

GENERAL STATUTES 36  
OF THE  
STATE OF MINNESOTA

IN FORCE

JANUARY 1. 1889.

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COMPLETE IN TWO VOLUMES.

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VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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ST. PAUL:  
WEST PUBLISHING CO.  
1888.

**\*§ 112. Fort Ripley reservation—Relinquishment.**

That the governor of the state of Minnesota is hereby authorized and requested to relinquish all the right, title, and interest of said state in and to all lands lying within the limits of the said\* Fort Ripley military reservation to the United States, and he is hereby authorized to make, execute, and deliver a deed of relinquishment in accordance with the application of the commissioner of the general land-office dated October twenty-seventh, one thousand eight hundred and eighty. (1881, c. 155.)

**\*§ 113. Antietam National Cemetery—Relinquishment.**

That the state of Maryland be, and is hereby, authorized to convey to the United States all right, title, and interest of the state of Minnesota in and to the land occupied by the Antietam National Cemetery, in the county of Washington, in the state of Maryland; and if the said state of Maryland shall have already made such transfer of title to the United States, the assent thereto of the state of Minnesota is hereby granted, and the governor of this commonwealth is requested to transmit a copy of this act to the president of the United States, and to the governor of the state of Maryland. (1879, c. 102.)

## CHAPTER 39.

## CHATTEL MORTGAGES.

**§ 1. Chattel mortgages—Validity—Filing.**

A chattel mortgage upon exempt personal property, executed by a married man, a housekeeper, to secure the purchase money, given pursuant to the agreement upon which the property was purchased, is valid without the wife's signature. *Barker v. Kelderhouse*, 8 Minn. 207, (Gil. 178.)

As to the validity of a chattel mortgage upon crops, see *Lamson v. Moffat*, (Wis.) 21 N. W. Rep. 62; *Wheeler v. Becker*, (Iowa,) 28 N. W. Rep. 40; *Barr v. Cannon*, (Iowa,) Id. 413; *Miller v. McCormick Harvesting-Machine Co.*, 35 Minn. 399, 29 N. W. Rep. 52.

This section is not applicable to the vendee of a mortgagee in possession, and therefore it is not incumbent upon such vendee to show in the first instance, in defense of his title, that the mortgage was made in good faith, and not for the purpose of defrauding creditors. *Marsh v. Armstrong*, 20 Minn. 81, (Gil. 66.)

If a mortgage, which permits the goods to remain with the mortgagor for purposes of sales by him, requires the proceeds of the sales to be paid directly to the mortgagee, in payment of the mortgage debt, the mortgage is not necessarily fraudulent as against creditors of the mortgagor. *Bannon v. Bowler*, 34 Minn. 416, 26 N. W. Rep. 237. Where possession is retained by the mortgagor, the burden of proof rests on the mortgagee to show that the chattel mortgage was executed in good faith; but in the absence of proceedings under the insolvent act a mortgage is not to be deemed fraudulent or void simply because it was intended to prefer the mortgagee to other creditors. *Id.* What facts will render a mortgage void as to creditors, and particularly the effect of an agreement permitting the mortgagor to retain possession, and sell and dispose of the mortgaged property; when the intent to defraud must exist; and the rights of *bona fide* purchasers from the mortgagor of an unfilled mortgage,—see *Horton v. Williams*, 21 Minn. 187; *Chopard v. Bayard*, 4 Minn. 533, (Gil. 418.)

When a party claims under a chattel mortgage, the burden is upon him to show any delivery or change of possession of the things mortgaged which may be necessary to make the mortgage valid. *McCarthy v. Grace*, 23 Minn. 182. The fact that the sheriff who makes the levy is the mortgagee in a chattel mortgage upon the things levied upon, is not notice to the levying creditor of the existence of the mortgage. *Id.*

As against an attachment creditor of a mortgagor of a stock of goods destroyed by fire, who seeks to garnishee the insurance money, made payable to the mortgagee by the policy, "as his interest may appear," such mortgage, if valid on its face, and given in good faith, is sufficient to uphold the right of the claimant to the insurance money,

\* See preamble to act.

to the amount actually due thereon, though the mortgage was never filed for record. *Coykendall v. Ladd*, 32 Minn. 529, 21 N. W. Rep. 733.

The provision requiring the filing of chattel mortgages, where the mortgagor retains possession of the mortgaged property, does not make the filing of the mortgage legally equivalent to actual delivery and continued change of possession. *Horton v. Williams*, 21 Minn. 187.

