

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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milk, cream, ice cream or butter, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device on any such receptacle, or to buy, sell, give, take, dispose of in any way, or traffic in any receptacle bearing any such name, mark or device. Any person offending against any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars or more than one hundred dollars, and each such receptacle so unlawfully dealt with as herein set out shall be deemed and held to be a separate offense. ('05 c. 340 § 2) [6952]

8332. Receptacles to be delivered on demand—Penalty—Any person having in possession or under control any receptacle bearing any name, mark or device recorded as provided in section one [8330] of this act, and not holding a written transfer or bill of sale therefor from the person named in the certificate issued by the secretary of state as provided in section one [8330] of this act or other authority in writing from such person, upon demand shall deliver such receptacle to the person named in such certificate or to the authorized agent of such person; and any person failing or refusing to so deliver the same when demanded shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be punished by imprisonment in the county jail for not less than ten days nor more than ninety days, or by a fine of not less than ten dollars nor more than one hundred dollars. ('05 c. 340 § 3) [6953]

8333. Recovery of receptacles—Search warrant—Whenever any person who has filed for record any such name, mark or device or who has acquired from such person in writing the ownership of such name, mark or device or the right to the exclusive use thereof, or anyone representing such person, shall make

oath before any magistrate that he has reason to believe and does believe that any receptacle bearing such name, mark or device is being unlawfully used or filled or had in possession by any person such magistrate shall thereupon issue a search warrant to discover and obtain such receptacle; and may also cause the person in whose possession such receptacle shall be found to be brought before him and shall then inquire into the circumstances of such possession, and if it shall be found that such person is guilty of violation of any section of this act he shall be punished as herein prescribed and the possession of the property taken upon such warrant shall be awarded to the owner thereof; but the remedy given by this section shall not be held to be exclusive, and offenders against any provision of this act may also be prosecuted as in case of other misdemeanors. ('05 c. 340 § 4) [6954]

8334. Receptacle and other terms defined—As used in this act, the term receptacle shall include not only bottles, siphons, tins, kegs, one-eighth barrels, quarter barrels, half barrels, barrels, boxes, cans and tubs, but all other receptacles used for holding any of the commodities in this act mentioned; the singular may include the plural and the plural may include the singular; the term person may include corporation; and the requirement for a written transfer, bill of sale, authority or consent means that it shall be signed by the person named in the certificate issued by the secretary of state as provided by section one [8330] of this act, or by a transferee claiming under a written transfer signed by such person or by an agent whose authority is in writing signed by such person or such transferee. ('05 c. 340 § 5) [6955]

8335. Taking deposit—The requiring or taking of any deposit for any purpose upon such receptacle shall not be deemed nor held to be a sale either optional or otherwise in any proceeding under this act. ('05 c. 340 § 6) [6956]

CHAPTER 66

HOMESTEAD EXEMPTION

Dwelling place exempt—Exceptions	8336
Area, how limited	8337
Existing exemption not affected by changes	8338
Title may be in husband or wife—Equitable title exempt	8339
No alienation without consent of spouse—Exceptions	8340
Exemption not lost by death or desertion	8341
Sale or removal permitted—Notice	8342
Selection after levy	8343
Selection, how made	8344

8336. Dwelling place exempt—Exceptions—The house owned and occupied by a debtor as his dwelling place, together with the land upon which it is situated to the amount hereinafter limited and defined, shall constitute the homestead of such debtor and his family, and shall be exempt from seizure or sale under legal process on account of any debt not lawfully charged thereon in writing, except such as are incurred for work or materials furnished in the construction, repair, or improvement of such homestead, or for services performed by laborers or servants. (3452) [6957]

1. Nature—A homestead is the place of residence or dwelling of its owner. It includes the house in which the owner lives and the customary appurtenances of a

house (10-154, 124; 15-116, 87; 21-101; 27-156, C1318; 27-406, 7+824; 29-18, 11+119; 51-360, 53+805). It is not the interest or title of the claimant (27-406, 7+824).

The general rule is that homestead laws are to be liberally construed so as to advance the beneficial object and carry out the manifest purpose of the Legislature. 202+494.

