

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

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CHAPTER 56 (G. S. ch. 39).

CHATTEL MORTGAGES.

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SEC. 4196. **When valid.**—Every mortgage on personal property which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession, of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless it appears that such mortgage was executed in good faith, and not for the purpose of defrauding any creditor, and unless the mortgage, or a true copy thereof, is filed as herein-after provided.

G. S. ch. 39, § 1. 4 M. 533; 5 M. 482; 7 M. 225; 8 M. 207; 20 M. 81; 21 M. 187; 23 M. 182; 35 M. 545; 33 M. 388; 32 M. 530; 31 M. 306, 520; 30 M. 271; 25 M. 84, 140, 298; 37 M. 83; 4 N. W. 356.

SEC. 4197. **Same — On crops.**—The mortgaging of crops before the seed thereof shall have been sown or planted, for more than one (1) 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, ch. 176: "An act forbidding the mortgaging of crops before the seed thereof shall have been sown or planted." Approved March 2, 1887.

FILING FOR RECORD.

SEC. 4198. **Where to be filed.**—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.

G. S. ch. 39, § 2, as amended 1883, ch. 38, § 1. Approved February 8, 1883. Amendment-inserted word, "village" in the sentence after *. 23 M. 39; 27 M. 373; 34 M. 419; 35 M. 535; 35 M. 400.

SEC. 4199. **In unorganized counties or townships.**—Every chattel mortgage upon property situate, at the time of the execution of such mort-

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gage, in a county not organized into townships, or in any unorganized township, and of which county the mortgagor is then a resident, shall be filed in the office of the register of deeds for such county; and the register of deeds of every such county 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 county, 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 to such names, the number of the instrument, the date, the amount secured thereby, when due, and the date of filing the same. Such instrument shall remain on file for the inspection of all persons interested.

1876, ch. 53, § 1: "An act to provide for the filing of chattel mortgages in counties not organized into townships." Approved February 17, 1876. As amended 1889, ch. 79, by inserting "or in any unorganized township."

SEC. 4200. Effect in unorganized counties or townships.—Every mortgage filed in pursuance of this act 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 or 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.

1876, ch. 53, § 2. 37 M. 59.

SEC. 4201. Effect of filing.—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 or 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.

G. S. ch. 39, § 3, as amended 1870, ch. 59; 1875, ch. 50; 1879, ch. 65, § 5. Before amendment this section limited life of mortgage to one year, unless within thirty days before end of the year a true copy and statement of mortgagee's interest is filed, which renewed it for another year. This was struck out by 1870, ch. 59. Acts 1875, ch. 50, added a proviso that if mortgage not due in two years, its effect is extended one year by filing such verified statement, which can be renewed until mortgage is due. Acts 1879, ch. 65, § 5, repealed ch. 50, acts 1875, which left this section as it stood before that act. Acts 1879, ch. 65, § 3, followed this section by re-enacting the provision for renewals found in acts 1875, ch. 50, two years after "time of filing," but acts 1887, ch. 58, makes it two years from time mortgage becomes due. 8 M. 351; 14 M. 228; 21 M. 187; 37 M. 59; 38 N. W. 801.

SEC. 4202. Same.—Every chattel mortgage shall cease to be valid as against the creditors of the person making the same or subsequent purchasers, or mortgagees 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 endorse on said affidavit the time that it was filed.

1879, ch. 65, § 3, as amended 1887, ch. 58. Approved March 7th. Amendment changed language, "time of filing the same or a copy thereof," to "time the same becomes due." In last sentence should read, "which affidavit the clerk," etc., corresponding with act 1879.

SEC. 4203. Effect of renewal.—The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would other-

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wise 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.

1879, ch. 65, § 4.

REDEMPTION.

SEC. 4204. **Before sale.**— When the condition of a mortgage of personal property is broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same, at any time before the property is sold in pursuance of the contract between the parties, or the right of redemption is foreclosed as hereinafter provided.

