But such a situation is not covered by the Uniform Act as a case of constructive fraud, and it would seem to be governed by section 7 on actual intent, and by the rules of estoppel under section 11.

\textquotedblleft Section 7. [Conveyance Made with Intent to Defraud.] Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.\textquotedblright

This section provides that where there is actual intent to hinder, delay or defraud, etc., the conveyance is fraudulent, as distinguished from cases described in sections 4, 5, 6 and 8, where the conveyance is fraudulent without actual intent. This section is the same as the Statute of Elizabeth; and as far as it goes it

\textsuperscript{98}27 C.J. 521, 522; Bigelow, Fraudulent Conveyances 237.
\textsuperscript{99}Bigelow, Fraudulent Conveyances 103 note; Glenn, Creditors' Rights and Remedies sec. 170.
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states the existing law. However, in all states the Statute of Elizabeth has been construed to render certain conveyances fraudulent where there was no actual fraudulent intent; and to that extent it goes beyond this section. Such conveyances, fraudulent without intent, are covered by sections 4, 5, 6 and 8. It would seem under the Uniform Act that cases of constructive fraud must be limited to conveyances covered by those four sections, and that any conveyances which are not within those sections, but which have been held in the past to be fraudulent regardless of intent, would fall within section 7, and that actual intent must be shown.

The rules as to badges of fraud,\(^7\) and other rules of evidence\(^7\)^ as to how fraudulent intent can be shown, would remain the same under this section as formerly; and it might well be that the court would continue to hold that where the necessary effect of the debtor's act is to defraud creditors, this is presumptive evidence of his fraudulent intent. But the rule that certain facts constitute conclusive and irrebuttable evidence of fraudulent intent, when such rule is really used to mean that the conveyance is fraudulent regardless of actual intent, would seem to be abolished. However, the doctrine that a man is liable for the necessary effect of his acts, and that he must be held to intend what a reasonable man under the circumstances would intend, has a strong hold on the courts; and it will be an interesting question to see whether or not a set of rules as to constructive fraud is built up under this section.

It is to be noted that it is the intent of the debtor which is referred to in this section. The protection of a purchaser for fair consideration who had no knowledge of the fraud at the time of purchase, is provided for in section 9.

The rules have already been referred to under sections 1 and 3, that a conveyance of exempt property, or a conveyance to pay a debt to one creditor operating as a preference, are not fraudulent, no matter what is the actual intent of the debtor.

In one important particular, this section changes the former law in Minnesota. Although there is an expression to the contrary in an early Minnesota case,\(^2\) yet the subsequent cases\(^3\)
establish the rule that actual intent to defraud present or existing creditors is not sufficient to render a conveyance fraudulent as to subsequent creditors, that if the conveyance is attacked by subsequent or future creditors it is necessary to show intent to defraud subsequent creditors as distinguished from existing creditors. This is changed in the Uniform Act, which declares that intent to defraud either present or future creditors renders the conveyance fraudulent as to both. The states have been divided squarely on the point,74 one group adopting the rule laid down in the Uniform Act, and another group the rule formerly found in Minnesota. The Act will produce uniformity on the point; and under it a conveyance is fraudulent as to a future creditor, if there was intent to defraud a present creditor. Apparently any creditor, present or future, may take advantage of an intent to hinder, delay or defraud any other creditor. There is much to be said for this rule. In nearly every case where a debtor makes a conveyance with intent to defraud one creditor, he either intends also to defraud creditors generally, or such is the necessary effect of the conveyance. The assets available for creditors have been decreased by the conveyance. Nevertheless, it is frequently very difficult or impossible by the nature of the case to secure evidence, which must be largely circumstantial, to show actual intent to defraud some particular creditor or class of creditors.

"Section 8. [Conveyance of Partnership Property.] Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred,75

"(a) To a partner, whether with or without a promise by him to pay partnership debts, or

"(b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners."

The section is to be read in connection with section 2 which defines when there is insolvency in case of a partnership.

There appear to be no cases in Minnesota on the points involved; and the cases in other states are in disagreement and confusion.76 The section clears up the doubt on an important matter.