Where a chattel mortgage, or a copy, is duly filed, the leaving of possession of the property with the mortgagor only makes the mortgage *prima facie* fraudulent. *Braley v. Byrnes*, 25 Minn. 297.

Where the possession is not delivered, a prior mortgage will be postponed to a subsequent *bona fide* mortgage, if not duly filed when the latter is executed, although the former may be subsequently filed prior to the filing of the second mortgage. *Bank of Farmington v. Ellis*, 30 Minn. 270, 15 N. W. Rep. 243.

A subsequent mortgagee, with notice (by a recital in his mortgage) of a prior voidable mortgage, cannot have the benefit of the requirement as to good faith in this section. *Tolbert v. Horton*, 31 Minn. 518, 18 N. W. Rep. 647. See, also, *Ward v. Anderberg*, 31 Minn. 304, 17 N. W. Rep. 630.

One claiming, as a purchaser, adversely to the mortgagee in an unrecorded mortgage, must show that he is a *bona fide* purchaser. *McNeil v. Finnegan*, 33 Minn. 375, 23 N. W. Rep. 540.

For a clause in a lease held to be in effect a chattel mortgage, under the provision requiring chattel mortgages to be filed, see *Merrill v. Ressler*, 33 N. W. Rep. 117.

As to the sufficiency of the filing, under the previous statute, (Comp St. c. 22, § 3,) see *Eddy v. Caldwell*, 7 Minn. 225, (Gil. 166;) *Lienau v. Moran*, 5 Minn. 482, (Gil. 386.)

See *Farmers' Loan & Trust Co. v. Minneapolis E. & M. Works*, 35 Minn. 543, 29 N. W. Rep. 349; *Ferguson v. Hogan*, 25 Minn. 135; *Gorham v. Summers*, 25 Minn. 81.

## § 2. Place of filing—Entries in record.

Every such instrument shall be filed in the town, city, or village where the property mortgaged is at the time of the execution of such mortgage, and a copy thereof filed in the town, city, or village where the mortgagor, if a resident of this state, resides at the time of the execution thereof. In each town such instrument shall be filed in the office of the town clerk thereof, and in the several cities and villages, in the office of the recorder, clerk, or other officer in whose custody the records of the city or village are kept; and each of the officers hereinbefore named shall file all such instruments when presented for that purpose, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of the town, city, or village, with an alphabetical index thereto, under the head of mortgagors and mortgagees, respectively, the names of each party to such instrument, and in separate columns opposite such names the number of the instrument, the date, the amount secured thereby, when due, and the date of filing the same. Such instrument or copy shall remain on file for the inspection of all persons interested. (*As amended 1883, c. 38, § 1.*)

The mortgagor resided, and the property mortgaged was situated, in an incorporated village. Held, that the proper place for filing such mortgage, or a copy thereof, under this section, prior to the amendment, was at the office of the town clerk of the township in which the village was situated, and not the office of the recorder or clerk of the village. *Moriarty v. Gullickson*, 22 Minn. 39.

The mortgaged property was situated in the borough of Belle Plaine, where the parties also resided. By the act creating such borough (Sp. Laws 1868, c. 36) it remained, for all purposes not designated in such act, a part of the town of Belle Plaine. Held, that the chattel mortgage in question was properly filed in the office of the clerk of the town of Belle Plaine, and that the provisions of this chapter do not include such boroughs. *Bannon v. Bowler*, 34 Minn. 416, 26 N. W. Rep. 237.

As to filing a mortgage upon crops, see *Miller v. McCormick Harvesting-Machine Co.*, 35 Minn. 399, 29 N. W. Rep. 52.

The word "filed," as applied to a chattel mortgage in §§ 1-3, does not include the indorsing and indexing prescribed by § 2; but a chattel mortgage is filed, within the meaning of the statute relating to chattel mortgages, when it is delivered to, and received and kept by, the proper officer, for the purpose of notice mentioned in the statute. *Gorham v. Summers*, 25 Minn. 81. A chattel mortgage is filed, within the meaning of this chapter, when it is delivered to, and received and kept by, the proper officer, and his failure to properly indorse and index the same, as required by this section, will not affect such filing as notice. *Gorham v. Summers*, 25 Minn. 81, followed. *Hodge v. Twitchell*, 33 Minn. 389, 23 N. W. Rep. 547.

Deposit for filing operates as a delivery to the mortgagee. *In re Guyer*, (Iowa,) 29 N. W. Rep. 826.