Under our statute the homestead exemption is not alone for the husband and his protection but for the benefit of the wife and children as well. It is not only a privilege but an absolute right. 162-230, 202+494.

The homestead law is liberally construed for the benefit of the debtor. 165-295, 206+461.

Evidence showing that husband and wife had lived on land, although frequently absent, and had retained home there, leaving household goods and furniture, held to sustain order setting apart homestead to surviving widow. 166-492, 206+929.

Where a husband embezzles funds and appropriates to payment for labor and materials for the construction of a dwelling upon land owned by himself and his wife, as tenants in common, and claimed by them as their homestead, a constructive trust arises in favor of the injured party as to the dwelling. 210+889.

The fact that the husband and wife were owners of the land, as tenants in common, does not subject the wife's interest therein to levy on account of such trust. 210+889.

2. Object and policy of statute—2-90, 72; 7-513, 419; 21-101; 27-156, 6+618; 89-247, 94+677.

3. Actual occupancy as home essential—5-333, 264; 7-513, 419; 8-309, 272; 10-154, 124; 15-116, 87; 21-299; 23-435; 25-183; 28-13, 8+830; 47-13, 49+390; 71-108, 73+639.

4. No limit to value—11-475, 364; 21-299; 39-244, 39+321; 41-227, 43+52; 59-415, 61+456; 69-24, 71+919; 112-512, 128+833.

5. No limitations on use—If the property is actually used as a home it may be used for other purposes also (10-154, 124; 26-286, 3+341; 41-227, 43+52; 58-450, 60+23; 69-24, 71+919; 69-292, 72+119). It may be leased in part (10-154, 124; 26-286, 3+341; 41-227, 43+52).

6. Liberal construction—27-156, 6+618; 41-227, 43+52; 41-481, 43+376; 65-491, 67+1031.

7. Liens of mechanics and materialmen—74-366, 77+292; 76-226, 78+1113; 89-150, 94+438.

8. Debts due laborers or servants—93-267, 101+74.

9. Insolvent may acquire—An insolvent may acquire a homestead with non-exempt funds (41-227, 43+52; 41-481, 43+376). But a mere intent to occupy property as a homestead will not defeat a creditor's lien attaching prior to actual occupancy (23-435, 26-417, 4+813; 41-481, 43+376; 47-13, 49+390).

123-293, 143+720.

Declaration of mortgagor, since deceased, claiming homestead, as evidence (128-525, 151+416). Extent of homestead rights (134-478, 159+788). Homestead record title conveyed by husband to wife by unrecorded deeds, and by her leased, husband joining to tenant in possession, such possession is notice of her title (142-35, 170+708). Eighty acres of land and dwelling thereon occupied by married man, who had left his wife and children, living unlawfully with another woman, constituted his homestead (143-35, 172+912). Waiver of confession of judgment subjecting homestead to levy under execution (144-404, 175+683). Temporary removal (217 Fed. 163).

10. Attachment.

That land is exempt as a homestead is not a ground for the dissolution of an attachment; and the order dissolving the attachment was not an adjudication that the homestead was on the land attached. 162-176, 202+711.

11. Mechanics' Liens.

Since the amendment to the Constitution in 1888 (see Laws 1889, p. 1), homesteads are subject to mechanics' liens. 165-177, 206+164.

Marking off and grading a part of the homestead, and erecting a second dwelling house thereon, does not operate as a waiver of the homestead right in such tract, but constitutes an "improvement" of the homestead, for which mechanics' liens may be filed against it. 165-177, 206+164.

12. Mortgage foreclosures.

Sale on mortgage foreclosure. 165-295, 206+461.

13. Selection by Bankruptcy Court.

There having been no selection of a homestead, the bankruptcy court had jurisdiction to determine the portion of the two quarters which constituted the homestead. (Mason's Code 11:11). 162-176, 202+711.

14. Alienation.

A married man, whose wife and children were living apart from him in a distant state, obtained a marriage license and went through a marriage ceremony with another woman, who believed his wife dead. They lived together as husband and wife until his death 29 years later. The wife knew of the marriage ceremony at the time. The husband some years later took title to a piece of land which he occupied until his death as his homestead. Two weeks before his death he made a deed of it, through a third person, to the woman with whom he lived. His wife did not join. It is held: The deed of his homestead by the husband, his wife not joining, was void under the statute. 157-266, 196+258.

