Minnesota Land Contract Law in Action

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NOTE

MINNESOTA LAND CONTRACT LAW IN ACTION*

Much has been written concerning the various legal problems arising between a vendor and purchaser under a contract for the sale of land.¹ Emphasis is usually placed on the strength and multitude of the remedies available to the vendor and the dire consequences that may easily befall the defaulting purchaser. However, little thought has been given to the interrelated legal and economic problems encompassing the purchase of a farm by use of this medium. It is hoped that this Note will serve three purposes: (1) a review of the substantive law of vendor and purchaser in the State of Minnesota; (2) a disclosure of the basic economic and legal problems created by this law in farm purchases and a comparison with the mortgagor-mortgagee relationship, and (3) an evaluation of the solution to these problems (a) by adherence of the legal profession to the sixth canon of ethics or (b) by legislation.

VENDOR'S REMEDIES

Prior to the passage of Chapter 223 of the Laws of 1897² the judicial decisions of the State of Minnesota provided that when

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1. A contract for the sale of land may be termed a land contract, a contract for deed, or a bond for deed.

2. This act is the origin of Minn. Stat. § 559.21 (1953).
time was of the essence of a contract, the vendor could cancel the contract in the manner provided therein. This meant that if no provision was made for giving notice to the purchaser, he might forfeit all rights as of the day of breach by a default in any of the contract terms. However, where time was not declared to be of the essence of the contract, the courts were somewhat more liberal. Therefore, before the vendor could cancel the contract he was required to notify the vendee to perform and allow him a reasonable time in which to do so.

In contrast to the strictness indicated above, it was within the court’s discretion, in an equitable action to foreclose a land contract, either to allow a strict foreclosure or permit foreclosure by sale. Moreover, in those instances where strict foreclosure was allowed, the court almost invariably established a time for payment in excess of thirty days from the time of trial. At first, granting extra time was a matter of pure discretion with the “chancellor,” but later a defaulting obligee was deemed to have a right to it.

In 1897 Minnesota passed a statute supposedly designed to alleviate the plight of the vendee. This act, as amended, provides that a vendor may terminate a contract for the conveyance of real

3. Johnson v. Eklund, 72 Minn. 195, 75 N. W. 14 (1898); True v. Northern Pac. Ry., 126 Minn. 72, 147 N. W. 948 (1914) (by implication); see Ballantine, Forfeiture for Breach of Contract, 5 Minn. L. Rev. 329, 345 (1921). Where the vendor had an “election” to cancel the contract, he could not do so secretly, In such cases he must inform the purchaser of his decision prior to the time for payment, or if after default, a reasonable time must be allowed for payment. O’Connor v. Hughes, 35 Minn. 446, 68 N. W. 182 (1886).

4. See Jandric v. Skahen, 235 Minn. 256, 260, 50 N. W. 2d 625, 628 (1951); Graceville State Bank v. Hofschild, 165 Minn. 58, 61, 206 N. W. 948, 949 (1926). Nor was it necessary that a vendee be given notice to quit in order that his vendor might maintain an action of ejectment. See McClane v. White, 5 Minn. (Gil. 139, 146) 178, 186 (1860).

5. Where time is not of the essence, a court of equity may allow payment to me made after the time agreed upon. See, e.g., Dahl v. Pross, 6 Minn. (Gil. 38, 42) 89, 93 (1861).

6. See Graceville State Bank v. Hofschild, 166 Minn. 58, 61, 206 N. W. 948, 949 (1926); Austin v. Waels, 30 Minn. 335, 340, 15 N. W. 409, 411 (1883).

7. See Denton v. Scully, 26 Minn. 325, 326-327, 4 N. W. 41, 42-43 (1879). Strict foreclosure was not allowed in a majority of jurisdictions. See Vanneman, Strict Foreclosure on Land Contracts, 14 Minn. L. Rev. 342, 344 (1930).

8. Drew v. Smith, 7 Minn. (Gil. 231) 301 (1862) (six months); cf. Eberlein v. Randall, 99 Minn. 528, 109 N. W. 1133 (1906) (ninety days); London v. Northwest Am. Mortgage Co. v. McMillan, 78 Minn. 53, 80 N. W. 841 (1899) (ninety days).

9. See Drew v. Smith, 7 Minn. (Gil. 231, 238) 301, 309-310 (1862).


11. As aptly stated by the Iowa Supreme Court in Waters v. Pearson, 163 Iowa 391, 397, 144 N. W. 1026, 1929 (1914), concerning a similar Iowa statute, “[the statute] is a merciful provision . . . extending a little grace to a party in default who may be staggering under the load of his undertaking.”
estate because of default by serving notice on the purchaser stating the mode of default and that the contract will terminate thirty days after service of the notice unless the purchaser removes the default and pays the costs of service within that time. Its "... primary purpose ... is to prevent the vendor taking advantage, through a provision in the contract, or otherwise, of the vendee's failure to make payments on time or of other defaults, and depriving him of his rights in the property without a definite notice of cancellation." Since the Minnesota Supreme Court determined that this statute provided a remedy in the nature of a statutory strict foreclosure, it would appear that two interpretive results were possible. First, the court could have allowed various equitable defenses in proper cases, thus giving the defaulting vendee additional time over and above the thirty days granted by the statute. This result could be supported by the theory that this statute was designed to benefit the vendee, that thirty days was a minimum notice time, and that where equity required more time it should be allowed as it was before the statute was enacted. Second, the court could have interpreted the statute strictly, thereby allowing the defaulting vendee only thirty days from the service of notice regardless of counterbalancing equities. The latter course was followed, adding force to the statement of Professor Ballantine that "[t]he vigorous

15. See note 8 supra and text thereо.
16. E.g., Graceville State Bank v. Hofschild, 166 Minn. 88, 205 N. W. 948 (1926). It would seem that the former interpretation was one the court felt it could not make, for by 1924 its feeling was clearly expressed:
"We are dealing with an all too inelastic statute. It does not discriminate, as law ought to discriminate, between those who deserve its indulgence and those who leave forfeited all right to it. The vendee who in good faith has made substantial payments, amounting possibly to a large portion of the purchase price, had added substantial value to the property by improvements and is in possession, may be cancelled out, and possibly his entire estate forfeited,
policy of equity with reference to bonds and mortgages has not been carried out consistently in contracts generally. By applying the statute as interpreted to those cases where time was not of the essence of the contract, the conclusion is easily reached that more frequently vendees are given less time to remove a default than they were prior to the statute's enactment.