7427 C.J. 523, 524; Bigelow, Fraudulent Conveyances, 85-117, esp. 103 note.
75The act as printed in Minn., Laws, 1921 ch. 415, has a period instead of a comma at this point, by some mistake.
For both this act and the Uniform Partnership Act, Prof. William Draper Lewis of the University of Pennsylvania was draftsman; and the above section is worded to harmonize with the Partnership Act, which is also in force in Minnesota.\footnote{77}{See discussion and notes in 28 Harv. L. Rev. 774-777, and 29 Harv. L.R. 296, 298.}

It is to be noted that the section only covers certain conveyances by a partnership which are constructively fraudulent, and that the preceding sections also apply to conveyances by a partnership.

"Section 9. [Rights of Creditors Whose Claims Have Matured.] (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,\footnote{78}{See discussion and notes in 28 Harv. L. Rev. 774-777, and 29 Harv. L.R. 296, 298.}

\[(a)\] Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

\[(b)\] Disregard the conveyance and attach or levy execution upon the property conveyed.

\[(2)\] A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment."

This section raises a number of important points which may perhaps best be discussed under the following headings,—what creditors may proceed to reach the property fraudulently conveyed, when may the creditor proceed for that purpose, against whom may he proceed, how may he proceed, what property may he reach, and what is the purchaser's right of reimbursement. Just as with the preceding sections, the discussion in general is to be understood as relating to the right to annul fraudulent obligations as well as to reach property fraudulently conveyed, although the annulling of obligations is not specifically mentioned. Of course, as to some matters, by their nature, such as the right of attachment, the discussion would not apply to obligations created in fraud of creditors.

**Who may Proceed to Reach Property Fraudulently Conveyed?**

The section adopts the general rule in the United States that only creditors as to whom a conveyance is fraudulent\footnote{78}{There is a comma at this point in the official text of the uniform act, which by mistake is printed as a period in Minn., Laws 1921, ch. 415.} may have

\footnote{79}{Sections 4 to 8 have stated the creditors as to whom various conveyances are fraudulent.}
it set aside, although in England and in some states the rule seems to be that if a conveyance is fraudulent as to one creditor, any other creditor may set it aside, at least if a creditor as to whom it is fraudulent, remains unpaid. In applying this section, however, section 7 must be borne in mind, which declares that a conveyance with intent to defraud existing creditors is fraudulent also as to subsequent creditors, thereby changing the former rule in Minnesota. The broad definition of "creditor" in section 1, that a creditor is any one having any legal claim, is also to be remembered.

It seems clear that assignees, personal representatives, heirs and successors of creditors have the same right to reach property fraudulently conveyed as have the original creditors, although they are not specifically mentioned in the act as they were in the Statute of Elizabeth and in the Minnesota statute. The assignees etc., of creditors stand in the shoes of the original creditors and are creditors themselves. At common law they would have the rights of the original creditors to reach the property fraudulently conveyed; and under section 11 the existing law continues in force in matters not covered by the act. An illustration would be where A gave his note to B and subsequently made a conveyance without fair consideration, while insolvent, fraudulent under section 4 of the act; and B thereafter endorsed the note to C. C, holder of the note, would have the same right to set aside the conveyance as B. It is obvious, however, that where a claim cannot be assigned or abates on the death of the owner, the purported assignees, or personal representatives, having no right to the claim, cannot set aside the conveyance as fraudulent.

The rights of trustees in bankruptcy, receivers, assignees for benefit of creditors, executors and administrators and other representatives of debtors, to bring action to recover back property fraudulently conveyed, for the benefit of creditors whose rights they also represent, are not within the scope of the act. This section describes the rights of creditors acting for themselves to reach property fraudulently conveyed. It does not regulate the

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80 Fullington v. N. W. Importers' Ass'n, (1892) 48 Minn. 490, 51 N.W. 475, 31 A.S.R. 663. The rule of this case, however, to the extent that it holds that a conveyance with intent to defraud existing creditors is not fraudulent as to subsequent creditors, is changed by sec. 7 of the act.

81 Bigelow, Fraudulent Conveyances 103 note; Glenn, Creditors' Rights and Remedies, sec. 160.

82 Minn., G.S. 1913, sec. 7014.

83 27 C.J. 478; Bigelow, Fraudulent Conveyances 105 note.
right of the trustee in bankruptcy of the debtor or other representative of both debtor and creditors to recover back property fraudulently conveyed, either in a plenary action for the benefit of all creditors or in an action for the benefit of certain creditors. In many cases, in order to secure equality of distribution among creditors and to recover property for a trust estate, the bankruptcy trustee or other representative can secure the property for the benefit of all creditors if the conveyance is fraudulent as to any; while if the creditors bring actions as individuals, only those as to whom the conveyance is fraudulent, may reach the property under the above section. The existing statutes and common law in regard to the rights of trustees in bankruptcy, receivers, assignees for creditors and others as representing the debtor and creditors, are not changed by the act.