**§ 3. Effect of filing—Acknowledgment.**

Every mortgage filed in pursuance of this chapter shall be held and considered to be full and sufficient notice, to all parties interested, of the existence and conditions thereof, but shall cease to be notice, as against the creditors of the mortgagor, and subsequent purchasers and mortgagees in good faith, after the expiration of two years from the filing thereof: *provided*, that no mortgage of goods and chattels shall be notice of any fact, as against the creditors of the mortgagor or subsequent purchasers or mortgagees in good faith, unless the same is acknowledged before some officer authorized to take acknowledgment of deeds. (*As amended* 1870, c. 59, § 1; *amendment* of 1875, c. 50, § 1, *repealed* 1879, c. 65, § 5.)

The mere filing of the mortgage when the mortgagor retains possession of the mortgaged property is not legally equivalent to actual delivery and continued change of possession. *Horton v. Williams*, 21 Minn. 187.

The provision, originally enacted in 1860, requiring chattel mortgages to be filed in the office of the clerk of the town or city, and the filing to be renewed within 30 days preceding the expiration of a year from the filing, did not apply to mortgages executed before its passage. *Foster v. Berkey*, 8 Minn. 351, (Gil. 310.)

Under this section, as it stood in 1860, the filing of a chattel mortgage was notice of the mortgage to the sheriff levying upon the property under process against the mortgagor, which rendered unnecessary any other notice under § 2, c. 41, Laws 1862. *Edson v. Newell*, 14 Minn. 228, (Gil. 167.) Where a sheriff, within a year after the filing of a chattel mortgage, levied on and sold the property upon process against the mortgagor, the omission of the mortgagee to file a copy of the mortgage within 30 days preceding the expiration of the year did not affect his cause of action against the sheriff. *Id.*

As to sufficiency of certificate of acknowledgment, see *Brunswick-Balke-Collender Co. v. Brackett*, 33 N. W. Rep. 214. Absence of notarial seal, *Thompson v. Scheid*, 33 N. W. Rep. 801.

See, also, cases cited *supra*, §§ 1, 2.

**\*§ 3a. Sale—Notice.**

Whenever the mortgagee in a chattel mortgage has a remedy by sale of the mortgaged property, authorized by the terms of the mortgage in case of default, such mortgaged property shall not be sold at private sale, but only upon previous written notice, given at least ten days before such sale, by serving a copy of such notice upon the mortgagor, or upon the person in possession of the property claiming the same, if such person can be found within the city, village, or town where the mortgage is filed; or, if such mortgagor or person cannot be found within such city, village, or town, then by posting three copies of such notice, as follows: One copy in each of three of the most public places of the city, village, or town where the mortgage is filed, or where the property is seized or taken under the mortgage. (1879, c. 65, § 1.)

**\*§ 3b. Declaring forfeiture.**

No mortgagee, nor any one claiming under him, shall have any right, arbitrary, or without just cause, based upon the actual existence of facts, to declare any of the conditions or stipulations of a mortgage broken prior to the time of default in the payment of such mortgage, or prior to the time when the conditions of such mortgage should be performed. (*Id.* § 2.)

**\*§ 3c. Limitation as against creditors, etc.**

Every chattel mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers, or mortgages in good faith, after the expiration of two years from the time the same becomes due, unless, before the expiration of the two years, the mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property mentioned therein, which affidavit he shall annex to the instrument or copy on file, and shall indorse on said affidavit the time that it was filed. (1879, c. 65, § 3, *as amended* 1887, c. 58.)

**\*§ 3d. Affidavit of renewal.**

The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against subsequent purchasers in good faith; but before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with like effect. (*Id.* § 4.)

**\*§ 5. Effect of filing.**

Though a person finds a note and mortgage in the possession of the mortgagor, he has no right to assume from that fact alone, without examination of the records, that the mortgage has been satisfied, and if he does so he takes subject to the equities of the mortgagee. *Geib v. Reynolds*, 35 Minn. 331, 28 N. W. Rep. 923.

**§ 7. (Sec. 4.) Copy of mortgage as evidence.**

See *Ellingboe v. Brakken*, 36 Minn. 156, 30 N. W. Rep. 659; *Gorham v. Summers*, 25 Minn. 81.

**§ 8. (Sec. 5.) Redemption.**

Formerly, at law, the mortgagee's title became absolute upon a default; but courts of law now accept the equitable rule that the right of redemption continues until it is barred or foreclosed, in the manner provided by law or in the mortgage. *Stromberg v. Lindberg*, 25 Minn. 513.

