Some Comments on the Section of the Minnesota Statute of Frauds Relating to Contracts

Robert Kingsley
SOME COMMENTS ON THE SECTION OF THE MINNESOTA STATUTE OF FRAUDS RELATING TO CONTRACTS

By Robert Kingsley*

For over two hundred and fifty years, the Statute of Frauds has been a source of discussion and criticism, much of it acrimonious. Of the principal sections which have been retained in our modern law, those relating to the conveyance, leasing, and contracts for the sale of land, and to the creation and transfer of trusts, have received wide and full treatment; and the old seventeenth section, relating to the sale of goods, has received the benefit of the scrutiny of the draftsmen of the Uniform Sales Act, in which in its present form, it is now embodied. But, by comparison, the old fourth section has been neglected by the writers, though not by the courts.

The purpose of the present paper is to classify the Minnesota decisions on this one section, and to comment briefly on those points which seem to call for comment. It does not attempt to state fully the whole law of Minnesota on the subject. Only those problems have been discussed which have been considered by the Minnesota court. For discussion of the other problems, which have not yet arisen in Minnesota, the reader is referred to the general works on the subject. Since the paper is, thus, concerned primarily with the rules of the one jurisdiction, reference

*Assistant Professor of Law, University of Southern California; formerly (1926-27) Instructor in Law, University of Minnesota.

1Mason's 1927 Minn. Stat. secs. 8456, 8459, 8460, 8379.
2Mason's 1927 Minn. Stat. sec. 8379.
3Mason's 1927 Minn. Stat. sec. 8456:

"No action on agreement, when—No action shall be maintained in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

1. Every agreement that by its terms is not to be performed within one year from the making thereof.
2. Every special promise to answer for the debt, default, or doings of another.
3. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.
4. Every agreement, promise or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings."
STATUTE OF FRAUDS

has been made to decisions in other jurisdictions only for the purpose of explaining or indicating the wisdom of the Minnesota rules.

The problems to be discussed fall under three main heads:

1. What contracts are, by their nature, within the terms of the statute, i.e., to what kinds of contracts is the statute applicable?

2. What formalities satisfy the requirements of the statute?

3. What is the effect of the statute on those contracts which, although of a type to which the statute is applicable, have not been created in accordance with its requirements.

I. To What Kinds of Contracts is the Statute Applicable?

A. Contracts not to be performed within one year

"Every agreement that by its terms is not to be performed within one year from the making thereof."

In effect, this means contracts which, by their terms, do not contemplate the possibility of being fully performed within one year. In other words, certain contracts, although they may possibly run for a period longer than one year, are not within the statutory bar, because the parties had in contemplation, at the time they entered into them, the possibility of their terms being fully carried out within that time. Thus, a contract which, although it is to run for an indefinite period, can be terminated by either party at will is not under the ban, nor is a contract of fire insurance, since both parties contemplate the possibility of destruction of the property and payment of the loss before the policy has been in force a year.

---

1Below, pp. 747-757.
2Below, pp. 757-760.
3Below, pp. 760-768.
4Mason's 1927 Minn. Stat. sec. 8456 (1).
5Cowles v. Warner, (1876) 22 Minn. 449, where it was said:
6If, however, beginning within the year, it was to continue in force for an indefinite period of time, with the right to either party to terminate it at any moment before expiration of such year, and its obligations were of such a character that they could all be performed within that period, without contravening any of its terms, then it was without the statute, and was a valid and binding contract; accord: Stitt v. Rat Portage Lbr. Co., (1905) 98 Minn. 52, 107 N. W. 824, 6 L. R. A. (N.S.) 191, 116 Am. St. Rep. 387.
7Wiebler v. Milwaukee Mechanics Mut. Ins. Co., (1883) 30 Minn. 464, 16 N. W. 363, where it was said that the statute:
8of course, does not include an agreement that may, in accordance with its terms, be fully performed and ended within the year; as where the thing to be done depends on a contingency that may happen within the time. This is the case with a contract to insure, where the insurance is to commence within the year."
Oral contracts of hiring for a term of service of more than one year, however, although there is a possibility of the servant's death within that period, which would terminate the contract, are nevertheless under the terms of the statute, since such a possibility cannot, properly, be said to have been in the contemplation of the parties; and so, also, are contracts of hiring for a one year term to begin in the future.

It is also obvious that although a contract does not in so many words provide that its performance shall continue into a second year, yet if it shows from its entirety that such was the intention, it is under the statute.

On the other hand, the court held in the case of Langan v. Inverson that if one party has already fully performed, or if he is fully to perform his part within one year, or does so perform, then the contract is not under the statute.

The general statement at the opening of this section may be changed, then, to read:

"A contract which, by its terms, does not contemplate the possibility of being fully performed on either side, within one year from the date of its making."

It requires no argument to show that oral leases where the term is for more than one year are under this section of the statute, as well as under those relating to interests in land. But if the term is for one year only, so that these latter sections do not apply, can the instant section still be applicable? The first problem relates to such oral leases where the term is to begin in the future, for example, an oral lease, made on January 30th, for a year term to commence on February 1st. This agree-

---

103 Williston, Contracts, sec. 1940, p. 3296-7.
11La Du-King Mfg. Co. v. La Du, (1887) 36 Minn. 473, 31 N. W. 938.
13Veagie v. Morse, (1896) 67 Minn. 100, 69 N. W. 637, where the agreement was to reimburse a mortgagee for his foreclosure bid in case the mortgagor did not redeem within the year allowed by the statute; Grand Forks Lbr. Co. v. McClure Logging Co., (1908) 103 Minn. 471, 115 N. W. 406, which was a contract for the delivery of seventy-seven million feet of lumber, at the rate of nine to twelve million feet per year.
14(1889) 78 Minn. 299, 80 N. W. 1051; accord, Kruse v. Tripp, (1915) 129 Minn. 252, 152 N. W. 538; McRae v. Feigh, (1919) 143 Minn. 241, 173 N. W. 655; and probably Hammel v. Feigh, (1919) 143 Minn. 115, 173 N. W. 570.
ment, clearly, cannot be fully performed until the expiration of one year and two days. It falls, therefore, within the terms of the statute as rephrased above. Such has been the Minnesota holding. The first Minnesota case on the point was dictum, the court finding that there was no showing that the agreement was made before the term began, and stating, generally, the ordinary rules of the statute. The first square holding was in the case of Jellett v. Rhode. In that case the court pointed out, logically enough it would seem, that there was no difference between such a contract and any other, so far as it concerned the evil against which the statute is aimed. This rule has been followed in the subsequent cases.