**When may the Creditor Proceed?** The act apparently makes an important change in this matter. Under this section the only prerequisite of the creditor's right not only to attach the property fraudulently conveyed, but also to bring action to set aside the conveyance, is that his claim shall have matured; and under the next section a creditor whose claim has not even matured may have the conveyance set aside. At common law, and in Minnesota prior to the passage of this act, it was necessary as a general rule for a creditor to secure judgment on the debt due him before an action would lie to set aside a fraudulent conveyance, though there were some exceptions to the rule. Such an action was regarded as one in aid of a judgment. In apparently doing away with this requirement of a judgment, and allowing the action to set aside the conveyance to be brought at any time, this section and the one succeeding, make an important change, but one

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84 For instance, sec. 70a(4) of the Bankruptcy Act, vests the trustee with title to property transferred in fraud of creditors by the bankrupt; secs. 7313 and 7314, Minn., G.S. 1913, provide, where the property of the deceased available for payment of his debts is insufficient to pay them in full, for the recovery by the executor or administrator of any property disposed of by the deceased with intent to defraud creditors, or by conveyance which for any reason is void as to them; sec. 8332 Minn., G.S. 1913, provides that the assignee in a general assignment for creditors shall represent the creditors as against all conveyances fraudulent as to them. It is to be presumed that when the question under such statutes is whether a certain conveyance is fraudulent, that the law of the state on fraudulent conveyances, found in the Uniform Act, will be applied.


86 27 C.J. 727 et seq.; Glenn, Creditors' Rights and Remedies, sec. 73 et seq.

87 Dunnell's Digest, sec. 3923; Wadsworth v. Schisselbauer, (1884) 32 Minn. 84, 19 N.W. 390.
which has a number of advantages, in avoiding great and unnecessary delay and circuity of action.

It is argued in a review of the Uniform Act appearing in the Columbia Law Review, that no sound doctrine has allowed the simple creditor to attack a conveyance as fraudulent, and that section 9, in connection with section 11, providing that "the rules of law and equity including the law merchant . . . shall govern" in cases not provided for in the act, should be construed as requiring by implication that a judgment must be obtained before the creditor may "have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim." The reviewer further states that section 10 should not be taken according to its words, as allowing a creditor of an unmatured claim to proceed generally to set aside a conveyance, but should also be construed so as to follow substantially the common law.

Under such a view of their meaning, sections 9 and 10 would produce practically no change in the law. But there are important considerations leading one to the contrary view, and to believe that the sections are to be construed according to the natural and apparent meaning of the words: first, the view that judgment on the debt must first be secured, renders section 10 meaningless; second, there are a number of important practical advantages in not requiring a judgment before the action to set aside the conveyance; third, in about one-third of the states there have been statutes in force for many years, doing away with the need of first securing judgment, and it is natural to suppose that the rule in these states was adopted in the uniform act as working better in practice; fourth, in the other states, there have been a number of important exceptions to the rule requiring judgment, so that there is nothing extraordinary or untried about bringing the action to set aside before judgment is secured. On account of the importance of the matter, these points will be discussed in more detail.

First, it is obvious that section 9, construed in connection with section 10, means that any creditor whose claim has matured, may proceed to have the conveyance set aside, and not merely a judgment creditor. Under section 10, a creditor whose claim has not matured may so proceed; and such a creditor would not have secured a judgment. What meaning can section

10 have if it requires judgment to proceed? It is not reasonable to suppose that it was intended by section 10 to permit a creditor whose claim had not matured, to proceed without judgment, and at the same time not to permit a creditor with a matured claim to proceed under section 9, unless he had secured judgment. The two sections appear to be parallel and subject to like construction as regards the requirement of judgment.