Under this section and c. 66, § 183, the mortgagor's right of redemption is subject to the claim of the mortgagor's creditors, and may be reached by garnishment. Whether it can properly be reached by a levy upon the mortgaged goods in the rightful possession of the mortgagee, *quære*. *Becker v. Dunham*, 27 Minn. 32, 6 N. W. Rep. 406.

Where the maker of a note executes a chattel mortgage to secure it, he is, in the absence of a demand, entitled to the whole of the business hours of the last day of grace to pay the note, and is not in default until such time expires. *Daly v. Proetz*, 20 Minn. 411, (Gil. 363.)

**§ 9. (Sec. 6.) Same—How made.**

See *Stromberg v. Lindberg*, 25 Minn. 513.

**§ 10. (Sec. 7.) Foreclosure.**

When a chattel mortgage provides for the payment of "all expenses for the sale" of the mortgaged property out of the avails of such sale, only such expenses are intended as are incurred in doing such things as form part of the proceedings of sale. *Ferguson v. Hogan*, 25 Minn. 135.

Mortgagor's acceptance of a part of proceeds of the sale operating as an estoppel, see *France v. Haynes*, (Iowa,) 25 N. W. Rep. 98.

As to sale under authority in mortgage, see *Campbell v. Wheeler*, (Iowa,) 29 N. W. Rep. 618.

Foreclosure in case of a mortgage to several to secure separate debts, see *Lyon v. Barentine*, (Mich.) 29 N. W. Rep. 837.

See *Stromberg v. Lindberg*, 25 Minn. 513.

**§ 12. (Sec. 9.) Foreclosure—When complete.**

The holder of a chattel mortgage, foreclosing under the power of sale, if he can, without prejudice or great inconvenience to himself, satisfy his debt by a sale of part of the property, is bound so to sell if the interest of the mortgagor require it; and if he unnecessarily and in bad faith sell the whole, he is liable to the owner of the right of redemption for the damages caused by it. The claim of the owner of the right of redemption for such damages is not the subject of levy upon execution. *Stromberg v. Lindberg*, 25 Minn. 513.

**\*§ 12a. Foreclosure sales—Purchase by mortgagees and pledgees.**

Whenever a mortgagee or pledgee of personal property has a remedy to enforce his lien upon such property by sale thereof in case of default, by virtue of the contract creating such lien, any such mortgagee or pledgee, their legal representatives or assigns, may, fairly and in good faith, purchase such property, or any part thereof, at any sale so made: *provided*, that such sale, if such

mortgagee or pledgee shall wish to bid thereat, shall be at public auction, and upon like notice as is required in case of execution sales in this state, and shall be conducted by the sheriff or his deputy of the county, or by a constable of the town in which such mortgaged or pledged property, or some part thereof, is situated at the time of giving such notice. (1885, c. 171.)

**\*§ 14. Fraudulent sale, etc., by mortgagor—Penalty—Evidence.**

That if any person, having conveyed any article of personal property by mortgage, shall, during the existence of the lien or title created by such mortgage, sell, transfer, conceal, take, drive, or carry away, or in any way or manner dispose of, said property, or any part thereof, with intent to defraud, or cause or suffer the same to be done, without the written consent of the mortgagee of said property, he shall be deemed guilty of misdemeanor, and shall be liable to indictment, and, on conviction thereof, shall be punished by a fine not less than twice the value of the property so sold or disposed of, or confined in the county jail not exceeding one year, or both, at the discretion of the court, and until the fine and all costs of such prosecution are paid: *provided*, that the fact of sale, without the written consent of the mortgagee or assignee being established on the trial, shall be *prima facie* evidence of a fraudulent intent on the part of the vendor. (1866, c. 30, § 1, *as amended* 1883, c. 23, § 1.)

[See Pen. Code, §§ 454, 541.]

The intent to defraud, mentioned in this section, is an intent to defraud the mortgagee therein named. Such intent is an essential ingredient of the offense defined by that section, so that an indictment under it, alleging no intent to defraud except one to defraud some person other than the mortgagee, is fatally defective. Such defect is not reached by Gen. St. 1873, c. 96, § 10, nor by c. 108, § 8. *State v. Ruhnke*, 27 Minn. 309, 7 N. W. Rep. 264.