Other decisions regarding the statute were not as oppressive to the purchaser, however. It is still possible for a vendor to waive his right to a forfeiture by dealing with the purchaser as if the contract still existed. For example, acceptance of the defaulted amount as payment on the contract after expiration of the statutory thirty day waiting period constitutes a waiver as a matter of law. On the other hand, an acceptance of an overdue payment after notice has been served for breach of a different condition of the contract will not waive the pending proceeding.

In Needles v. Keys the vendor had inserted in the contract an acceleration clause by which he could declare the entire balance of the contract due and payable upon default of the vendee. In serving notice of default on the purchaser the vendor informed him that the option was thereby exercised and payment of the entire balance would be required to reinstate the contract. The court in holding for the vendee stated:

"We think the legislature did not intend to permit him [vendor], by his own act, to add to the conditions which the vendee must perform to cure his default and save his equitable rights. We think that the legislature intended that the contract should not be forfeited if, within the prescribed time, the vendee removed such defaults as were made grounds of forfeiture by the terms of the contract itself. And we hold that in proceedings under this statute, the vendor cannot, by exercising an option to declare deferred instalments due immediately, require the vendee to pay such deferred instalments or forfeit his contract [Italics added]."

just as summarily as the speculator who has made an insignificant down payment, is not in possession and does not intend further performance unless he can make a profitable deal. The law ought not to be in that condition, but it is, and it is our duty to apply it as we find it." Follingstad v. Syverson, 160 Minn. 307, 311, 200 N. W. 90, 92 (1924).

17. See Ballantine, supra note 3, at 341.
18. E.g., Graceville State Bank v. Hofschild, 166 Minn. 58, 206, N. W. 948 (1926).
19. Compare the provisions of Minn. Stat. § 559.21 (1953), with the cases cited in note 8 supra.
22. 149 Minn. 477, 184 N. W. 33 (1921).
23. Id. at 480, 184 N. W. at 34.
While this case precludes the possibility of the vendor gaining an advantage over a purchaser through the use of an “optional” or “elective” acceleration clause, it appears through negative implication from the wording of the opinion that a provision in the contract automatically accelerating the balance of the debt without any action by the vendor would be upheld. Not only would this result follow from the quoted case, but it is also in accord with general principles of equity, and in a majority of cases would probably make reinstatements of the contract impossible.

Successful termination of the contract by the vendor precludes him from obtaining a judgment for installments in arrears. Any judgment obtained prior to termination for overdue installments is subject to discharge of record, but payments already made are forfeited.

While § 559.21 is undoubtedly the most widely used remedy for a vendee’s breach of land contract, the vendor is not limited to its use alone. However, it is the sole remedy which eliminates the need for court procedure. The vendor may bring an action for specific performance, strict foreclosure, recission or damages for breach of contract; and since it is within the sound discretion

24. A clause accelerating the remaining balance for default where payment is being made in specified instalments is in no way a penalty and will be enforced in both law and equity. 2 Pomeroy, Equity Jurisprudence (5th ed., Symons, 1941).

25. While the result would be in accord with general principles of equity, see note 24 supra and text thereto, it would be an extremely inequitable result.

26. Smith v. Dristig, 176 Minn. 601, 224 N. W. 157 (1929); accord, Andresen v. Simon, 171 Minn. 168, 213 N. W. 563 (1927); see Des Moines Joint Stock Land Bank v. Wyffels, 185 Minn. 476, 477, 241 N. W. 592, 593 (1932). It is doubtful whether a contract provision would be upheld which made defaulted instalments a measure of liquidated damages payable to the vendor after he has successfully terminated the contract. See Smith v. Dristig, supra at 603, 224 N. W. at 157-158.


32. State Bank of Milan v. Sylte, supra note 31. Foreclosure by action “... is better for the vendee and gives him much more opportunity to protect his rights than the statutory cancellation.” Id. at 73, 202 N. W. at 71.

33. E.g., Hunter v. Holmes, 69 Minn. 496, 62 N. W. 1131 (1895) (by implication).

34. E.g., Wilson v. Hoy, 120 Minn. 451, 139 N. W. 817 (1913).
of the court whether a foreclosure should be strict or by sale,\textsuperscript{35} nothing appears able to stop the vendor from obtaining a foreclosure by sale with an attendant deficiency judgment in a proper case.\textsuperscript{36}

To indicate the value of an alternative remedy, a comparison of results achieved through use of § 559.21 and an action for damages is appropriate. \(A\) sells a farm to \(B\) on contract at a price of $10,000 with a $1,000 down payment, the balance payable in one year. During this period land values take an appreciable tumble so that the land is worth but $7,500 at the year's end. \(B\) decides that he would rather not pay $10,000 for land worth only $7,500 and defaults in his payment. Now if \(A\) proceeds under § 559.21 he will recover the farm worth $7,500 and retain the $1,000 down payment for a total value of $8,500. If he brings an action for damages for breach, he will still have the farm, and in addition to retaining the $1,000 already paid, he will obtain a judgment for $1,500.\textsuperscript{37} Assuming the total cost of litigation will be considerably less than the amount of the judgment, \(A\) will be wiser to bring the latter action rather than relying on the simpler procedure afforded him by § 559.21, for he will now have the land worth $7,500, the down payment of $1,000 and a judgment against \(B\) for $1,500 which total is equal to the original contract price. From the foregoing hypothetical situation the general principle can be formulated that whenever the market value of the land at the time of breach is sufficiently below the contract price so as to exceed the amount already paid by the purchaser, it will be to the advantage of the vendor to seek recovery of damages\textsuperscript{38} rather than terminate the contract in accordance with § 559.21.\textsuperscript{39}

\textbf{Vendee's Remedies}

Problems involving remedies available to the vendee need little discussion. However, it might be well to insert a word of caution.

\textsuperscript{35} See note 7 \textit{supra} and text thereto.

\textsuperscript{36} \textit{Cf.} London & Northwestern Am. Mortgage Co. v. McMillan, 78 Minn. 53, 80 N. W. 841 (1899). For an able criticism of the atrocious result reached in this case see Vanneman, \emph{Strict Foreclosure on Land Contracts}, 14 Minn. L. Rev. 342, 348 (1930).

\textsuperscript{37} It is also possible for a vendee to lose his rights by abandonment. Mathwig v. Ostrand, 132 Minn. 346, 157 N. W. 489 (1916).

\textsuperscript{38} In an action for damages the vendor is entitled to recover the difference between the contract price and market price at the time of the breach. \textit{E.g.}, Wilson v. Hoy, 120 Minn. 451, 139 N. W. 817 (1913).