Second, if the creditor need not wait for judgment, he can proceed at once to set aside the conveyance at the same time that he sues on the debt; and instead of waiting for two cases to be brought on and tried, one after the other, the cases would be on the calendar at the same time. The time necessary to realize on the debt would be cut in half. Probably the debt and the fraudulent conveyance would be tried in one case, with two defendants.\textsuperscript{89} Inasmuch as debtors who convey property in fraud of creditors frequently desire to cause the creditors as much delay and expense as possible, any change of procedure which reduces the delay has a strong point in its favor. An example of the delay under the former rule is the ordinary case of a fraudulent conveyance of real property. The creditor would sue on the debt and attach the property. On recovering judgment he could sell on execution; but it would be impossible in most instances to secure a satisfactory price to satisfy his debt, since subsequent litigation is necessary to determine the question of a fraudulent transfer, and therefore title.\textsuperscript{90} He would, therefore, commence an action to set aside the conveyance after obtaining judgment on the debt. It saves great delay and circuity of action to be able to bring and try the two actions at once. If the property was not fraudulently conveyed, it is an advantage to the owner to have the matter disposed of with less delay, since the property is tied up from the date of the original attachment.

Third, some eighteen states have realized the advantages to be gained from doing away with the requirement that judgment on the debt precede the action to set aside the conveyance, and have abolished the requirement by statute. These statutes vary considerably in form.\textsuperscript{91}

\textsuperscript{89}27 C.J. 736, note 39.
\textsuperscript{91}For statement of the statutes see 14 A. & E. Encyc., 2nd ed., 319 note, and 5 Encyc. Pl. & Pr. 475 note. See also 27 C.J. 735, 736; 12 R.C.L. 631.
Fourth, the courts of states, not having such statutes, have realized the hardship of requiring judgment, and have permitted the action to set aside fraudulent conveyances in many cases without first securing judgment. Thus, where the debtor has absconded, or is a non-resident, the court does not ask that personal judgment be first secured against him on the debt, as this would require going to another state or be impossible. Also, many states permit an action to set aside a fraudulent conveyance in aid of an attachment lien, without first securing judgment. Again, a judgment creditor may bring a creditor’s bill to set aside a fraudulent conveyance in behalf also of other creditors who may join him, who have not recovered judgments; and trustees, receivers, executors and others representing creditors are constantly suing to set aside conveyances, where some or all of the creditors have not recovered judgments. In England and Canada a simple creditor can bring a suit to set aside a fraudulent conveyance, thereby preventing the grantee from dealing with the property.

For the above reasons it would seem that the uniform act is to be construed as permitting a creditor to sue to set aside a fraudulent conveyance, without first securing judgment, and that the argument that such procedure is so contrary to existing practice and policy that the act must at all hazards be stretched in its construction to avoid it, is unsound and not true to fact.

In case the courts construe the uniform act as not requiring the creditor to first secure judgment, there are several matters to note. Although the statutes to a similar effect above referred

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95 27 C.J. 729.
96 27 C.J. 729.
97 The right of the creditor to interfere with the property fraudulently conveyed before he has established his debt at law, is recognized in his right to attach. If he may attach, why may he not also sue to set aside the conveyance and save time? This is in substance the procedure in garnishment under sec. 7870, Minn., G.S. 1913. Sec. 7889, Minn., G.S. 1913, giving a creditor the right to enjoin the debtor from disposing of his property fraudulently pending the suit on the debt, is an example of a remedial statute giving a right not recognized at common law. See 5 Encyc. Pl. & Pr. 473.
98 Note the right in some states of the creditor having a subsequent lien by mortgage, etc., to set aside the conveyance without procuring judgment, 27 C.J. 734. One holding a junior chattel mortgage may attach a senior chattel mortgage as fraudulent without first procuring judgment.
to have been liberally construed as remedial legislation in the states where passed, yet they are without effect as affecting equity procedure in the federal courts. Again, if the Fraudulent Conveyance Act applies to chattel mortgages as well as section 6707 General Statutes 1913, and to conveyances to a third person, where the debtor furnishes the consideration to the grantor, as well as section 6966 General Statutes 1913, then an action can be brought under the uniform act to set aside such a mortgage or conveyance by a simple creditor before judgment has been secured, which does not appear possible under those sections.

It is also important to note the effect that the uniform act would have on the statute of limitations, if it gives the right to bring action to set aside the fraudulent conveyance without first securing judgment. Formerly the statutory period of six years did not begin to run until judgment was secured and docketed in the county where the land lay, although the fraud had been discovered before, because the judgment was a prerequisite to bringing the action. But now it would appear that once the creditor has a claim the statute commences to run as soon as the fraud has been discovered; and it has been so held in states where by statute the action may be commenced before judgment.