These were cases of oral leases calling for a monthly payment of rent. But suppose the agreement were that the lessee should pay a year's rent in advance on the first day of the term. Would not his part of the contract be fully performed on that day, and the case fall under the rule of Langan v. Iverson? This depends on the real meaning of the rule of that case. It is expressly based, as are the other American cases in accord with it, on a line of English cases, the first of which was Donnellon v. Read. These were cases where the only "performance" left for defendant was the payment of money, and hence, as has been pointed out, the only real question was whether plaintiff should recover in an action on the contract, or in quantum meruit using the contract as evidence of his debt. It will be obvious that such a rule does not necessarily support a contention that where plaintiff has fully performed his part within the year, defendant can be compelled to do an act, or otherwise perform the contract in a manner other than the mere payment over of the contract price.

---

21 Mackey v. Potter, (1886) 34 Minn. 510, 26 N. W. 906.
22 The court said only, "... in cases where it [the statute] does apply, it must appear that the agreement cannot be performed, according to its terms, within one year from the time when it was made."
23 (1890) 43 Minn. 166, 45 N. W. 13.
24 "The evil result[s] likely to follow from allowing such a contract, the performance of which is to be long postponed, to rest in parol, without any written evidence showing the terms of the agreement, are of the same nature, and just as likely to occur, as in the case of any other contract." Jellett v. Rhode, (1890) 43 Minn. 166, 167, 45 N. W. 13.
25 Johnson v. Albertson, (1892) 51 Minn. 333, 53 N. W. 642; Brosius v. Evans, (1903) 90 Minn. 521, 97 N. W. 373.
26 (1899) 78 Minn. 299, 80 N. W. 1051. See text to footnote 14.
27 (1839) 78 Minn. 299, 80 N. W. 1051. See text to footnote 14.
28 (1832) 3 Barn. & Ad. 899.
In fact, one court, in allowing a money recovery, seemed expressly to draw this distinction. Not all the courts have made this distinction, however. The Wisconsin case cited by the court to sustain *Langan v. Iverson* was a case where defendant's "performance" was to be the withdrawal from competition, and this has been followed in other jurisdictions. The Minnesota court has not squarely considered the point. In one case, *Hammel v. Feigh*, the court indicated that it would apply *Langan v. Iverson* to a situation where defendant's "performance" was the making of an accounting:

"This is an action for an accounting. The parties, as is noted later, accomplished the main purpose of their partnership. They performed, or at least the plaintiff did. The contract of partnership is no longer executory and the statute is without application to the present situation."

But the language there is, to say the least, equivocal, and, in any case, it may well be urged again that this is not strictly a suit on the contract but merely a use of it to show a duty to account.

The question must, then, be left unanswered. If the court decides to follow the orthodox reasoning which supports the main rule, then the reversal of situation would leave this contract within the statute; but if the court follows the more liberal language of some of the other cases, such a contract might well be supported.

So far, the established rules are relatively clear, and in the main, in accord with legal opinion the country over. One last

---

25Dufree v. O'Brien, (1888) 16 R. I. 213, 14 Atl. 857, where the court said, at p. 217, "... there is ... a wide distinction between a case where one seeks to enforce a verbal contract more than a year after it was made, when witnesses to its terms may have died, or from lapse of time have lost their clear recollection of executory stipulations, and a case where one simply seeks to recover payment for a benefit received."

26Washburn v. Dosch, (1887) 68 Wis. 436, 32 N. W. 551.

27(1889) 78 Minn. 299, 80 N. W. 1051.

28Cf., for example, Smalley v. Greene, (1880) 52 Iowa 241, 3 N. W. 78.

29(1919) 143 Minn. 115, 173 N. W. 570.

30(1889) 78 Minn. 299, 80 N. W. 1051.

31The only proposition so far discussed on which there is an appearance of conflict is Jellett v. Rhode, (1890) 43 Minn. 66, 45 N. W. 13. As is pointed out in that case, the cases apparently contra to it can be explained on one of the three grounds:

1. The cases arising under a statute which, like the English statute, allows oral leases for three years—thus indicating a legislative purpose to exclude leases from the "contracts not to be performed within one year."

2. The New York cases decided on the basis of a legislative action amending the "land" section which had formerly read "oral leases for one year from the making thereof" by omitting the italicized words, thus indicat-
situation remains, however, which is not so clear. Suppose that A on January 2nd orally agrees with B that on February 1st they will execute formally a written contract or lease, for a term of one year to begin on February 1st. Does the statute apply to this situation? The Minnesota court has held that it does. The question seems first to have been raised in this state in 1896, and the court indicated that the agreement fell under the ban of the statute, but this was dictum, and the case actually went off on a question of evidence. Five years later, the question was again before the court in *Taylor v. Times Newspaper Co.* In that case, plaintiff had submitted to the defendant company a "secret plan" for procuring advertising. The parties had signed an agreement, which was not formally correct under the statute as it did not express the consideration, by the terms of which the company agreed to examine the plan and if it decided to accept it, to enter into a formal contract; if not, to return the plan. It also provided that if defendant did use the plan without executing the formal contract, it should be liable to pay to plaintiff certain percentages of the earnings, as liquidated damages. Plaintiff claimed that defendant, after claiming to reject the plan, had actually used it, in violation of this agreement. He was met at the outset by the claim that he was barred from relief by the statute. This objection, the court briefly, and without discussion, rejected in these words:

"Contracts held void under the first sub-division of . . . [Mason's 1927 Minn. Stat., sec. 8546] . . . are such only as cannot by their terms be performed within a year; and the contract or preliminary agreement here under consideration does not come within that class."

*Engle v. Schneider*, (1896) 66 Minn. 388, 69 N. W. 139.