\textsuperscript{39} If \(A\) believes that land values will continue to decline, he should bring an action for specific performance, which will place any subsequent loss on \(B\). Conversely, if it appears that land is about to appreciate in value, a damage action would be preferable.

\textsuperscript{39} Costs of litigation and inconvenience must be included in determining the better remedy in a particular case.
If a vendee has suffered loss through misrepresentations of the vendor and is desirous of maintaining an action for damages, thereby affirming the contract, he must bring the action prior to a contract termination effectuated by the vendor. It is highly probable that the vendee will afford the vendor an opportunity to terminate the contract, for what is more natural than to refuse to pay when one feels cheated. If the vendee fails to institute timely proceedings, he will be relegated to an action for money had and received. However, if the vendee has begun suit to rescind the contract, a restraining order will be issued preventing service of notice of termination prior to a determination of the rescission action.

**APPLICATION AND RESULTS OF THE DOCTRINE OF EQUITABLE CONVERSION**

Much of the substantive law applicable to contract for deed concerns the doctrine of equitable conversion. Underlying the doctrine, and an excellent illustration of it, is the equitable principle that "... equity regards that as done which ought to be done...." Application of this doctrine to the law of vendor and purchaser is limited by the specific enforceability of the contract. If for some reason the contract is not specifically enforceable no conversion is possible.

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40. West v. Walker, 181 Minn. 169, 231 N. W. 826 (1930); cf. International Realty & Securities Corp v. Vanderpoel, 127 Minn. 89, 148 N. W. 895 (1914). It is interesting to note that although the court speaks in terms of a completed cancellation, West v. Walker, supra at 171, 231 N. W. at 827, the fact that the vendee starts his suit for damages prior to the expiration of the thirtieth day will not effect a stoppage of the statutory termination action. See Olson v. Northern Pac. Ry., 126 Minn. 229, 148 N. W. 67 (1914).

41. An action for money had and received would be governed by the rules of recission. See id. at 233, 148 N. W. at 69. Since a termination action renders the contract completely nugatory, the court was powerless to assert that rescission was available to the vendee, for inherent in this remedy is that there be something to rescind. For an excellent opinion asserting that the vendee should be allowed recovery on a tort theory, thus obviating the legal anomaly indicated above, see the dissenting opinion of Justice Stone in West v. Walker, 181 Minn. 169, 172-174, 231 N. W. 826, 828-829 (1930).

42. Freeman v. Fehr, 132 Minn. 384, 157 N. W. 587 (1916).

43. "A contract for the sale and purchase of land has always been treated by the courts as creating an equitable conversion in favor of the seller as well as in favor of the buyer." Langdell, *Equitable Conversion*, 18 Harv. L. Rev. 245, 255 (1905). And the conversion occurs when the contract right is created. See Langdell, *Equitable Conversion*, 19 Harv. L. Rev. 321 (1906).

For an excellent critique of the application of this doctrine to land contracts, see Stone, *Equitable Conversion by Contract*, 13 Col. L. Rev. 369 (1913), who expounds the theory that the same results could be reached by more logical reasoning.

44. 4 Pomeroy, *op. cit. supra* note 24, at 472.

In general, equitable conversion allocates the benefits and burdens incident to interests in the land between the parties to the contract, and "... as between the parties and third persons, it is invoked to determine the devolution upon death of the rights and liabilities of each party with respect to the land, and to ascertain the powers of creditors of each party to reach the land in payment of their claims."46 The effect, then, is that for all practical purposes the vendee is the owner of the land.47

What does this mean specifically? First, that the vendee's interest will pass on his death to the devisee of his real estate, or if he should die intestate, to his legal heirs.48 As would then be expected, the vendor's interest passes as personalty.49 Either the vendor or vendee may sell50 or mortgage51 his interest, and the vendee's interest may be leased.52 Furthermore, the land may be reached by creditors of either party,53 but execution on one party's interest does not impair the rights of the other.54

46. See 3 American Law of Property 63 (Casner ed. 1952).
47. See Summers v. Midland Co., 167 Minn. 453, 457, 209 N. W. 323, 324 (1926). An executory contract for the sale of land makes the vendee equitable owner while the vendor retains legal title as security for the purchase price. See, e.g., Minnesota Building & Loan Ass'n v. Closs, 182 Minn. 452, 454, 234 N. W. 872, 873 (1931); Shraiber v. Hanson, 138 Minn. 80, 82, 163 N. W. 1032, 1033 (1917).
48. See, e.g., Chemedlin v. Prince, 15 Minn. (Gil. 263, 268) 331, 334-335 (1870); see 1 Tiffany, Real Property § 307 (3d ed. 1939). Since the trend today is to make a person's heirs and next of kin the same in most cases for purposes of decent and distribution, see, e.g., Minn. Stat. § 525.16 (1953), the importance of the application of the doctrine in cases of intestacy is greatly diminished.
50. Paynesville Land Co. v. Grabow, 160 Minn. 414, 200 N. W. 481 (1924) (vendee); Meyers v. Markham, 90 Minn. 230, 96 N. W. 335, 787 (1903) (vendor). However, in the latter case the vendee can sue the vendor for breach of contract or acquiesce in the transfer by dealing with the new owner.
51. Stannard v. Marboe, 159 Minn. 119, 198 N. W. 127 (1924) (vendee). The word "assigns" in § 559.21 includes the mortgagee of the vendee, and he is entitled to notice of termination whenever the vendor has actual or constructive knowledge of the mortgage. Failure to give such notice leaves the mortgage a lien against the contract and the land. Ibid.
52. Greenfield v. Olson, 143 Minn. 275, 173 N. W. 416 (1919).
53. Reynolds v. Fleming, 43 Minn. 513, 45 N. W. 1099 (1890). Even where the vendee has not completed payments his interest is subject to sale on execution with the purchaser being placed in the vendee's shoes and entitled to complete the purchase and demand a deed. Judgment liens are attachable to the vendee's interest. Hook v. Northwest Thresher Co., 91 Minn. 482, 98 N. W. 463 (1904).
54. See W. T. Bailey Lumber Co. v. Hendrickson, 185 Minn. 251, 252, 240 N. W. 666 (1932).
Another important effect of the doctrine of equitable conversion is that loss occasioned by injury to the property which is the subject of the contract is generally laid at the vendee's doorstep although some jurisdictions adopt the contrary view and still others have adopted the Uniform Vendor and Purchaser Risk Act which places this loss on the party in possession. While Minnesota appears to agree with the majority view where the vendee has paid part of the purchase price and is in possession, it remains an open question as to who would bear the risk of loss where nothing more had been done than the mere signing of the contract.