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97 Encyc. Pl. & Pr. 476; 27 C.J. 736; Jones v. Smith, (1890) 92 Ala. 455, 9 So. 179.

In general under section 6966, Minn., G.S. 1913, a simple creditor must secure a judgment before he can sue to establish a trust in the property; Gerton v. Massey, (1866) 12 Minn. 145, (83); 27 C.J. 730.

In regard to chattel mortgages it is important to distinguish between rules stating as to what creditors the mortgage is void or fraudulent, and rules stating when a creditor as to whom the mortgage is void, may bring action to set it aside. It is one of the former rules, which in Minnesota declares that a chattel mortgage is void because not filed only as to creditors who have secured a lien on the property. Goldberg v. Brule Timber Co., (1918) 140 Minn. 335, 337, 168 N.W. 22, and cases there cited. However, such a mortgage has been held void as to simple creditors because fraudulent, Coykendall v. Ladd, (1884) 32 Minn. 529, 21 N.W. 733; Citizens State Bank v. Brown, (1910) 110 Minn. 176, 124 N.W. 990; and under the definition of "creditor" in section 1 of the Uniform Act, there would be no distinction between simple creditors and creditors with a lien, in determining as to whom the chattel mortgage was fraudulent.

990 Rounds v. Green, (1882) 29 Minn. 139, 12 N.W. 454.
9910 Duxbury v. Boice, (1897) 70 Minn. 113, 72 N.W. 838. Question whether the rule of Brasie v. Minneapolis Brewing Co., (1902) 87 Minn. 456, 93 N.W. 529, 97 A.S.R. 538, that statute runs from date of sale, where real property is sold on execution and ejectment suit brought to determine whether conveyance was fraudulent, would continue to apply to cases of sale on execution.
9912 Combs v. Watson, (1877) 32 Oh. St. 228; Ramsey v. Quillen,
Against Whom may the Creditor Proceed? This section in providing that the creditor may act against any person except a purchaser for fair consideration without knowledge of the fraud at the time of purchase, or one deriving title from such purchaser, follows in general the former law in Minnesota. Section 7016, General Statutes 1913, similarly protected purchasers for value without previous notice of the fraud; while it has been held that where the purchaser participated in the fraud, the conveyance could be set aside in toto. The uniform act, however, appears to make some minor changes. Thus under the act, the purchaser to hold the property must give “fair consideration” as defined by section 3, or otherwise he is only entitled to reimbursement. Now section 3 requires a fair equivalent to constitute a “fair consideration,” and in other particulars may require more than the former rules as to a sufficient consideration. This has been already referred to under section 3. On the other hand, in the matter of what is good faith, the uniform act appears to be more favorable to the purchaser. It has been held in Minnesota that if a purchaser has knowledge of facts which would put an ordinarily prudent man on inquiry, this constitutes notice sufficient to set aside the conveyance. This section seems to require that the purchaser have knowledge of the fraud, not merely notice, thus protecting the purchaser who is negligent and does not exercise the care of the ordinarily prudent man, but nevertheless acts in good faith. This corresponds to the rule as to holders in due course under the Uniform Negotiable Instruments Act.

How may the Creditor Proceed? The section specifies two ways in which the creditor may proceed: (a) have the conveyance set aside, or (b) disregard it and attach or levy execution on the property. These are the methods laid down in the leading Minnesota case, except, of course, that a judgment was formerly a prerequisite to bringing the action to set aside. It is

(1880) 5 Lea (Tenn.) 184; McBee v. Bearden, (1881) 7 Lea (Tenn.) 731 (contingent claim, not matured.)

102Thompson v. Bickford, (1872) 19 Minn. 17 (1).

104Sec. 9 (2).

105Manwaring v. O'Brien, (1899) 75 Minn. 542, 78 N.W. 1; See 27 C.J. 513, 514. In such cases where the purchaser has not been guilty of actual fraud, the courts have usually granted him reimbursement. See Leqve v. Stoppel, (1896) 64 Minn. 74, 66 N.W. 208; 27 C.J. 671-672, 674.

106Sec. 56, N.I.L., Minn., G.S. 1913, sec. 5868.