*Taylor v. Times Newspaper Co.*, (1901) 83 Minn. 523, 86 N. W. 760.

The discussion in the briefs of contracts is equally unsatisfactory. Practically the point is not considered. Appellant's brief does not mention the point at all; respondent's comment is as follows: " . . . that document . . . consists of several parts:

(a) An agreement to enter into a formal contract 'on terms to be mutually agreed upon' if the Times decides to adopt the plan, and to make such formal contract before putting the plan into operation.

(b) An agreement to pay the penalty stipulated if the first agreement is violated and the plan put into operation without first making the formal contract.
For a year, the situation stood thus, with a dictum running one way, and an unexplained holding tending the other. Then, in 1902, the problem arose in a third case, *Cram v. Thompson.*

This case involved a lease. There had been an oral agreement by defendant to take plaintiff's store and to execute a written lease therefor when it had been rebuilt ready for his company. The plaintiff tried the case in both the court below and in the appellate court on the theory that he had an oral "lease," and devoted his whole effort to an attempt to prove that his actions were a part performance sufficient to take the situation out of the effect of the statute. There was no suggestion, on either side, that the agreement was anything else, so that, by its terms, the statute would not apply. In this situation, the court introduced its consideration of the real problem by the simple introductory remark that:

"The agreement for the future execution of the lease was void, as it was not in writing, and could not be performed within a year."  

The last pronouncement of the court was in 1915. In a case, *Hanson v. Marion,* very similar on its face to *Cram v. Thompson,* the problem was squarely raised. The court indicated that it considered the remark in the *Cram Case* to be a binding decision. The nature of that case has just been pointed out.

(c) An agreement to notify the plaintiff if the Times decides not to take the plan, so that plaintiff may open negotiations with other newspapers in the city.

(d) An agreement not to give anyone interested in any newspaper outside of the city any details of the plan.

(e) An agreement not to make, or permit anyone else to make, a copy of any part of the plan while in the possession of the Times for examination.

No consideration is expressed in this "memorandum" for any of these several agreements on the part of the Times Co., and the stipulation (b) cannot by its terms be performed within one year. (Respondent's brief, p. 6.)

Hence it will be seen that neither side properly argued the question of whether the agreement listed as "a" by respondent came under the statute.

35*(1902) 87 Minn. 172, 91 N. W. 483.

36The case is classified in *Dunnell* as a case of an oral "lease."

6 *Dunnell's Digest*, 2nd ed., sec. 8863, note 38.


38*(1915) 128 Minn. 468, 151 N. W. 195.

39*(1902) 87 Minn. 172, 91 N. W. 483.

40Supra at footnote 36.

41The court said, "The . . . contention . . . is disposed of by *Cram v. Thompson*, [(1902) 87 Minn. 172, 91 N. W. 483]. . . . It was there expressly held that an oral contract to execute a lease, which when executed would extend for a period beyond one year, was within the statute and unenforceable. The question was squarely decided in that case and the decision must be deemed as settling the law on the subject in this state." *Hanson v. Marion*, (1915) 128 Minn. 468, 471, 151 N. W. 195.
nically, the statement may have been "holding," but it was made without the benefit of argument by counsel, and without, apparently, any real consideration by the court. It would seem, therefore, that, under usual rules of construction, the court was in error in supposing that the Cram Case was binding on it on this point.

But the court appended to its reference to the earlier case, a brief statement of its reasons for refusing to depart from its earlier language. It said:

"The agreement to enter into such lease is of no greater validity than an oral contract of lease, had one been entered into instead of the agreement to do so. If the oral agreement to enter into a lease which by the statutes is required to be in writing, be held valid, then the purpose of the statutes is wholly nullified, and may be avoided in all cases ... We ... discover no sufficient reason for departing from the rule of the Cram Case, and therefore follow and apply it as there laid down."

If the court was wrong in holding that there was a prior decision by which it was bound, this reasoning must stand as the real basis of the rule. Consequently its validity is worthy of consideration. Would the purpose of the statute be as much defeated by allowing this contract, as by allowing the one last discussed? The answer to this question depends on the answer to the more fundamental question: what is the real purpose of the statute? The statements in the authorities seem to indicate two closely related purposes: first, to make actual fraud and forgery more difficult, by providing for a mode of proof relatively difficult to "manufacture," and second, and this is prob-

42Cram v. Thompson, (1902) 87 Minn. 172, 91 N. W. 483.
43An error which is rendered the more curious by the fact that the unauthoritative nature of the previous case was clearly pointed out by counsel for the appellant on page 20 of his brief:
"It will no doubt be claimed that the supreme court of this state has announced a doctrine contrary ... and the case of Cram v. Thompson, [(1912)] 87 Minn. 172, [91 N. W. 483] cited as authority for such claim. While in that case the court may have used language which is in conflict with the rule announced by the cases cited by plaintiff it did not pass on the question in that case, as both parties assumed that the statute rendered the contract invalid."

44Mason's 1927 Minn. Stat. secs. 8456, 8460.
45Hanson v. Marion, (1915) 128 Minn. 468, 471, 151 N. W. 195.
46"To secure defendants against unfounded and fraudulent claims."
1 Williston, Contracts, sec. 448, p. 862.
"The object of the statute of frauds, as its name indicates, was to prevent men from being, through fraud or perjury, held liable for engagements which they never made. To prevent this wrong it was eminently proper that their promises or agreements (using the latter word in its
ably the main purpose of that portion now under consideration, to guard against the frailties of even honest memories, by providing for a more certain mode of proof in those cases where the opportunities for forgetfulness are the greatest.\textsuperscript{47}

Applying these objects to the case in hand, it would seem that the court erred in thinking that this class of contracts must be held to be within the statute. The oral lease to begin in the future carries with it the possibility of requiring that the parties and their witnesses remember all its terms for a period longer than that which the legislature has decided is safe; but the oral contract to execute a lease requires only such a remembrance up to the time fixed for making the lease, which is to be a less period than that set.\textsuperscript{48} The authorities, as the court itself admits, are in conflict on this point,\textsuperscript{49} and, as a matter of fact, some of the

\textsuperscript{47}"Indeed the real object and scope of the statute would seem to extend far beyond all questions of the integrity of witnesses, and to comprehend the exclusion of merely oral testimony in certain classes of transactions, as at best of an uncertain and deceptive character." Browne, Statute of Frauds, 5th ed., vii.