15. Estoppel to Claim.

The wife and children, though taking the legal title, might be equitably estopped by their conduct from claiming, as against a good-faith purchaser, that the deed did not pass title to the woman with whom the decedent lived, and from asserting their title against the purchaser. That the property was a homestead did not prevent the operation of an estoppel by conduct. 157-266, 196+258.

16. Crops.

Crops growing on homestead are not exempt. 10 F. (2d) 747.

8337. Area, how limited—Such homestead may include any quantity of land not exceeding eighty acres, and not included in the laid out or platted portion of any incorporated city, village or borough. If it be within the laid out or platted portion of such incorporated place having five thousand inhabitants or over, its area shall not exceed one-third of an acre, and if it

be within the laid out or platted portion of such incorporated place containing fewer than five thousand inhabitants, the area so exempted shall not exceed one-half of an acre. (R. L. § 3453, amended '07 c. 335 § 1) [6958]

Exemption is measured by area, and quantity of land prescribed may be selected as such, notwithstanding part may be devoted to purposes other than that of dwelling place of owner (112-512, 128+833). Two separate 10-acre parcels, touching only at corners, between which is roadway, if owned, occupied, and cultivated as one farm, may constitute homestead, though residence and appurtenances are all on one tract (101-347, 112+273). Effect of enlargement of area by R. L. upon debts created prior thereto (115-508, 133+75; 182 Fed. 439). Divided ownership between husband and wife is not controlling against the right of homestead (136-258, 161+515).

Crops growing on homestead are not exempt. 10 F. (2d) 747.

8338. Existing exemption not affected by changes

—As against debts which are not a lien upon such property the area of the homestead shall not be reduced or enlarged by reason of any change in the population of the place in which it is situated, by extending the limits of an incorporated place so as to include the same, or by the platting of surrounding or adjoining lands or the vacation of existing plats. And as against debts contracted prior to the taking effect of the Revised Laws, the homestead exemptions then established shall be neither enlarged nor diminished by the provisions of this chapter. (3454) [6959]

8339. Title may be in husband or wife—Equitable

title exempt—If the debtor be married the homestead title may be vested in either spouse, and the exemption shall extend to the debts of either or of both. Any interest in the land, whether legal or equitable, shall constitute ownership, within the meaning of this chapter, and the dwelling house so owned and occupied shall be exempt, though situated on the land of another. (3455) [6960]

Ownership is essential (8-309, 272; 22-384; 34-258, 25+452). An equitable title is sufficient (21-101; 21-107; 23-454; 27-756, 6+618; 41-412, 43+90; 44-482, 47+53; 89-247, 94+677; 91-482, 98+453). An undivided interest is sufficient (27-406, 7+824. See 36-136, 30+458). A tenant for years has a sufficient interest (58-450, 60+23). No change in title affects the exemption if claimant retains the ownership (27-406, 7+824). House on land of another (see 12-108, 59; 51-360, 53+805). Nature of interest of one spouse in the homestead of the other (56-523, 58+156; 85-83, 88+419; 96-294, 104+969). Wife has interest, though legal title is in husband, and is entitled to quiet enjoyment (97-503, 106+955). Vendee's equitable interest in contract of sale is subject to homestead estate (123-483, 144+222). Ownership of separate parcel within single homestead area (136-258, 161+515). Judgment debtor's existing homestead rights of record in wife's name (139-295, 166+342).

162-176, 202+711, notes under §§ 8336, 8343; 162-230, 202+494, note under §§ 8336, 8340, 8341.

A homestead claimed by husband and wife may be in part on land owned by one and in part on land owned by the other. 162-176, 202+711.