107Jackson v. Holbrook, (1887) 36 Minn. 494, 32 N.W. 852, A.S.R. 683. They are also the methods in general use in other states.
true that the court in that case, mentions three remedies, (1) to sell on execution and let the purchaser contest the validity of the title, (2) to bring action to have the conveyance removed as an obstruction to selling on execution, and then sell after decree in that action, (3) to bring action to have the conveyance adjudged void as to the judgment, and have the land sold by receiver or officer of court. It would seem, however, that (2) and (3) would both come under (a) of the uniform act, since they are both actions to set aside the conveyance, except that in one case the officer of the court sells in the same action, and in the other case the action is followed by sale on execution. It seems clear that there is no abolishing of any of the former remedies by the act, especially in view of section 11. It is remedial legislation and to be broadly construed; it is a re-statement of the law, and so to be construed; and the Minnesota rule that the equity action to set aside could be brought in aid of and preceding sale of land on execution at law, is the general one in the United States.\textsuperscript{108}

For similar reasons it is not to be supposed that the Uniform Act abolishes garnishment as a method of reaching property fraudulently conveyed,\textsuperscript{109} although it is not specifically mentioned. Many states do not have garnishment statutes under that name; and in a uniform act the words would naturally be broadly construed to cover the various local forms of remedies. "Attach" would seem, therefore, in this act, to include "garnish."

It has been held in Minnesota that the title of property fraudulently conveyed remains in the grantee, even after sale on execution, until the fraudulent character of the conveyance is established in legal proceedings.\textsuperscript{110} This is contrary to the general rule that the sale on execution gives title to the purchaser at the sale.\textsuperscript{111} In view of the words of this section which are that the creditor may "disregard" the conveyance and levy execution, and of section 12 which requires uniformity of construction in the different states enacting the law, it may well be that the court will hold that the rule on this matter has been changed by the uniform act.

The above section does not specify how the attachment is to be made, leaving that to the existing law of each state. The

\textsuperscript{108}27 C.J. 719; Glenn, Creditors' Rights and Remedies sec. 77-79.
\textsuperscript{109}Benton v. Snyder, (1875) 22 Minn. 247.
\textsuperscript{111}67 L.R.A. note at 865, 900; 27 C.J. 704; 16 H.L.R. 375.
attachment affidavit prescribed by statute has been used in practice regularly to apply to cases of constructive fraud, where there was no actual intent to defraud; and no doubt an affidavit in the words of the statute, that the debtor has disposed of his property "with intent to delay or defraud his creditors," will be held to apply to any conveyance fraudulent under the uniform act, although it be a conveyance under section 4, 5, 6 or 8, made without actual intent to defraud. The words of the attachment statute would be words of art in that they would be construed as covering whatever conveyances the law of the state may declare are fraudulent as to creditors.

What Property may the Creditor Reach? The definition of "conveyance" in section 1 covers any form of property, and therefore any property conveyed can be reached under section 9. The act does not cover such other questions of relief, as the right of the creditor to an accounting by the transferee for rents and profits of the property, the right to personal judgment against the transferee where he has sold the property or mingled it with his own, the right of the transferee to re-imbursement for taxes paid and other expenses, incumbrances paid off, etc. On these and similar points, under section 11 the existing rules of law would apply.

Purchaser's right of reimbursement. The reason for subdivision two of the section, allowing a purchaser who has given less than fair consideration for the conveyance, to retain the property as security for repayment, if he had no fraudulent intent, is obvious. Two cases present themselves, first, where the entire price is inadequate and has been paid, second, where the price is adequate, but only part has been paid by the purchaser. As to the former, the rule was in most cases, that inadequate consideration was evidence of fraud of the purchaser, but if in fact there was no fraud then the purchaser held the property at law, but equity permitted the conveyance to stand only as security, while if there was actual fraud in the purchaser, he had no right even to reimbursement. Under the uniform act, if the price is inadequate, and the conveyance is otherwise fraudulent under sections 4 to 8, the purchaser without actual fraudulent intent may hold the property only as security for repayment under

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112 Minn., G. S. 1913, sec. 7846, subd. 4.
113 See Dunnell Digest, sec. 3892, 3893, 3930, 3891; also 27 C. J. 670, 668, 855, 675-7.
114 Carson v. Hawley, (1901) 82 Minn. 204, 210, 84 N. W. 746, 27 C. J. 544, 545.
section 9 (2), while a purchaser having such fraudulent intent may not have reimbursement. This appears to involve some change in the form of stating the law, rather than in its substance, and has been referred to under section 3. In many cases before the uniform act, the same result was reached by apparently somewhat different reasoning, the conveyance being held constructively fraudulent because of the inadequate price, in which case the purchaser could hold the property as security for the inadequate price paid, which could not be done if the purchase was actually fraudulent. The advantage of the act is to make the rule clear and uniform.