\textsuperscript{48}The facts of a recent case may serve to illustrate the proposition. In Wm. Weisman Realty Co. v. Cohen, (1923) 157 Minn. 161, 195 N. W. 898, plaintiff claimed under an indorsement, made on April 11, 1919, on the back of a lease which would not expire until Dec. 31, 1922, or more than two years later, that:

"The lessee is hereby given the option of renewing this lease for a period of five years from the expiration thereof... upon giving six months notice before expiration of his intention so to do," which did not satisfy the statute by lack of a recital of consideration. Here the court quite properly held the statute to apply. This agreement to "renew," was, obviously, not to be performed, even by the execution of a new instrument, until, at the earliest, six months prior to December 31, 1922, or more than two years after the promise was made. Hence this was an agreement which, in the language of our general rule, as given in the text to footnote 15 supra, "does not contemplate the possibility of being fully performed on either side within one year from the date of its making."

\textsuperscript{49}Hanson v. Marion, (1915) 128 Minn. 468, 471, 151 N. W. 195. Contra to Hanson v. Marion are: Finucane v. Kearney, (1839) 1 Free. Ch. (Miss.) 65; Eaton v. Whitaker, (1846) 18 Conn. 222, 44 Am. Dec. 586; Henderson v. Touchstone, (1857) 22 Ga. 1; Shakespeare v. Alba, (1884) 76 Ala. 351; 1 Tiffany, Landlord and Tenant, 384, sec. 66a: "... since the performance of such an agreement consists in the making of the lease, the fact that the lease, when made, will extend until the expiration of a period greater than a year from the date of the agreement should not, it seems clear, bring the agreement within such provision;" Smith, Fraud 411, sec.
authorities cited by the court as supporting its holding would seem to be distinguishable.\textsuperscript{50} This being the case, it would seem that the court, when the point again arises, might well consider the proposition anew, with a full discussion of all the authorities and of the application of the objects of the statute to this particular situation, a course it recently has followed in another connection.\textsuperscript{51}

It may be urged against any reconsideration that the present rule has become established and should not be changed. Were the situation reversed, this argument would have force. Even though one does not believe that, under the rules of stare decisis, a decision overruling a former decision should be prospective only,\textsuperscript{52} still it is true that if contracts have been made in reliance


Sometimes cited as in accord with Hanson v. Marion, but actually distinguishable as being cases where the contract sought to be enforced was the "ultimate" contract, and not the contract to execute a written contract, are: Box v. Stanford, (1849) 13 Smedes & M. (Miss.) 93, 51 Am. Dec. 142; Caylor v. Roe, (1884) 99 Ind. 1; Donenmuhler v. Eilenberger, (1897) 70 Ill. App. 189; Appeal of Freeman, (1899) 69 N. H. 470, 43 Atl. 183; Falk v. Devendorf, (1920) 172 Wis. 10, 177 N. W. 894.

Four cases found cited on the proposition do not seem to be in point at all: Hawley v. Moody, (1852) 24 N. D. 603; Winteran v. Cherry, (1883) 78 Mo. 344; Brauer v. Oceanic Steam Nav. Co., Ltd., (1904) 178 N. Y. 339, 70 N. E. 863; Howie v. Swaggard, (1926) 142 Miss. 409, 107 So. 556.

\textsuperscript{50} Of the five cases cited by the court in support, one, Appeal of Freeman, (1899) 69 N. H. 470, 43 Atl. 183, is distinguished above (note 49); one, Hovell v. Sonnabend, (1906) 191 Mass. 310, 77 N. E. 764, was decided on the ground of part performance; and one, Strehl v. D'Ever, (1872) 66 Ill. 77, while containing language in support was actually decided on the ground that the alleged oral agreement to execute a written contract had not been found.

\textsuperscript{51} Cf. Agard v. People's Nat'l Bank, Shakopee, (1927) 169 Minn. 438, 211 N. W. 825, where, although cited to previous discussions as far back as volume 17 of the Minnesota Reports, the court said, "To whatever extent our former decisions may have committed us, we have given the problem a thorough reinvestigation with a view to choosing anew that side of the issue which seems best supported by reason."

\textsuperscript{52} For an excellent discussion of when a court decision overruling a
upon a decision to the effect that they need not comply with the requirements of the statute, it would be harsh and unjust to penalize their makers unless the necessity for so doing was undoubted and overwhelming. But in the present situation, no such equity arises. The only person who could claim to have "relied" on the present rule would be a man who had deliberately made an agreement, intending to evade it later by invoking the bar of the statute. Clearly little sympathy need be felt for him.

In conclusion, then, the rules of interpretation of this part of the statute, so far as they have developed, are, in the main, sound. Two things only require attention: first, a clear statement of the extent to which the language of Langan v. Iverson is to be carried; and second, a thorough reconsideration of the rule of Hanson v. Marion in the light of the decisions in other states, and the purposes of the statute.

B. Promise to Answer for the Debt, Default or Doings of Another

"Every special promise to answer for the debt, default or doings of another." 55

The problems arising under this section, although frequently found and discussed in the works on the Statute of Frauds, are equally those of the substantive law of suretyship. Interesting as they are, they fall without the restricted scope of this paper.

C. Agreements Upon Consideration of Marriage.

"Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry." 56

No case seems to have arisen in Minnesota in which the applicability of this section was put in issue. In the first of the

former decision should be taken as prospective merely, consult (1927) 5 N. C. L. Rev. 170.

53 (1889) 78 Minn. 299, 80 N. W. 1051.
54 (1915) 128 Minn. 468, 151 N. W. 195.
55 Mason's 1927 Minn. Stat. sec. 8456 (2).
57 For some other discussions of these problems, consult, (1924) 8 MINNESOTA LAW REVIEW, 628; Arnold, Indemnity Contracts and the Statute of Frauds: Thomas v. Cook versus Green v. Creswell, (1925) 9 MINNESOTA LAW REVIEW, 401.
58 Mason's 1927 Minn. Stat. sec. 8456 (3).
three cases in which it is referred to, the court found from the evidence that the defendant's promise was not made on consideration of marriage but on another consideration, and that the reference in the oral agreement to plaintiff's marriage was only for the purpose of fixing the time of performance.