G. S. ch. 39, § 5 (8). 20 M. 411; 27 M. 34; 27 M. 515.

SEC. 4205. **How made.**— The person entitled to redeem shall pay or tender to the mortgagee, or person holding under him, the sum due on the mortgage, or offer performance of the thing to be done, and shall pay all reasonable and lawful charges and expenses incurred in the care and custody of the property, or otherwise arising from the mortgage; and if, upon such payment or performance, or tender thereof, the property is not forthwith restored, the person entitled to redeem may recover it in a civil action, with such damages as he may have sustained by the withholding thereof.

G. S. ch. 39, § 6 (9).

SATISFACTION OF MORTGAGE.

SEC. 4206. **The method.**— Whenever any mortgage, filed under the provisions of this chapter, has been paid, or the conditions thereof satisfied, the mortgagee, or his assignee or personal representatives, shall give to the mortgagor, his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing said certificate, on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, endorsing thereon the name of the county, town (or city or village), and the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied," with the date, opposite to such mortgage, in the book in which such mortgages are entered.

1872, ch. 62: "An act to amend ch. 39 of G. S., relating to chattel mortgages," approved February 10, 1872, "by adding thereto" this section.

FORECLOSURE.

SEC. 4207. **Notice.**— The mortgagee or his assigns, after condition broken, may give to the mortgagor, or the person in possession of the property claiming the same, written notice of his intention to foreclose the mortgage for breach of the condition thereof; which notice shall be served by leaving a copy with the mortgagor, or a person in possession of the property claiming the same, or by publishing it, at least once a week for three successive weeks, in a newspaper printed and published in the county or city where the mortgage is properly recorded, or where the property is situated, or if there is no such paper, in a newspaper printed and published at the capital of the state.

Remedy by sale.— *Provided*, that nothing in this chapter contained shall deprive the mortgagee of his remedy by sale, in cases where such sale is authorized by the mortgage.

G. S. ch. 39, § 7 (10).

SEC. 4208. **Proof of.**—The notice, with an affidavit of service, shall be filed wherever the mortgage is filed, and when so filed, the same, or a copy thereof, shall be admitted as evidence of the giving of such notice.

G. S. ch. 39, § 8 (11). 25 M. 58.

SEC. 4209. **When complete.**—If the money to be paid, or other thing to be done, is not paid or performed, or tender thereof made, within sixty days after such notice is so filed, the right to redeem shall be foreclosed

G. S. ch. 39, § 9 (12). 25 M. 515.

REMEDY BY SALE.

SEC. 4210. **After 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, ch. 65, § 1: "An act in relation to chattel mortgages." Approved February 26, 1879.

SEC. 4211. **And after default.**—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.

1879, ch. 65, § 2.

GENERAL PROVISIONS.

SEC. 4212. **Mortgagee or pledgee may purchase.**—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, ch. 171: "An act authorizing mortgagees and pledgees of personal property to purchase at public sales of such property." Approved February 13, 1885.

SEC. 4213. **Protection of mortgaged chattels.**—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 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, ch. 30, as amended 1883, ch. 23. Approved March 2, 1883. 34 M. 340; 32 M. 537; 27 M. 310.

SEC. 4214. **Copy of mortgage as evidence.**— A copy of any such mortgage, or copy, filed and indorsed as aforesaid, together with any statement made in pursuance of this chapter, when certified by the clerk or other proper officer to be a true copy of the original on file in his office, shall be received in evidence in like manner and with like effect as the original mortgage or copy filed, and indorsement.

G. S. ch. 39, § 4 (7). 25 M. 84; 36 M. 156.

SEC. 4215. **Acknowledgments by town clerks.**— That township clerks are authorized and empowered to take and certify acknowledgments of chattel mortgages, and acknowledgments so taken shall be valid and binding in law.

1871, ch. 53: "An act to authorize township clerks to take acknowledgments of chattel mortgages." Approved March 6, 1871.

CONDITIONAL SALES.

SEC. 4216. **When valid.**— Every note of hand, or other evidence of indebtedness, or contract, the conditions of which are that the title or ownership to the property for which said note or other evidence of indebtedness, or contract is given, remains in the vendor, shall be absolutely void as against the creditors of the vendee, and as against subsequent purchasers and mortgagees in good faith, unless the note, or other evidence of indebtedness or contract, or true copies thereof, or, if said contract be oral, then a memorandum expressing the terms and conditions thereof, be filed as hereinafter provided.