8340. No alienation without consent of spouse—Ex-

ceptions—Such homestead exemption shall not extend to any mortgage lawfully obtained thereon, to any valid lien for taxes or assessments, or to any charge arising under the laws relating to laborers or materialmen's liens. But if the owner be married, no mortgage of the homestead, except for purchase money unpaid thereon, nor any sale or other alienation thereof, shall be valid without the signatures of both husband and wife. (3456) [6961]

The consent of both husband and wife is essential to the conveyance of a homestead (96-294, 104+969). A deed, a contract for a deed, or a mortgage other than for the purchase money, of a homestead, without the signature of the wife, is void (21-101; 21-107; 21-299; 23-454; 28-464, 10+775; 31-213, 17+341; 35-280, 28+510; 38-469, 38+370; 39-511, 40+830; 41-412, 43+90; 44-482, 47+53; 55-244, 56+817). It cannot be made the foundation of an action for damages against the husband (55-244, 56+817). Its covenants are not binding (39-511, 40+830). It does not become valid upon the premises ceasing to be a

homestead (21-299; 39-511, 40-830; 44-482, 47+53); nor by reason of a subsequent divorce (36-57, 29+674; 39-511, 40+830). A husband cannot waive the exemption without his wife joining (25-183. See 35-280, 28+510; 68-317, 71+393; 96-294, 104+969). A material alteration in a mortgage by the husband after the wife has signed it and without her consent renders the mortgage void (28-464, 10+775). It is sufficient if the wife merely signs the deed. It is not necessary that it be acknowledged and attested. A conveyance without the wife joining is void and no title can be acquired under it even by the subsequent bona fide purchasers (28-464, 468, 10+775). Conveyance without wife joining void, though she has abandoned him and is living in adultery (99-348, 109+593). Grant of perpetual easement for railroad right of way without wife joining void (110-518, 126+276). The consent of a wife is not essential to the assignment of a mortgage given by the husband prior to his marriage (63-269, 65+454). A conveyance of a homestead and other lands without the signature of the wife is not void as to the other lands (31-213, 17+341; 55-244, 56+817). The wife may be estopped by her conduct from asserting her want of assent to a conveyance (28-464, 10+775; 44-482, 47+53; 75-549, 78+242; 78-295, 80+1127. See 67-71, 69+626). After an abandonment of a homestead a husband may mortgage it without his wife joining (35-280, 28+510). If part of a homestead is taken under the power of eminent domain the husband may dispose of the award without the consent of his wife (31-239, 17+385). Where the signature of one of the spouses is obtained by fraud the conveyance may be set aside unless the grantee is innocent (36-437, 31+858; 75-279, 77+961). Where a wife joins her husband in a deed which is put in escrow to be delivered on the performance of certain conditions by the grantee she waives her homestead right (37-215, 33+781. See 75-549, 78+242). It is not necessary for the wife to join in the covenants of her husband's deed in order to bar her homestead interest (48-408, 51+379). The signature of the wife is not essential to the validity of a purchase money mortgage (15-512, 423; 23-454). Where A mortgaged his homestead to B, his wife not joining, and later, after a divorce, deeded the same to C, who agreed to assume the mortgage, it was held that C was estopped to question the validity of the mortgage (36-57, 29+674). A wife abandoning a homestead, cannot have partition thereof against her husband (96-294, 104+969).

G. S. 1894 § 5521 cited (97-484, 107+159).
Deed, reserving life estate, unsigned by wife as to homestead, is void (124-335, 144+1094). As to mortgage not joined in by wife to homestead, prior judgment on issue of marriage, is inadmissible (128-525, 151+416). Wife joining husband in deeding his homestead as security for loan (122-419, 142+721). Agreement without wife's consent with town for road across homestead is void (133-128, 157+1039). Misdescription due to mutual mistake in deed to homestead joined in by both husband and wife may be reformed (129-290, 152+648). Estoppel to asserting invalidity of separate conveyances of homestead (133-261, 158+244). Contract for sale of homestead, jointly owned by husband and wife, made by wife alone, and thereafter confirmed by husband, is not invalid (138-171, 164+899; 142-36, 170+708; 143-38, 172+914). Six month lease is not an alienation (148-269, 181+579). Mortgage fraudulently representing himself as unmarried is estopped from asserting invalidity (150-242, 184+1021). Trust deed including homestead executed by husband and wife wherein was a latent ambiguity, parol evidence admissible (244 Fed. 914). 162-349, 202+733, note under § 8195; 165-38, 205+607; 165-158, 207+315.