In those jurisdictions where risk of loss is on the vendee an additional problem arises. If only the vendor has taken out insurance and part or all of the subject property is destroyed, who is to receive the proceeds of the policy? In England and in some jurisdictions of the United States the judicial rule is that the proceeds shall inure to the benefit of the vendor thus allowing him to collect twice. The trend in this country, however, seems to be to allow the proceeds to stand in the place of the property thus reducing the amount of the purchase price. Although the Minnesota court has not decided the exact point under discussion, there can be little question but that its decision will be in accord with the latter, more equitable, view. Such a decision should be augmented with the holding that the cost of the vendor's premiums be charged to the vendee. However, since both vendor and vendee have insurable

55. See Vanneman, Risk of Loss, in Equity, Between the Date of Contract to Sell Real Estate and Transfer of Title, 8 Minn. L. Rev. 127-130 (1924).
56. See Note, 6 Minn. L. Rev. 513, 515 (1922).
59. In Teig v. Linster, 150 Minn. 111, 184 N. W. 609 (1921), the court points out that there are authorities both ways and then finds it unnecessary to decide the question. See id. at 113, 184 N. W. at 609.
For an interesting discussion of risk of loss concluding that the risk should remain with the vendor unless a contrary intent be implied, and that possession may or may not be the controlling element to indicate such intent, see Vanneman, Risk of Loss, in Equity, Between the Date of Contract to Sell Real Estate and Transfer of Title, 8 Minn. L. Rev. 127 (1924).
60. See 3 Corbin, Contracts § 670 (1951); 3 American Law of Property § 11.31 (Casner ed. 1952).
61. Cf. Cetkowski v. Knutson, 163 Minn. 492, 204 N. W. 528 (1925) (vendor collects proceeds of insurance running to vendee where vendor allowed to rescind for fraud subsequent to destruction of the property).
interests until the contract is fully performed, the above problem should not be allowed to arise.

Other results of the law of vendor and purchaser which are at least in part explicable by the doctrine of equitable conversion include the following: (1) the vendee is allowed the condemnation award in eminent domain proceedings; 63 (2) a spouse's statutory marital interest attaches to the equitable estate of the vendee and cannot be cut off by a provision in a contract between the vendor and vendee; 64 (3) a vendee, as well as a vendor, is considered a freeholder and as such may sign a petition to form a consolidated school district; 65 (4) a vendee may hold the land which is the subject matter of the contract as a homestead; 66 (5) a vendee is generally liable for taxes due and unpaid when the contract is signed while subsequent taxes which become a lien are the obligation of the party in possession; 67 (6) a vendor's interest is taxable as personal property for inheritance tax purposes; (7) a vendee in possession is entitled to damages for trespass to the

62. See Vanneman, Risk of Loss, in Equity, Between the Date of Contract to Sell Real Estate and Transfer of Title, 8 Minn. L. Rev. 127, 137 (1924).

63. Summers v. Midland Co., 167 Minn. 453, 209 N. W. 323 (1926). However the vendor may be granted the award to hold as trustee for vendee if the former's security is impaired. See id. at 456, 209 N. W. at 324.

64. Wellington v. St. Paul, Minneapolis & Manitoba Ry., 123 Minn. 483, 144 N. W. 222 (1913).

65. In re Consolidation of School Districts v. Schultz, 140 Minn. 475, 168 N. W. 552 (1918). The vendee has an estate of inheritance which is an estate of freehold. Minn. Stat. § 500.05 (1953).

66. In re Consolidation of School Districts v. Schmidt, 146 Minn. 403, 178 N. W. 892 (1920). Note that the factor of the vendor's possession is specifically discounted by the court. See id. at 405, 178 N. W. at 893.

67. Minn. Stat. § 122.20 (1953) requires that the petitioners be "resident freeholders." It would therefore seem that the courts overriding of the factor of possession, see note 66 supra, must be confined to whether or not a vendor is a freeholder and cannot be interpreted as considering as valid the signature of a vendor who is out of possession at the time of signing. 68. Minn. Stat. §§ 510.01, 510.04 (1953); Wilder v. Haughey, 21 Minn. 101 (1874).

69. Minn. Stat. § 507.02 (1953); Wilder v. Haughey, supra note 68.

70. In regard to rural land, compare Minn. Stat. § 273.13(6) (1953), with Minn. Stat. § 273.13(4) (1953). This statement must be confined to those cases where the vendee has possession. See note 71 infra and text thereto.


72. State ex rel. Hilton v. Probate Court, 145 Minn. 155, 176 N. W. 493 (1920). The vendee's debt was also taxable as a credit for general tax purposes, State v. Rand, 39 Minn. 502, 40 N. W. 835 (1888), until exempted from taxation. Minn. Stat. § 293.021 (1953).
land.\(^7\) (8) a vendor in possession is liable to the vendee for waste, yet a vendor may obtain an injunction against a waste-committing vendee;\(^\text{74}\) and (9) a vendor is entitled to rents and profits of the land until time for relinquishment of possession arrives at which time these rights pass to the vendee.\(^7\)

Another matter of increasing importance concerns the right of a vendee to remove valuable minerals from the land or to lease mineral rights to third parties. The obvious objection to this action is that the vendee or his lessee is committing waste. However, it must be remembered that the vendee is for all practical purposes the owner of the land\(^7\)\(^6\) and should be allowed to use it as he pleases so long as he does not reduce its value below the amount owed to the vendor. This would appear to be the applicable rule.\(^7\) A converse holding would require the vendee to obtain permission from the vendor before taking any action and as a consequence place the vendor in a position to "hold-up" the vendee when the former is only entitled to payment of the unpaid balance of the purchase price.

**METHODS FOR INCREASING THE DESIRABILITY OF USING LAND CONTRACTS**

At this point it seems relevant to discuss briefly some of the economic problems that surround the use of contract for deed in the sale and purchase of farm land. It has generally been assumed that a purchaser using this mode of "financing" will be able to make a much smaller down payment than if a standard mortgage

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73. Hueston v. Mississippi & Rum River Boom Co., 76 Minn. 251, 79 N. W. 92 (1899). However, if the injury is so great as to impair the vendor's security, he may be able to have the damages impounded. Id. at 255, 79 N. W. at 93. But a vendee not in possession may not maintain an action for trespass since it is a possessory action and constructive possession attaches to the legal title. Olson v. Minn. & North Wis. R. R., 89 Minn. 280, 94 N. W. 871 (1903).