The second case admitted that the contract was within the statute and was concerned solely with the problem of whether the statutory requirements had been met; the third admitted both that the statute applied and that its requirements had not been compiled with, and discussed solely the effect of the statute in that situation.

D. AGREEMENTS TO PAY A DEBT DISCHARGED IN BANKRUPTCY

"Every agreement, promise or undertaking to pay a debt which has been discharged by bankruptcy or insolvency proceedings." Apparently it has never been construed.

II. WHAT FORMALITIES DOES THE STATUTE REQUIRE?

A. IN GENERAL

"... unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party charged therewith." As is the general rule, the formalities of the statute are satisfied by the existence of a number of papers, provided that taken together and without the need of parol evidence to connect them, they make out a complete statement of the transaction.

The other cases are concerned with the problem of "expressing the consideration." The Minnesota statute attempted to settle

---

56Slingerland v. Slingerland, (1888) 39 Minn. 197, 39 N. W. 140.
60Siewers v. Siewers, (1896) 65 Minn. 104, 67 N. W. 802. For a discussion of the principles involved in this case, see infra, text to footnotes 64 et seq.
61Haraldson v. Knutson, (1919) 142 Minn. 109, 171 N. W. 201. For a discussion of the principles involved in this case, see infra, text to footnotes 117-123.
63Mason's 1927 Minn. Stat. sec. 8456 (4).
64Mason's 1927 Minn. Stat. sec. 8456.
66Halstead v. Minn. Tribune Co., (1920) 147 Minn. 294, 180 N. W. 556.
the conflict of authority which existed elsewhere over the correctness of the rule of *Wain v. Warlters*, requiring the consideration to be expressed, by enacting expressly the rule of that case into the statute. But the court, while apparently observing the phraseology of the statute, has frankly sought means of evading it. In an early case, the court, after setting forth what it conceived to be the object of the statute, said,

“But . . . it has never seemed to us that there was any necessity in order to prevent the mischief aimed at, for requiring all the motives and considerations which induced the party to make the promise, to be reduced to writing . . . The fact is that the expression of the consideration is so unnecessary in order to prevent the mischief aimed at, and frequently so inconvenient, that the courts have always been inclined to give this provision of the statute a very liberal construction, which sometimes . . . reduces it to a mere formality.”

The court, therefore, in accord with the weight of authority, has held that the mere words, “for value received,” were a good expression of “the” consideration; and, in that same case, in a dictum, approved the holdings of other courts that the statement of a nominal, or a false, consideration was sufficient, and also the doctrine that a seal would meet the requirement.

Whether this suggestion is the best one or not is open to considerable question. Even approving the court’s declaration of the object of the statute, viz:

“To prevent men from being . . . held liable for engagements which they never made . . . [by requiring that it] . . . be put into the durable form of a writing and not left to the uncertainty of verbal testimony;”

it is submitted that if the party requires any protection from the “uncertainty of verbal testimony” he requires it as much in the

---

70 The language of the court on this point has already been quoted, footnote 46 supra.
74 Happe v. Stout, (1852) 2 Cal. 460.
75 Childs v. Barnum, (1851) 11 Barb. (N.Y.) 14; 1 Reed, Statute of Frauds, 3931; but query whether this proposition is still valid, in view of our statute, Mason’s 1927 Minn. Stat. sec. 6933, abolishing private seals.
determination of what he was to get as in the determination of the making of some agreement. In fact, he may need it more. The existence of some agreement may well be remembered by witnesses, when the exact terms of it are lost. Hence too loose—"liberal"—a construction of this requirement may well result in depriving a party who has admittedly made some agreement of the benefit he had expected thereby.

Of course these objections do not apply to the situation of the main case. The phrase there sustained—"for value received"—indicates that the promisor has at that moment received his benefit, and, therefore, it becomes immaterial whether, in the future, witnesses are able to remember what it was.

Clearly, there is no need, under any view, that the expression of the consideration take any special form or manner. Hence, it is sufficient if the whole instrument, on its face, indicates what the consideration was.\(^7\)

B. EXPRESSING THE CONSIDERATION IN CONTRACTS OF GUARANTY.

The rules so far discussed apply equally to all four subdivisions. In addition, there are in Minnesota, a few cases which lay down special rules for contracts under the second subdivision.\(^7\)

As we have seen, ordinarily the contract itself must indicate the consideration. But in contracts of guaranty, ordinarily the consideration to the guarantor is solely the payment to the prin-

\(^7\)Straight v. Wight, (1895) 60 Minn. 515, 516-517, 63 N. W. 105: "It is not necessary that the written memorandum should expressly state what the consideration was. It is sufficient if, from the whole writing, it appears with reasonable clearness what was the consideration upon which the undertaking was given." See Wilson Sewing Machine Co. v. Schnell, (1873) 20 Minn. 40 (33), where the court said: "It is not necessary that the consideration should appear in express terms. It would undoubtedly be sufficient, in any case, if the memorandum is so framed that any person of ordinary capacity must infer, from the perusal of it, that such and no other, was the consideration upon which the undertaking was given. Not that a mere conjecture, however plausible, would be sufficient to satisfy the statute, but there must be a well-grounded reference to be necessarily collected from the terms of the memorandum."

See also Siewers v. Siewers, (1896) 65 Minn. 104, 105, 67 N. W. 802, where the language used was: "It is not required that what the consideration was shall be expressly stated, but upon what consideration the promise or undertaking was given must appear with reasonable clearness," but the court held that an agreement reading, "I . . . promise to pay to . . . [plaintiff] . . . on the wedding day when she shall become my wife, the sum of $1,000" did not satisfy the requirement.