Brothers held not partners in ownership of land and one married could claim homestead exemption, 298 Fed. 291.

Where the wife has been wrongfully induced by fraud or deception to release her homestead rights, either by her husband or by a third party, she is entitled, in a court of equity, to have such conveyance set aside and to be restored to her legal rights. 162-230, 202+494.

A wife, having executed a note and mortgage on the homestead and intrusted them to her husband without restrictions on their use, cannot resist foreclosure by denying her husband's authority to use the note and mortgage as security for credit given him by a bank on the faith thereof. 162-391, 203+227.

8341. Exemption not lost by death or desertion—If the owner shall die leaving a spouse or minor children constituting his family surviving, the homestead exemption shall not be affected by such death. And if a husband shall abscond, or otherwise desert his family, his wife and the minor children comprising such family may retain the homestead, with all the rights of owners therein. But they shall not have power to sell or mortgage the same, except in cases expressly provided for by law. (8457) [6962]

Upon the death of the spouse holding the fee title,

the surviving spouse takes the homestead right, not by any right of survivorship, but as property set aside by law from decedent's estate for the benefit of the surviving spouse and children. 162-230, 202+494.

8342. Sale or removal permitted—Notice—The owner may sell and convey the homestead without subjecting it, or the proceeds of such sale for the period of one year after sale, to any judgment or debt from which it was exempt in his hands. And he may remove therefrom without affecting such exemption, if he do not thereby abandon the same as his place of abode. But if he shall cease to occupy such homestead for more than six consecutive months he shall be deemed to have abandoned the same unless, within such period, he shall file with the register of deeds of the county in which it is situated a notice, executed, witnessed, and acknowledged as in the case of a deed, describing the premises and claiming the same as his homestead. But in no case shall the exemption continue more than five years after such filing, unless during some part of said term the premises shall have been occupied as the actual dwelling place of the debtor or his family. (3458) [6963]

1. Sale and removal—The statute does not have the effect of rendering actual occupancy as a home unnecessary; it simply authorizes temporary removal after a homestead has been acquired by actual occupancy as a home (15-116, 87; 29-18, 11+119; 35-280, 28+510; 47-13, 49+390). A conveyance of a homestead vests a good title in the grantee (25-305; 71-108, 73+639), even though it was made with a fraudulent intent (27-116, 6+455; 27-156, 6+618; 28-77, 9+172; 28-544, 11+77; 40-193, 41+103T; 89-247, 94+677). Prior to Revised Laws, garnishment reached money owing by garnishee derived from sale of homestead of defendants, and which defendants intended at time of service of garnishee summons to use in purchase of another homestead within one year from time premises were sold (97-484, 107+159).

2. Notice of claim—Abandonment—If an owner removes from and ceases to occupy his homestead for more than six months without filing the notice required by this section his homestead right ceases although he may have removed with the intention of returning and resuming his occupancy at some future time. To recover the right there must be a resumption of actual occupancy. Filing notice is effective to preserve the right only when there is an intention to return and occupy as a home (38-308, 37+340; 40-172, 41+1059; 47-13, 49+390; 50-264, 52+862). This section does not preserve the right for six months absolutely. If a party leaves his homestead with the intention of never returning his exemption right ceases at once regardless of whether he has filed a claim or not (29-18, 11+119; 35-280, 28+510; 71-108, 73+639; 84-468, 87+1024). A party may remove from his homestead for a period of six months with impunity although he does not file the statutory notice, if he intends to return (38-303, 37+340). Evidence of an abandonment must be clear and convincing (31-197, 17+336; 39-193, 39+141; 71-108, 73+639). Held insufficient (106-442, 119+60). The burden of proving a filing of notice rests on the claimant (50-264, 52+862). The domicile of the husband is the domicile of the wife. If he leaves the homestead with the intention of not returning there is an abandonment regardless of the intention of the wife (35-280, 28+510; 84-468, 87+1024. See 25-183; 40-172, 41+1059). To constitute an abandonment there must be an actual removal from the premises. An intention to remove is insufficient (31-197, 17+336). The acquisition of a new homestead works a forfeiture of the old one (29-18, 11+119). Where there has been a loss of exemption by abandonment a resumption of occupancy as a home does not have a retroactive effect, but merely gives a new right as of the date of the resumption (71-108, 73+639). Where a homestead right is lost by removal and failure to file the statutory notice the premises do not pass to the surviving spouse under ch. 74 (40-172, 41+1059). An outstanding interest is not a thing separate from the land so that its acquisition by the claimant affects the exemption (27-406, 7+324). Removal without abandonment (217 Fed. 168). Failure to file notice (138-405, 165+235; 142-36, 170+708). Not a homestead (152-163, 188+316; 217 Fed. 169; 206 Fed. 877).