75. See 3 id. at 69.

76. See note 47 supra and text thereto.

77. It is generally held in cases where a vendee in possession is removing standing timber that an injunction against removal will not be issued unless the vendor's security will be rendered insufficient. E.g., Bitting v. Chattooga County Bank, 159 Ga. 78, 124 S. E. 899 (1924); Van Wyck v. Alliger, 6 Barb. Ch. 507 (N. Y. 1849); Scott v. Wharton, 2 Hen. & M. 25 (Va. 1808); Core v. Bell, 20 W. Va. 169 (1882); see Small v. Slocumb, 112 Ga. 279, 281, 37 S. E. 481, 482 (1900). However, one case has held that if the amount of purchase money remaining due is equal to the value of the land, and the vendee has liabilities equal to the amount of his other assets, the security for the purchase price is insufficient. Moses Bros. v. Johnson, 88 Ala. 517, 7 So. 146 (1889).

Since the vendee has an interest that may be leased, see note 52 supra and text thereto, the same rule would be applicable with the lessee's rights dependent on the vendee's performance of the contract.
or purchase money mortgage is used. There is some evidence that this assumption is a valid one in Minnesota. What, then, is the problem? Here is a device by which a young farmer can purchase land with a down payment which is occasionally as low as a year's rental. What more can he ask? The answer is simple—security—some better chance to be sure that he will own that land someday. In a few words, the problem becomes one of increasing vendee security, yet retaining the low level of down payments. While the purpose of Minnesota Statute § 559.21 was to alleviate the hardship imposed on the purchaser by taking from the vendor the arbitrary right to cancel the contract without notice, it has already been shown that in many cases the statute places the purchaser in a worse position than he was prior to its enactment. There also exists a considerable economic disparity between the parties to many installment contracts, thus giving the vendor the advantage of greater bargaining power.

How is it possible to make this instrument more suitable for farm land purchase without hindering sales to those moderate means? Four possible solutions are suggested: (1) self-enforcement by practicing attorneys of the canons of professional ethics; (2) increased buyer awareness; (3) legislation, and (4) a change in judicial attitude.

Application of the Sixth Canon

The sixth canon of legal ethics states in part:

"It is unprofessional to represent conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

The recent survey of vendors and purchases of rural land has disclosed that in almost every case the two parties went to the same lawyer to have the contract drawn up. Since the vendor is the

78. See Legis., 52 Harv. L. Rev. 129, 130-131 (1938).
79. This information was derived from the field study. See explanatory note at page 93 supra. Data from this study is now being analyzed by the Department of Agricultural Economics, Institute of Agriculture of the University of Minnesota.
80. One case was found in which the down payment amounted to approximately eight per cent of the total purchase price.
81. See notes 5-19 supra and text thereto.
82. See Legis., supra note 78, at 129-130.
83. Many courts have defended forfeiture of a purchaser's interest on nothing but the premise that those having obligations should be urged to fulfill them. Ibid.
84. See note 79 supra.
movant, this attorney represents him; yet in not a single case did the lawyer suggest that the purchaser retain his own counsel. In the majority of the cases the purchaser was not even aware that a law existed by which the vendor could terminate a defaulted contract thirty days after notice of termination resulting in forfeiture of everything the purchaser had paid. In view of the following excerpt from an Opinion of the Committee of Professional Ethics of the American Bar Association, there can be no doubt that many of Minnesota's lawyers are violating the sixth canon of ethics:

"We deem it improper in such a case for the attorney to accept employment from [one party], unless the [other party] is clearly advised that he should have counsel and the reasons therefore."

One might ask at this point what difference it makes whether the vendee is represented, for in almost every case the parties have already decided to use the contract for deed. However, several advantages flow from individual vendee representation. First, it might be found that the vendee is making a sufficiently large down payment to demand a deed and give back a purchase money mortgage. A concrete example may best serve to illustrate this advantage: Although a vendor had intended to handle the financing on a purchase money mortgage, a vendee, who had a forty percent down payment, purchased on contract for deed because he was not represented and through ignorance knew nothing about either instrument or the law applicable thereto. Proper legal representation might have prevented this.

Secondly, and of much greater importance, is the insertion or omission of various contract provisions. Since Minnesota has established uniform conveyancing blanks it seems appropriate to examine various clauses, particularly those of importance to the vendee,

85. The fee for drawing up the contract will be charged to the vendor. 86. Minn. Stat. § 559.21 (1953). For a discussion of this statute and other remedies available to the vendor, see notes 10-39 supra and text thereto. 87. A. B. A. Opinion on Professional Ethics and Grievances 224 (1941). The fact situation for which this opinion was written is not the same as the one pictured here, but is sufficiently analogous to be applicable. 88. Generally considered to be at least one-third of the total purchase price. 89. See notes 121-130 infra and text thereto for some comparisons between mortgage and contract for deed. The argument here presented assumes that purchase under mortgage is preferable to purchase under contract for deed where a substantial down payment is made. 90. The standard forms have been approved and recommended for use, Minn. Stat. § 507.09 (1953), but are not required. Fees for recording other than these approved forms are twenty-five per cent higher. Minn. Stat. §§ 507.11 (1953).
in conjunction with the recommended forms of contract for deed.\textsuperscript{91}

The contract should provide for the payment of taxes and assessments; the standard contract does so, with the vendee being required to pay them from and after the dates properly inserted in the contract.\textsuperscript{92}

Another clause of the standard contract provides that "buildings and improvements" now on the land and subsequently added thereto "shall be and remain" the vendor's until the contract is completely executed. This provision is apparently inserted to protect the vendor from the commission of waste by the vendee\textsuperscript{93} and to grant the vendor the right to any "fixtures" added and attached to the land.\textsuperscript{94} This provision is subject to criticism on two grounds. First, the word "improvements" is highly ambiguous,\textsuperscript{95} thereby leading to unnecessary litigation; and secondly, there seems little justification in drafting a standard contract so as to give additional benefits to the vendor who already has more than enough. Rather, a clause should be formulated listing as many items as possible and pre-determining who should receive them if the contract is terminated with only the remainder left to "chance."\textsuperscript{96} Here is a point upon which counsel for the vendee should attempt to bargain.

The standard insurance clause is acceptable for while the vendee must pay the premiums, the proceeds are applicable to the purchase price, and everything over the amount owed the vendor must be remitted to the vendee. Furthermore, the exact amounts of insurance coverage may be and should be determined by the parties. Since the vendee also has an insurable interest,\textsuperscript{97} he is able to provide for his own insurance coverage.

\textsuperscript{91.} For this purpose Form 54, the individual vendor form, will be used. Copies of this and other contract for deed forms may be found in 29 Minn. Stat. Ann. 370-383 (1947).