As to the second case, of part payment by the purchaser in good faith before discovery of the fraud, the rule under subdivision two of this section and under section 3, which defines "fair consideration" as the conveyance of property which is a fair equivalent by the purchaser, not merely a promise to pay, seems to be that in such case there is no "fair consideration," and that the purchaser may not pay the rest of the price after he discovers the fraud, but may only hold the property as security for repayment of the installments already paid. This was also apparently the former rule.

"Section 10. [Rights of Creditors Whose Claims Have Not Maturated.] Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,

"(a) Restrain the defendant from disposing of his property,
"(b) Appoint a receiver to take charge of the property,
"(c) Set aside the conveyance or annul the obligation, or
"(d) Make any order which the circumstances of the case may require."

The change which this section and the preceding one appear to make in the rule that the creditor ordinarily must secure judgment before bringing action to set aside the conveyance, has already been discussed under section 9. The cases of creditors whose claims have not matured, securing court protection where there has been a fraudulent conveyance, are not so numerous as

116Crockett v. Phinney, (1885) 33 Minn. 153, 22 N.W. 289; Riddell v. Munro, (1892) 49 Minn. 49, 53, 52 N.W. 141.
117In Minn., Laws 1921, ch. 415, (a) is printed (2) by some mistake.
cases where the claims have matured but have not been reduced to judgment,\textsuperscript{118} but they are not unknown.\textsuperscript{110} Where a creditor has a note not yet due, and the debtor has conveyed his property fraudulently, the creditor may well require protection in the form of an order preventing the transferee from further dealing with the property; and lack of such an order at the time might well cause the creditor loss of ability to collect his debt when it matured, and therefore irreparable damage.\textsuperscript{120} The words in this section, as contrasted with the preceding one, are "the court may." It is in the discretion of the court to grant the preliminary relief, the nature of which is outlined in the act.

"Section 11. [Cases Not Provided for in Act.] In any case not provided for in this Act the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern."

The section provides, what would largely be true in its absence, that the act shall be construed in relation to the common law and law merchant. Such a section is found generally in the uniform acts. Reference has already been made under the various sections to a number of doctrines and rules which probably continue in force, because not mentioned in the act, and not covered by it. Many more such rules could be enumerated.

"Section 12. [Construction of Act.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

This section is found in the various uniform acts. Judicial construction is a large part of any legislation, if not the largest part, and is especially important in applying the present act. The advantages of uniformity can only be achieved if the courts in the different states construe the act alike. Otherwise there can be just as confusing diversity in the law, as if the statute itself was worded differently in the separate states.

\textsuperscript{118}Statutes permitting actions to set aside without first securing judgment have been construed to apply only to matured claims. 27 C.J. 736 note 38; 5 Encyc. Pl. & Pr. 477, note 4.

\textsuperscript{110}Thus the Tennessee code has allowed an accommodation indorser or surety to sue out an attachment against the property of the principal who has fraudulently conveyed his property, as security for his liability, whether the debt on which he is bound be due or not. McBee v. Bearden, (1881) 7 Lea (Tenn.) 731.

\textsuperscript{120}For an instance of preliminary injunction against fraudulent conveyances being allowed, see Minn., G.S. 1913, sec. 7889.
"Section 13. [Name of Act.] This act may be cited as the Uniform Fraudulent Conveyance Act."

By taking advantage of this section to cite the act by its nationally known name, and by using the section numbers of the act in referring to its provisions, judges and lawyers will make their references easily understood anywhere in the United States. Uniformity of reference to the act and its provisions are a decided advantage in its use.

"Section 14. [Inconsistent Legislation Repealed.] Sections 7010 and 7013 of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this Act are hereby repealed; but sections 7011, 7012, 7017 and 7018 of General Statutes, 1913, are not repealed."

The sections of the General Statutes which are superseded by the uniform act and by it expressly repealed, as well as those mentioned as not repealed, have been discussed at the beginning under the heading Scope of the Act. Such sections of the statutes as are partly repealed, and not mentioned in the act, were also there referred to.

"Section 15. This act shall take effect on the first day of January, one thousand nine hundred and twenty-two."

121 See 7 Minnesota Law Review 455-59.