\(^7\)Mason's 1927 Minn. Stat. sec. 8456 (2): "Every special promise to answer for the debt, default, or doings of another"—supra, text to footnotes 55 and 56.
principal of the consideration for his promise. Hence the courts have held that, if the contract of guaranty be given at the same time that the principal debt is created, and refers to it, the consideration is sufficiently expressed.\textsuperscript{79}

But if there is no showing in the memorandum that the original debt was not already in existence when the contract of guaranty was given, then the reference in it to the principal debt can be made to refer only to a consideration which is "past," and, therefore, insufficient. On this basis, a guaranty that:

"We . . . are held and firmly bound to . . . [plaintiff] . . . in the penal sum of $500, for the payment of which we hereby bind ourselves and our legal representatives firmly by these presents. Now, if . . . [the principal debtor] . . . redeems note dated April 20th, for $500, which expires August 20th, in favor of . . . [plaintiff] . . . , then the above to be void,"

was held bad under the statute, in the absence of any allegation that it was made and delivered contemporaneously with the note referred to.\textsuperscript{80}

III. What is the Effect of the Statute?

"No action shall be maintained in either of the following cases, upon any agreement,"\textsuperscript{81} etc.

We are here considering a case where the contract is one of those for which the statute requires certain formalities, with which the parties have not complied. What is the effect of the above language in such a case? Are the parties entirely remediless; or is some relief open to them; and, if so, what?

The common mode of expressing this question is to inquire whether the statute makes the contract "void," or merely "unenforceable." It is the writer's opinion that the Minnesota court definitely has held that contracts under this section are not void.

\textsuperscript{79}See Wilson Sewing Machine Co. v. Schnell, (1873) 20 Minn. 40 (33): " . . . we think the weight of authority is in favor of the proposition that the objection that the consideration is not stated does not apply to a guaranty of a note when the written promise of the debtor sets forth a consideration and the guaranty refers to the original indebtedness, and is made and delivered at the same time therewith."

\textsuperscript{80}Wilson Sewing Machine Co. v. Schnell, (1873) 20 Minn. 40 (33). On the same theory, simply endorsing on a note, "I guarantee the collection of the within note," was insufficient. Nichols, Shepard & Co. v. Allen, (1877) 23 Minn. 542; and, clearly, a mere blank endorsement was bad. Meer v. Folsom, (1869) 14 Minn. 340 (260).

\textsuperscript{81}Mason's 1927 Minn. Stat. sec. 8456.

\textsuperscript{82}Johnson v. Albertson, (1892) 51 Minn. 333, 53 N. W. 642. For a discussion of this case see infra, text to footnotes 90-97.
but that the only effect of this section of the statute is to make them unenforceable by an action ex contractu.

For over sixty-five years, there was but one case even remotely questioning this interpretation. On the other hand, the breach of the terms of such an oral agreement was held to be a defense to an action in quantum meruit for the part actually performed, on the theory that this was not maintaining an action on the contract, but merely showing that no unjust enrichment had taken place.

One of the most recent decisions seems to point in the same direction. In Theopold v. Curtsinger there had been an oral lease for one year to begin in the future, in which the plaintiff lessor had agreed to make certain repairs. The repairs not being made, defendant moved out after eleven months of occupancy. Plaintiff sued for the rent due for the last month and defendant counterclaimed for damages for the failure to repair. The court held that the statute did not apply, apparently on some idea of estoppel.

But the court has gone even further than this. If the contract had been performed, even though it could not be enforced by a suit thereon, yet it could be used, in an action in quantum

---

83Dean Goodrich indicates that, in his opinion, one other case had questioned this. (1919) 4 Iowa L. Bull. 184, 187, footnote 12 and text thereto. But the case cited, Waite v. McKelvey, (1898) 71 Minn. 107, 72 N. W. 727, was concerned with the old section relating to the sale of goods. G. S. 1913, sec. 6999, (since repealed, and replaced by the Uniform Sales Act, Mason's 1927 Minn. Stat. sec. 8379) whose language expressly declared contracts coming under the terms of that section to be "void."

84Kriger v. Leppel, (1889) 42 Minn. 6, 43 N. W. 484.

85"Oral contracts of this description are not wholly void. No action, it is true, can be maintained to enforce them. So far, however, as the parties have voluntarily acted under and performed them, they are to be taken as defining and measuring the rights of the parties." Kriger v Leppel, (1889) 42 Minn. 6, 7, 43 N. W. 484.

86(1927) 170 Minn. 105, 212 N. W. 18.

87"Defendant was in possession under a written lease until September 1, 1921, retained possession thereafter under the oral lease, and paid rent for 11 months in accordance with its terms. . . . Certainly he was in no position to disavow the contract or escape payment of rent for August on the ground that the lease came within the statute of frauds.

"On the other hand, plaintiff, having accepted rent for 11 months under the oral lease and having then sued to compel payment of the rent for the last month of the term, could no longer be heard to say that the lease was not binding upon him. . . . Having acted to his detriment in reliance on the promise, defendant may well say that plaintiff is now estopped from asserting that the lease came within the statute of frauds. Therefore it cannot be held as a matter of law that the counterclaim was unenforceable because of the statute." Theopold v. Curtsinger, (1927) 170 Minn. 105, 108, 212 N. W. 18, 19-20 (Italics the author's).
meruit for two purposes: first, to show that the performance on
the part of the plaintiff was not intended to be gratuitous; and,
second, as evidence of what was the "reasonable value" of that
performance.⁸⁸

These cases, certainly, do not indicate that the contract was
"void." A void contract, by definition, creates no rights and
cannot be resorted to for any purpose. A contract which "de-
finies and measures" the rights of the parties is more than a void
contract.⁹⁰

True there is one case whose language might indicate a dif-
ferent view. In Johnson v. Albertson,⁹¹ there had been a parol
lease for one year to begin in futuro, a contract within the stat-
ute.⁹² The tenant had occupied the building for more than two
years, when he was evicted. He claimed to be protected for the
balance of the year, under the established doctrine that a tenant
for one year, who holds over, becomes, after a brief period, a
tenant from year to year.⁹³ The court rejected the plea, declining
to look to the oral contract for the purpose of determining the
length of his original term, and in so doing, spoke of the con-
tract as "void." It said:

"If the void lease can be looked at for the purpose of deter-
mining the duration of the term, the statute of frauds is evaded
beyond doubt; and the question whether the payment of rent was
made with reference to a yearly, monthly, or any other holding
should be determined without reference to the void demise . . .
If the void lease cannot be referred to during the first twelve
months for the purpose of determining the duration of the term,
(and all of the recent authorities go to this extent,) it is inconsis-
tent and illogical to say that by the lapse of time, and by the
payment of rent after the expiration of the first year, precisely
as it was paid before, the inference of a new and valid contract
arises, which, in the absence of proof to the contrary, must con-
trol . . . We are of the opinion that at no time can a parol demise,
void under the statute of frauds, be resorted to for the purpose
of ascertaining the duration of the term."⁹⁴

⁸⁸Spinney v. Hill, (1900) 81 Minn. 316, 84 N. W. 116; see Lally v.
⁹⁰It is recognized, of course, that strictly there can be no such thing as
a "void contract" since that is a contradiction in terms. The phrase has,
however, a well recognized meaning and is used here to save elaborate
circularity of expression.
⁹¹(1892) 51 Minn. 333, 53 N. W. 642.
⁹²Supra, text to footnotes 17-21.
⁹³Cf. 1 Tiffany, Real Property, 2nd ed., sec. 73.
⁹⁴Johnson v. Albertson, (1892) 51 Minn. 333, 336, 53 N. W. 642.
(Italicics the author's).
If this language is to be taken at its face value, then this case stands contra to the rule of the cases previously discussed. But does it do so? It was not necessary for the court to find the contract totally "void" in order to reach its decision. All that it holds is that such an oral contract, whatever else may be done with it, cannot be resorted to for the purpose of ascertaining the period with reference to which rent was paid; and one of the cases relied on to support the holding of this case expressly pointed out this distinction. Support for this idea may be found, also, in the fact that in the subsequent, analogous, case of Lally v. Crookston Lbr. Co., the court recognized that the contract was not totally void, at the same time that it refused to look to that contract for the purpose of determining whether an employee, kept on after his one year term was up, had been hired for another full year. It would seem not improper to regard the word "void" in Johnson v. Albertson as used without intention to distinguish it from "unenforceable" and as meaning only "within the bar of the statute."

The case of Halloran v. Jacob Schmidt Brewing Co., has been taken, generally, as indicating a contrary view. For this reason, it deserves a full discussion. It was an action, in Minnesota, on a contract executed in Iowa, guaranteeing the payment of rent on real estate located in Iowa. The contract was sufficient under the Iowa statute of frauds, but insufficient under the Minnesota statute for failure to express the consideration. The real question was one of conflict of laws—whether the Iowa, or the Minnesota, statute should be applied. According to the general principles of conflict of laws, this problem depended on the subsidiary one of whether the Statute of Frauds related to the "substance," in which case the Iowa law would apply, or to procedure merely, in which case the Minnesota law would govern.

In the leading English case, Leroux v. Brown, the court had decided that this section of the statute related merely to procedure,

9(1892) 51 Minn. 333, 53 N. W. 642.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
99(1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917E 777.
and, therefore, that if the law of the forum had not been satisfied, no suit could be brought on the foreign agreement. In reaching this decision, the court drew a famous distinction between this section and the old seventeenth section, based on the difference between the use of the words “no action shall be brought” in the instant section, and the words “no contract shall be allowed to be good” in the other, and indicated that the latter words rendered the contract void, hence related to the substance, and that a contract under the latter section would have been enforceable in England.

This distinction, based on a difference in language, the Minnesota court refused to adopt, saying,

“... it is probably true that the legislators had no particular reason in mind for the different phrasings in section 6998$^{103}$ and 6999.$^{104}$ G.S. 1913, of our statute of frauds pertaining to similar transactions. No doubt, the main object in the enactment of both sections was to circumvent the occasion for perjury and consequent fraud, by providing for written evidence in respect to certain contracts . . . . We believe no distinction should be made between the two sections because of the use of the language ‘no action shall be maintained’ in the one, and ‘every contract shall be void’ in the other; but that the phrases, in the connection in which they are used, mean one and the same thing, namely, to make a valid contract in this state, concerning subjects mentioned in said sections, a writing is required;”$^{105}$

and held that the statute was more than a mere rule of procedure, and, therefore, that the Iowa statute applied.

It has been assumed by writers that this was, necessarily, a decision that the Minnesota statute rendered contracts coming under it “void.”$^{106}$ To the writer, this assumption does not seem justified. Apparently the idea is that since, if the statute did make the contract “void,” it would affect the substance, therefore if it affects the substance, it must be because it is “void.”

$^{103}$Now Mason’s 1927 Minn. Stat. sec. 8456.
$^{104}$Now repealed, consult supra, footnote 83.
$^{105}$Halloran v. Jacob Schmidt Brewing Co., (1917) 137 Minn. 141, 146, 162 N. W. 1082, L. R. A. 1917E 777.
$^{106}$(1926) 11 MINNESOTA LAW REVIEW 44, 51, note 28, “The Minnesota court has held that there is no distinction in the language of the different sections of the statute, holding the obligation in each instance void, and that the statute concerned the substance, Halloran v. Jacob Schmidt Brewing Co., (1917) 137 Minn. 141, 162 N. W. 1082 . . . .” (Italics the author’s); consult also (1926) 11 MINNESOTA LAW REVIEW 78, 79; (1926) 11 Cornell L. Quar. 361, 364, “Other courts hold that regardless of the words used the statute makes a contract coming within its term void,” citing this case.
But this does not necessarily follow. Professor Lorenzen has pointed out a line of reasoning by which an "unenforceable" contract may be deemed to affect the substance. This is not the place to discuss the correctness of that view. For our present purpose, it is immaterial what rule of conflict of laws is adopted in relation to the statute. If this was the view adopted by the court, then the writer is correct in his belief that the statute of frauds in Minnesota does not affect the validity of the contract.