\textsuperscript{92.} See note 71 supra and text thereto.

\textsuperscript{93.} See note 74 supra and text thereto.

\textsuperscript{94.} However, \textit{cf.} Cohen v. Whitcomb, 142 Minn. 20, 170 N. W. 851 (1919) wherein a lease granting the lessor "improvements, repairs or alterations made in or to said buildings" was determined to exclude reference to removable fixtures.

For a brief résumé of the general principles applicable to the law of fixtures in Minnesota, see Northwestern Lumber & Wrecking Co. v. Parker, 125 Minn. 107, 110-113, 145 N. W. 964, 965-966 (1914).

\textsuperscript{95.} Even if "improvements" is defined to exclude removable fixtures, the question of what is a removable fixture is far from settled and may be for the jury to decide. \textit{See} Cohen v. Whitcomb, 142 Minn. 20, 23, 170 N. W. 851, 852 (1919).

\textsuperscript{96.} Articles normally fixtures may be converted by agreement as concerns the parties thereto. Northwestern Lumber & Wrecking Co. v. Parker, 125 Minn. 107, 145 N. W. 964 (1914).

\textsuperscript{97.} See note 62 supra and text thereto.
Next is found the provision which allows the buyer to terminate the contract in accord with Minnesota Statute § 559.21. Since the purpose of the statute was to allow the vendee more grace, it would seem doubtful that a court would construe a provision allowing the vendee sixty or ninety days within which to make up a default as invalid. Purchaser representation might result in a more extended term for reinstatement.

One other clause of the standard contract deserves mention—the one which by implication gives possession to the vendee from the date of execution of the contract. This clause is extremely important in view of the Minnesota ruling that the vendor retains the right to possession unless the vendee is granted the right expressly or by necessary implication. In every land contract the question of possession should be specifically determined.

Several other possible clauses should be given consideration. First is what might be termed a pre-payment provision. If this privilege is not extended to the vendee, the vendor need not accept payments in advance or for more than the amount stipulated in the contract. This means that a purchaser who has a good crop in one year may be unable to reduce his debt by more than the amount due in that year. As a result he must (1) continue to pay interest on "borrowed" money and (2) face the possibility of defaulting in a future year when only a small crop may be harvested. A default might be forestalled if, coupled with a pre-payment provision, an additional clause is inserted to the effect that advance or over payments will be applied to subsequent installments and the vendee will not be considered in default as to principal unless the total amount of his payments falls below the schedule set out in the contract.

Pre-payment provisions are also the concern of the vendor who has sold on installments to enable him to spread his capital gains over a period of years. If he receives over thirty per cent in the year

98. See note 11 supra and text thereto.
99. It is conceded, however, that the statute as worded is highly inflexible. Particularly should greater leniency be granted by the vendor where the purchaser makes a more substantial down payment.
100. See Boeck v. Johnson, 161 Minn. 248, 250, 201 N. W. 311, 312 (1924); Townshend v. Goodfellow, 40 Minn. 312, 315, 41 N. W. 1056, 1057 (1889).
101. Olson v. Minn. & North Wis. R. R., 89 Minn. 280, 94 N. W. 871 (1903).
102. Porten v. Peterson, 139 Minn. 152, 166 N. W. 183 (1918); see Note, 17 A. L. R. 866 (1922). Of course much depends on how the payment provisions are worded.
103. Such additional provision is necessary to insure the desired result. See Note, 48 A. L. R. 273 (1927).
of sale he must pay taxes on the entire profit, whereas by disposing of his property "... on the instalment plan [he] may return as income therefrom in any taxable year that proportion of the instalment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price."104 One significant change effected by passage of the new Internal Revenue Code allows the installment method of accounting even though no down payment is made in the taxable year of sale.105

No clause concerning crops appears in the standard contract. However, in view of the fact that a vendor has the exclusive right to crops unsevered at the time of contract cancellation,106 a clause allowing the vendee a right of entry to cultivate and harvest crops he has sown, with the vendor receiving a share as rent for the use of the land during this period of wrongful exclusion,107 would be but reciprocal justice. The legislative answer to this problem would be to include vendees under contract for deed within the coverage of existing statutes which allow mortgagors to grow and harvest crops even though their year of redemption expires during the growing season.108

While the farmer is most likely to have difficulty in meeting his obligations during the first few years after purchase, very few amortized payment plans were found in existence.109 The use of this type of payment plan will reduce the overall amount payable in the early years of the contract as compared to an equivalent non-amortized arrangement, but will require relatively greater payments in later years, when the purchaser will normally be in a better position to pay.110 Amortized payment plans should be particularly

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104. Int. Rev. Code § 453(a) (1954). Also see id. § 453(b).
106. Roehrs v. Thompson, 185 Minn. 154, 240 N. W. 111 (1932).
107. This suggestion was advanced in id. at 159, 240 N. W. at 113, but as applied to future legislation. Until the rural legislators can convince their city brethren that some such action is advisable the above is offered as a solution.
108. Minn. Stat. §§ 561.11-561.16 (1953). Concededly the problem is somewhat different and cannot be solved by adding the words "and vendee under a contract for deed," but it is a starting point for the type of legislation needed.
109. This finding is a result of the afore-mentioned survey. See explanatory note, p. 93 supra.
110. The difference, of course, comes from the fact that under the amortized plan the total payment is constant, being apportioned to interest and principal with greater amounts going to interest in earlier years and lesser amounts in later years. Under a non-amortized plan the principal payment is constant with the amount of interest steadily reducing. In either case interest is payable on the unpaid balance.
helpful to a beginning farmer who may be starting with little capital and has other installment payments coming due. Little vendor opposition should be encountered if the plan is fully explained, with the possible exception of those cases in which the vendor feels he may die before the contract has been fully performed and would prefer receiving more money in its early years. Conversely, this greater adaptability of the amortized plan to budgeted living should greatly appeal to most vendors.\footnote{111}

Another aspect of the law of contract for deed, that of recordation, provides an opportunity for counsel for the vendee to be helpful.

It was disclosed by the survey that very few vendors or vendees understood why it was necessary to record their contract. Although it is true that possession of the land by the vendee is notice of his rights to subsequent purchasers\footnote{112} and judgment creditors,\footnote{113} thereby affording him protection analogous to that of the recording act,\footnote{114} he is not protected if he himself is a subsequent purchaser unless he records before the prior purchaser does so.\footnote{115} Other factors pertaining to the matter of recording include: costs of recordation;\footnote{116} that recording is unnecessary for the purchaser to claim the homestead tax rate;\footnote{117} that the mortgage registration tax must be paid before the contract can be successfully used in evidence\footnote{118} or terminated\footnote{119} by the vendor, and probably the single, most important, item to consider—the character of the vendor. It seems advisable to inform each party of the pros and cons of recordation and allow them a voice in the decision.