In an indictment under this section an allegation that the defendant sold and disposed of the property to one A. B. and divers other persons, whose names are to the grand jury unknown, charges only one offense. *State v. Williams*, 32 Minn. 537, 21 N. W. Rep. 746. The expression, "having conveyed by mortgage," as used in this statute, simply means, "having executed a mortgage." *Id.* It is not necessary to allege in the indictment that the defendant was the owner of the property mortgaged. A growing crop of grain is personal property within the meaning of this statute. *Id.*

As to the sufficiency of the commitment in criminal proceedings against a mortgagor, under this section, see *Collins v. Brackett*, 34 Minn. 339, 25 N. W. Rep. 708.

See *Tootle v. Taylor*, (Iowa,) 21 N. W. Rep. 115; *Walker v. Camp*, (Iowa,) 27 N. W. Rep. 300; *State v. Hards*, (Neb.) 27 N. W. Rep. 139.

**\*§ 14a. Mortgage of crops.**

The mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such crops are declared void and of no effect: *provided*, this act shall not apply to mortgages given upon crops to secure part or all of the purchase price of lands upon which said crops may be sown or planted. (1887, c. 176.)

See notes to §§ 1, 2, *supra*.

FILING OF NOTES, CONTRACTS, ETC.

**\*§ 15. Conditional sales—Contract to be filed.**

Such contracts, though not filed, are not void as to creditors having actual notice at the time of levy. *Dyer v. Thorstad*, 35 Minn. 534, 29 N. W. Rep. 345.

**\*§ 16. Notes, etc.—Where filed—Index.**

Every such note or other evidence of indebtedness or contract, or a copy thereof, shall be filed in the town, city, or village where the vendee resides at the time of the making thereof. In each town such instruments shall be filed in the office of the town-clerk thereof; and in the several cities and villages,

in the office of the recorder, clerk, or other officer in whose custody the records are kept; and each of the officers hereinbefore named shall file all such instruments when presented for that purpose, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book, to be provided by him at the expense of the town, city, or village, with an alphabetical index thereto, under the head of vendor and vendee respectively, the names of each party to such instrument, and in separate columns opposite such names the number of the instrument, the date, the amount thereof, when due, and the date of filing the same. Such instrument or copy thereof shall remain on file for the inspection of all persons interested. (1873, c. 65, § 2, *as amended* 1883, c. 38, § 2; 1885, c. 76.)

See *Dyer v. Thorstad*, 35 Minn. 534, 29 N. W. Rep. 345.

NOTES, ETC., GIVEN FOR SEED-GRAIN.

**\*§ 21. Contents—Lien.**

See cases cited in note to \*§§ 22, 23, *post*.

**\*§ 22. Place, manner, and effect of filing—Fees.**

The note, contract, or statement, or copy thereof, mentioned in section twenty-one of said chapter thirty-nine, shall, in order to constitute such lien, be filed in the office of the town clerk of the town, or the clerk or recorder of the city or village, in which the borrower resides, or in which the land on which said seed is to be sown is situated; and said clerk or recorder shall receive, file, indorse, and enter the same in the same manner as is by law required in case of chattel mortgages, and shall receive the same fees therefor; and from the time of filing such note, contract, or statement, or copy thereof, the party loaning the seed, or assigns, shall have a valid first claim and lien upon the growing crops and the crops grown from such seed, to the amount and according to the terms of the contract, against all creditors and purchasers, as well as against the owner; and such lien shall not be affected by any exemption laws; and the filing aforesaid shall constitute a sufficient notice to all persons of the existence of such lien; but such lien shall cease after one year from the date of filing the same. (1883, c. 38, § 3.)

The note or contract required to be given by this and the next preceding section, as a foundation for the lien, must be given immediately after, or contemporaneously with, the receiving of the seed. It cannot be given for seed to be furnished at some time after the execution of the note or contract. The note or contract must contain a statement of the quantity of seed actually furnished and received. A note for a quantity of wheat, a part of which was not furnished and was not to be furnished until after the execution of the note, and a part of which never was furnished, does not comply with the substantial requirements of the statute, and the party taking it cannot, through it, acquire the statutory lien for seed actually furnished. *Kelly v. Seely*, 27 Minn. 385, 7 N. W. Rep. 821.

No lien is created where the terms of the statute are not in fact complied with, and where the crop upon which the lien is claimed is not grown from the seed actually furnished by the party receiving the note. *Wallace v. Palmer*, 36 Minn. 126, 30 N. W. Rep. 445.

**\*§ 23. Enforcement of lien.**

After condition broken, the lender has an adequate remedy by action of replevin, and cannot, therefore, have an injunction to prevent the borrower from disposing of the crop. *Minnesota Linseed Oil Co. v. Maginnis*, 32 Minn. 193, 196, 20 N. W. Rep. 85.