1873, ch. 65, § 1: "An act to provide for filing certain notes or other evidences of indebtedness or contracts in the office of town clerks." Approved March 10, 1873. 35 M. 535; 39 N. W. 140.

SEC. 4217. **Where filed.**— 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, ch. 65, § 2, as amended 1883, ch. 38 (February 8th); 1885, ch. 76 (March 3d). Amendment of 1883 inserted in first sentence, the words "or a copy thereof." Acts 1885 changed word vendor to read "vendee," as it read in acts 1873. 34 M. 419.

SEC. 4218. **Effect of filing.**— Every note, or other evidence of indebtedness, or contract, 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 vendee, and subsequent purchasers and mortgagees in good faith, after the expiration of one year from the day on which such note, or other evidence of indebtedness, or contract, became due.

1873, ch. 65, § 3. 35 M. 535.

SEC. 4219. **Satisfaction of.**—Whenever any note, or other evidence of indebtedness, or contract, filed under the provisions of this act, has been paid, or the conditions thereof satisfied, the vendor, or his assignee or personal representatives, shall give to the vendee, or his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the instrument, and that the same has been paid and discharged in full; and on delivering said certificate in writing to the officer with whom such instrument is filed, the said officer shall deliver said instrument to the person producing said certificate, and shall file said certificate in his office, endorsing thereon the name of the county, town, (or city or village,) and the true date of filing the same, and shall write the word "satisfied," with the date, opposite to such instrument, in the book in which such instruments are entered.

1873, ch. 65, § 5.

SEC. 4220. **Copies as evidence.**—A copy of any such note, or other evidence of indebtedness, or contract, or copy, filed and endorsed as aforesaid, together with any statement made in pursuance of this act, when certified by the clerk or other proper officer to be a true copy of the original on file in his office, shall be received in evidence in like manner and with like effect as the original instrument or copy filed or endorsed.

1873, ch. 65, § 4.

SEC. 4221. **Fees.**—The town clerk, and the recorder, clerk or other officer of any city or village, in whose custody the records of such village or city are kept, shall receive the sum of ten cents for filing every note, contract or other evidence of indebtedness, to be paid by the party presenting the same for filing, and the sum of ten cents for filing every certificate of discharge, to be paid by the party presenting the same for filing, which fee must be paid before such instruments or certificates shall be entitled to record.

1873, ch. 65, § 6.

LIEN FOR SEED GRAIN.

SEC. 4222. **Note or contract.**—Any person who desires to secure a loan or purchase of sowing-seed at any time, may, at the time of receiving such seed, give a note or contract for the same to the party of whom he secures it, stating the amount and kind of seed, the terms of the loan or purchase, and the time and manner of return or payment; and the party furnishing such seed, and receiving such note or contract therefor, may acquire a just and valid lien upon the crop growing or raised from such seed, by filing, as hereinafter provided, said note or contract, or a true copy thereof, or a statement of the amount and kind of seed furnished, and the terms, time and manner of payment.

1875, ch. 93, § 1: "An act to protect parties furnishing sowing-seed." Approved March 9, 1875. Section 5 of this act provides that notes or contracts executed in 1875 shall be governed by this act. 32 M. 196; 27 M. 387.

SEC. 4223. **Filed.**—The note, contract, or statement, or copy thereof mentioned in section twenty-one¹ 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, endorse 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.

1875, ch. 93, § 2, as amended 1883, ch. 38, § 3 (February 8). Amendment inserted "or recorder of the city or village in which the borrower resides." ¹The preceding section. 34 M. 419; 86 M. 126.

SEC. 4224. Enforcement of lien.—The party owning such note or contract, and having such lien, may, at any time after condition broken, proceed to take possession of the crop raised from the seed for which it was given, or so much thereof as he may be entitled to take or receive, according to the terms of such note or contract, and the necessary expense of taking the same; and upon the receipt of such payment or satisfaction, the lien shall become discharged.

1875, ch. 93, § 3.

SEC. 4225. Application of statute.—The general statutes relating to chattel mortgages, so far as not inconsistent with the provisions of this act, shall be applicable thereto.

1875, ch. 93, § 4. 33 M. 190.