While vendee representation is but one aspect of the problem of the beginning farmer, it is a starting point; and if both the attorney and the vendee become conscious of the advantages accruable to

\footnote{111. \textit{For aid in drafting contracts and for other clauses applicable to contract for deed see the references in Bade, Cases and Materials on Real Property and Conveyancing, 106 n. 28 (1954). See also 3 American Law of Property §§ 11.42-11.52. (Casner ed. 1952).}}

\footnote{112. \textit{See Niles v. Cooper, 98 Minn. 39, 42-43, 107 N. W. 744, 745 (1906).}}


\footnote{114. Minn. Stat. § 507.34 (1953).}

\footnote{115. \textit{Ibid.} (notice race recording act).}

\footnote{116. Minn. Stat. §§ 287.02, 287.05 (1953) provide for a registration tax of $.15 per $100 of the unpaid balance of the purchase price at the inception of the contract. In addition, of course, there are the normal recording fees.}}


\footnote{118. Minn. Stat. § 287.10 (1953).}

\footnote{119. Engel v. Mahlen, 183 Minn. 1, 189 N. W. 422 (1922), 7 Minn. L. Rev. 70. The time of payment is not important so long as it precedes enforcement of the contract or its use as evidence. Kirk v. Welch, 212 Minn. 300, 3 N. W. 2d 426 (1942).}
each, the Utopia envisaged by the drafters of the sixth canon of professional ethics may soon be achieved.120

Legislative Approach

A second avenue for improvement in the contract for deed may be achieved through legislative action. There is ample support for the statement that the present statute providing for forfeiture for failure to remove a default within thirty days after service of notice of termination, is unduly harsh and inelastic.121 However, it must be remembered that an attempt to remove these elements of harshness and rigidity may result in increasing the amount of down payment required, thus in part reducing the effectiveness of the land contract as a method of acquiring farm land.

Before examining legislation of other jurisdictions to determine if any guide is provided for a solution to these problems, it is necessary to review various legislative actions that may have the adverse effect of raising down payment requirements.122 This may be done by comparing briefly the legal and economic aspects of mortgage financing with that of contract for deed.

It may be stated generally that the legal relationship of vendor and purchaser under a contract for deed is substantially that of mortgagee and mortgagor123 and "[t]he only difference is a more efficient remedy in case of default."124 This remedy differential must then account for the disparity in amount of down payment required under these two methods of land purchase. The statutory

120. Not only should the buyer benefit but the lawyer as well. More lawyers will have additional work; and if the vendee feels that he is being counselled he will be willing to pay a larger fee which will be justified in that the lawyer will be doing a more thorough job.

121. It is the intention of the Department of Land Economics of the Institute of Agriculture of the University of Minnesota to disseminate information that should educate the farmer to the extent of realizing his legal needs in this field.

122. For examples of the attitude propounded by the judiciary see Roehrs v. Thompson, 185 Minn. 154, 159, 240 N. W. 111, 113 (1932); Smith v. Dristig, 176 Minn. 601, 602, 224 N. W. 157 (1929); Follingstad v. Syverson, 160 Minn. 307, 311-312, 200 N. W. 90, 92 (1924).

Further evidence lending credence to this conclusion is that it was necessary to obviate the statute's severity during a period of economic crisis. See Minn. Laws 1933, c. 422, discussed in Current Legis., 18 Minn. L. Rev. 53, 57 (1933).

123. See, e.g., Kreuscher v. Roth, 152 Minn. 320, 324, 188 N. W. 996, 997 (1922); Nolan v. Greeley, 150 Minn. 441, 442, 185 N. W. 647, 648 (1921); see Ballantine, supra note 3, at 347.

remedy for contract default is a swift, inexpensive action in pais which terminates the vendee's rights in thirty days, but a mortgage default generally results in foreclosure by sale, which allows the mortgagor one year from the date of sale in cases of foreclosure by advertisement, and from the date of confirmation of sale in cases of foreclosure by action, in which to redeem the property. In addition to the statutory time differential, an additional period must be ascribed to the mortgage because of the procedure involved. Moreover, foreclosure by sale is expensive. It follows logically that a vendor who is required to wait over a year after default in order to repossess will insist on greater security than one who need wait only thirty days; therefore, any proposed legislation must avoid overextension of the reinstatement period.

A vast majority of states have enacted no special legislation regarding installment land contracts. However, there are a few, in addition to Minnesota, who have made a positive effort to aid the vendee. Iowa's statutory answer to the problem is virtually identical to that of Minnesota and was originally enacted in the same year—1897. Louisiana's statute is worded specifically in terms of installment land contracts and provides a forty-five day reinstatement period measured from the mailing date of notice to the vendee. North Dakota provides a similar statutory remedy, the major difference being that the grace period allowed is one year. South Dakota expressly codifies strict foreclosure, setting a ten day minimum in which the defaulting vendee can comply with the judgment, and then allowing the court to equitably adjust the

125. Minn. Stat. § 559.21 (1953). Pertinent parts of the statute are quoted at note 12 supra.
126. However, strict foreclosure may be allowed where just or appropriate. Minn. Stat. § 581.12 (1953).
127. Minn. Stat. § 580.23 (1953). This method is more frequently used in Minnesota than foreclosure by action because it is faster and less expensive.
129. Six weeks' published notice is required in a foreclosure by advertisement, Minn. Stat. § 580.03 (1953). With a foreclosure by action the time required is that necessary to get into court.
130. Osborne, Mortgages § 318 (1951).
131. If payments are made annually the mortgagee must wait over two years from the last payment before the opportunity arises to gain possession of the land.
132. A few states did adopt a certain section of the Field Code, see Legis., supra note 78 at 131 n. 17, which, although apparently applicable to land contracts, was rendered nugatory by judicial antipathy. See id. at 131-135; see also Vanneman, Strict Foreclosure on Land Contracts, 14 Minn. L. Rev. 342, 353-359 (1930).
135. Id. § 9:2945.
rights of the parties.\textsuperscript{137} Only the North Dakota legislation would satisfy the vendee's need for security, but it seems obvious that the allowance of a year in which to reinstate the contract may well result in raising down payment requirements to a level at least equal to that of purchase money mortgages.

The State of Michigan allows a defaulting vendee ninety days from the date of judgment to pay the amount found due in summary proceedings initiated by the vendor for the restitution of land.\textsuperscript{138} While greater leeway is granted the vendee, the statute is inelastic and minus the attributes of an action in \textit{pays}.