Apparently such was the view of the court. In the previous case of *Hanson v. Marion*, it had been urged by the plaintiff that the statute was only a rule of evidence, and, hence, since he had been allowed to introduce evidence of the oral agreement without objection, the rule that "incompetent evidence is sufficient proof of a fact when received without objection" should apply and the defendant be now estopped from raising the question of the statute. The court rejected the idea that the statute was only a rule of evidence, saying:

"The language of the statute is that 'no action shall be maintained' upon the contracts there referred to unless in writing, and though the statute may be waived by the party entitled to invoke it, it is clear that the legislature intended by its enactment something more than a mere rule of evidence. If the statute declared that no evidence of such a contract was admissible unless in writing, the construction claimed for it would be well grounded. But it does not so read, and the construction of the statute heretofore has been that the contract is unenforceable, and not as a limitation of the mode of proof."

In other words, the statute determines what constitutes an actionable fact—not the mode of proving that fact.

---


108 (1915) 128 Minn. 468, 151 N. W. 195.

109 The court says, 128 Minn. 468, 473, that defendant raised this point. This is an obvious slip—the briefs show that it was raised by plaintiff, and, in the nature of things, he is the only one who would.

110 *Hanson v. Marion*, (1915) 128 Minn. 468, 473-4, 151 N. W. 195. This view seems correct. See Lorenzen, The Statute of Frauds and the Conflict of Laws, (1923) 32 Yale L. Jour. 311, 324. The statute of frauds is not a rule of evidence at all. It may furnish the occasion for the operation of a rule of evidence—namely, the so-called "best evidence rule"; but if the requirements of that rule are met, as for example, by proof of the loss or destruction of the note or memorandum, oral evidence of the contents of that writing are admissible, consult Siewers v. Siewers, (1896) 65 Minn. 104, 67 N. W. 802.
In two subsequent cases, reference has been made to the Halloran Case. In both, it has been treated as not inconsistent with considering contracts within the terms of the statute as “unenforceable” merely. In Matson v. Bauman it was treated as simply laying down a rule of conflict of laws; while, in its last pronouncement on the point, Oxborough v. St. Martin, the court cited the Halloran Case as authority for an even more extreme position than it had previously taken, namely, that even contracts under one of the “land” sections of the statute could be used as evidence in an action in quantum meruit, in spite of the fact that the language of the section there in question more clearly referred to validity than that of the section which is the subject of this article.

In Haraldson v. Knutson is to be found a further indication that this section of the statute does not make contracts void. In that case there had been an antenuptial marriage settlement, which, while reduced to writing, was not signed until after the marriage. It was argued that the statute should be taken as making the antenuptial agreement void, and hence, that the writing when executed was a postnuptial settlement, and the Halloran

---

111 Halloran v. Jacob Schmidt Brewing Co., (1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917 E 777.
112 (1918) 139 Minn. 296, 166 N. W. 343.
113 "In Halloran v. Jacob Schmidt Brg. Co., (1917) 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917 E 777, it was held, in respect to the question of the statute of frauds, that a contract made and to be performed in another state, by parties residing therein, must be controlled as to the sufficiency of the written agreement by the law of that state,” Matson v. Bauman, (1918) 139 Minn. 296, 299, 166 N. W. 343.
114 (1926) 169 Minn. 72, 210 N. W. 854.
116 Mason’s 1927 Minn. Stat. sec. 8459.
117 "There is a verbal difference in the statute of frauds as applied to different subject matters upon which some courts base a distinction, holding that in the instances where the statute refers to the contract as void it is not admissible for any purposes. We have held that there should be no such distinction. Halloran v. Jacob Schmidt Brg. Co. 137 Minn. 141, 162 N. W. 1082, L. R. A. 1917 E 777.” Oxborough v. St. Martin, (1926) 169 Minn. 72, 73, 210 N. W. 854. In other words, in Minnesota, apparently, if this language is to be accepted, no contract is made utterly without legal consequences by any section of the Statute of Frauds. The possibility of this far reaching importance of this case seems to have been overlooked by the commentators upon it. (1927) 40 Harv. L. Rev. 648; (1927) 27 Col. L. Rev. 337, they discussing only whether it is proper to use the oral contract as evidence of reasonable value in addition to using it as evidence of whether the services were intended to be gratuitous.
118 (1919) 142 Minn. 109, 171 N. W. 201.
Case was cited to the court as authority for such an interpretation of the statute. The court rejected this interpretation, though without reference to the previous case, and held that the original agreement was not totally "void," but merely "unenforceable" and subject to being made fully valid by a subsequent memorandum, signed at any time, even after marriage.

The court in this case uses language which is, in view of the other cases, open to criticism. In one place it says: "The distinction, where a statute declares a contract void if not made in compliance with its provisions, and where it provides that no action shall be maintained thereon, is clear." To draw in this manner a distinction from the varying language of different sections is, clearly, contra to the previous decision in the Halloran Case, and has since been again disapproved in the Oxborough Case. But this language was not necessary to the decision, and, even if it is incorrect, the case is still good authority for the "unenforceable" nature of contracts within the statute.

Since, then, all the cases before and after the Halloran Case have refused to consider this section of the statute of frauds as

---

121 For a collection of the authorities on the rule of this case, consult (1926) 11 MINNESOTA LAW REVIEW 78. As already indicated, the expression of doubt, contained in that discussion, as to the Minnesota rule, is, in my opinion, unjustified. The same situation has recently been before the supreme court of South Dakota, under a statute reading, "The following contracts are invalid..." S. D. Rev. Code 1919, sec. 855. That court followed the line of authority based on the terminology of the statute and held, following two Wisconsin cases, Brandeis v. Neustadtl, (1860) 13 Wis. 142 and Rowell v. Barber, (1910) 142 Wis. 304, 125 N. W. 937, 27 L. R. A. [N.S.] 1140, that its statute made all agreements not conforming to the requirements "void," and, therefore, that it could not be validated by any subsequent act. In re Peterson's Estate, (S.D. 1929) 226 N. W. 641. For a discussion of the Wisconsin rule, which is based on the terminology, consult Page, Failure to Comply with the Wisconsin Statute of Frauds, (1928) 4 Wis. L. Rev. 325.
122 Haraldson v. Knutson, (1919) 142 Minn. 109, 111, 171 N. W. 201.
making contracts totally "void," and since that case can be explained on a theory other than the "void" nature of the contract involved, there seems to be no reason for assuming that contracts falling under this section are anything more than "unenforceable" by an action in the nature of a suit on the contract.