Two states have approached the problem somewhat differently. The Arizona statutes contain what might be termed an escalator clause providing that, as the amount of the purchaser's equity increases, a longer period of "grace" is allowed for default. Thus, if the vendee has under twenty per cent equity, he is allowed thirty days of "grace"; if he has an equity of fifty percent or more, he is given nine months. Shorter periods are allowed where the equity is under fifty percent.\textsuperscript{139} The "sleeper" contained in this act is that the period of "grace" begins to run from the date of default and not from the date of service of notice of default, which means that a defaulting vendee may have forfeited his payments without realizing it.

Maryland is the most recent state to enact legislation concerning installment land contracts.\textsuperscript{140} An installment land contract is defined as an executory contract for the sale of land in which the vendee is to pay the purchase price in five or more installments exclusive of a down payment and in which the vendor is to retain title as security.\textsuperscript{141} Corporations are expressly excluded from this vendee category.\textsuperscript{142} Further, the act makes mandatory the insertion of certain specific clauses in the contract. For example, the contract must provide the vendee with the privilege of prepayment;\textsuperscript{143} and when the vendee has paid forty percent or more of the cash price, he can demand a deed and continue financing on the same terms under a purchase money mortgage.\textsuperscript{144} The vendor must serve

\begin{itemize}
\item \textsuperscript{137} S. D. Code § 37.3101 \textit{et seq.} (1939).
\item \textsuperscript{138} Mich. Stat. Ann. § 27.1999 (1938). This remedy is not exclusive, however.
\item \textsuperscript{139} Ariz. Code Ann. § 71-126 (1939).
\item \textsuperscript{141} Md. Laws 1951, c. 596, § 117.
\item \textsuperscript{142} Md. Ann. Code Gen. Laws art. 21, § 118(1) (1951).
\item \textsuperscript{143} Id. § 118(5).
\item \textsuperscript{144} Id. § 120(3).
\item \textsuperscript{145} Id. § 120(7).
\end{itemize}
notice of termination and the vendee is allowed thirty days after
the mailing date of the notice to reinstate the contract.\textsuperscript{146} However,
if an actual termination is completed, the vendor's remedy to re-
possess is limited to a sale of the premises exactly as if he were a
mortgagee.\textsuperscript{147} Again the criticism of inelasticity is applicable. While
the required sale of the premises is a step in the right direction, it
is actually of little practical value to the debtor because (1) there
is a lack of energetic advertising attached to the proceeding, (2)
the buyer must pay cash within a short time after purchase and
(3) the mortgagee can bid in his debt.\textsuperscript{148} Moreover, it seems that
limiting the scope of the legislation to those contracts where five or
more payments are to be made is an arbitrary dichotomy. Certainly
a purchaser who is to make four payments of $5,000 is entitled to
the same protection as one who is to make five payments of $4,000
in addition to down payments.\textsuperscript{149}

In general, two possibilities appear for legislative action. The
first would retain the grace period of thirty days when very small
down payments are made, e.g., ten per cent, with the duration of
reinstatement time increasing to a maximum of six months when
forty per cent or more of the original purchase price has been
paid.\textsuperscript{150} This type of statute retains the advantage of \textit{in pais} action
and allows little time for the vendee to reinstate his contract in
those cases where he has a relatively minor interest in the property
and the tendency for willful default is more probable. It is unlikely
that this legislative change would increase down payment require-
ments, but the advantage of additional security to the buyer is
limited.

A second course of action would abolish the element of for-
feiture by requiring a sale of the property. Statutory provision for
\textit{adequate} advertising, with the cost to be deducted from the proceeds
of the sale, should be enacted. The purchaser at the sale should be
allowed sixty to ninety days in which to make payment. These
latter two provisions should considerably broaden the number of
prospective purchasers of the land. The present thirty day notice

\begin{itemize}
  \item \textsuperscript{146} Id. §§ 121(1), (2)(b), (4).
  \item \textsuperscript{147} Id. § 123. A sale is then subject to court confirmation, id. art. 66,
  § 7, and the vendee to a deficiency judgment. Id. § 14.
  \item \textsuperscript{148} See Beuscher, Law and the Farmer 89-90 (1953).
  \item \textsuperscript{149} It is suggested that our statute be rephrased to refer expressly to
  \textit{installment} land contracts.
  \item \textsuperscript{150} For proposed legislation the scope of which was based on the number
  of payments to be made see Legis., supra note 78, at 135 n. 50.
  \item \textsuperscript{150} The factor of vendee improvements may be given consideration,
  see id. at 135, but this may lead to valuation problems and thereby probably
  preclude retaining the \textit{in pais} form of recovery.
\end{itemize}
provisions would be retained and upon completion of filing of proof of service of notice and failure of the vendee to rectify the default, the sheriff should be directed to take the necessary steps to hold the sale within as short a period as is commensurate with the advertising requirements. Furthermore, if the proceeds of the sale are not equal to the amount of the vendee's debt a deficiency judgment should be automatically allowed for the difference between the amount bid at the sale and the amount owed by the vendee. No redemption from this sale should be allowed. This remedy should maximize the security of the vendee by reducing to a minimum the element of forfeiture, since an amount paid for the land at the sheriff's sale in excess of the vendee's debt would be returned to him. It should also contain the level of down payments, except in those cases where the vendor sells with the express desire of regaining his land plus what the vendee has paid in.151 In order that the purpose of these statutes be safeguarded the use of all types of acceleration clauses should be eliminated.152

CONCLUSION

While there remain a few instances in which the judiciary may render decisions helpful to the defaulting vendee, the problem of surmounting the doctrine of stare decisis must be faced in most cases.153 Two avenues of aid remain open—the combination of vendee representation and education, and legislation. Although each alone would be extremely helpful, complementary action would be preferable. The ultimate effect would be to increase the usefulness of the contract for deed as an instrument enabling deserving farmers with limited capital to acquire a farm.

151. This type of vendor is rare; but where he does exist, he is a threat to any buyer. An increase in this type of person's down payment requirement, reducing the field of potential buyers should not be considered a loss, for fringe buyers are not in a position to be purchasing from a "shark."

152. See Legis., supra note 78, at 136. See notes 22-25 supra and text thereto for a discussion of acceleration clauses.

153. See, e.g., notes 14-17 supra and text thereto for a discussion of the possible interpretations of Minn. Stat. § 559.21 (1953). The difficulty of overturning the interpretation accepted by the court and followed for many years cannot be overemphasized.