As against an attachment, a claim to a homestead, made by a debtor who failed to file the notice cannot be sustained unless it appears that, within 6 months immediately preceding the levy, the debtor actually resided in and occupied the dwelling house. 163-294, 204+38.

The evidence supports a finding of abandonment of a homestead. 167-489, 209+636.

A man's intentions are not necessarily determined by his declarations; his conduct must be considered as well. 210+87.

The fact that within six months after his removal from his homestead the owner registered as a voter in the city to which he removed does not establish conclusively that he had changed his place of residence. 210+87.

When homestead rights are acquired, they are presumed to continue until it is shown by clear and convincing evidence that they have been abandoned. 210+87.

The owner may sell and convey his homestead without subjecting it to the lien of a judgment from which it was exempt in his hands, and may remove therefrom without affecting the exemption, if he does not thereby abandon the homestead as his place of abode. 210+87.

The evidence supports a finding that a homestead had not been abandoned. 213+537.

8343. Selection after levy—If the premises so owned and occupied by the debtor or claimed under him by another as exempt shall exceed the area herein prescribed, and the homestead shall not have been set apart as such and its boundaries defined, an attachment or execution may be levied upon the whole. Thereupon the person entitled to the benefits of such exemption shall deliver to the officer making said levy a description of the part claimed as exempt, and the remainder only shall be subject to the levy so made. (3459) [6964]

A sale of the whole of a tract including a homestead is void as to the whole if no selection is made, either by the officer or the claimant (25-183; 27-156, 6+618; 30-84, 14+364; 30-259, 15+118; 31-213, 17+341; 36-338, 31+353; 37-208, 34+23; 91-482, 93+463). A selection is conclusive if voluntarily made by the claimant (see 78-295, 50+1127).

Within the statutory time after the levy of the executions the plaintiffs presented to the sheriff their selection of a homestead. It was ignored. It is held that the defendants cannot contest the selection made. 162-176, 202+711.

In an action to set aside a mortgage foreclosure sale upon the ground that the sheriff sold the mortgaged land, which included the homestead of the plaintiff, ignoring his claim that the land other than the homestead be first sold, the complaint is held not to state a cause of action against the sheriff. 162-311, 202+723.

8344. Selection, how made—Such selection shall embrace the site of the dwelling and its appurtenances, shall be compact in form, and shall be so made as not unreasonably to affect the value of the remaining part. If the selection be not made within twenty days after notice of the levy, or if, when made, it be not satisfactory to the creditor procuring such levy, the sheriff shall cause such homestead to be set apart by a survey, beginning at a point designated by the claimant, or, if no such designation be made, at such point as the sheriff shall direct, and the cost of such survey shall be added to the debt and paid out of the proceeds of sale. (3460) [6965]

The selection must be reasonable and the tract carved out regular and compact in shape. The dwelling-house and appurtenances must be included (61-238, 63+632. See 70-546, 73+842). It will be presumed that an officer making a selection discharged his duty (91-482, 92+463). 162-176, 202+711, notes under §§ 8336, 8343.

CHAPTER 67

CHATTEL MORTGAGES AND CONDITIONAL SALES

Chattel Mortgages, §§ 8345-8359.

Mortgages, when void	8345
Mortgages to deliver copy of mortgage to mortgagor	8345-1
Same—Mortgage to contain receipt of mortgagor	8345-2
Where filed	8346
Duties of recording officer—Fee	8347
Index books—Limit of lien—When notice	8348
Mortgage of exempt property	8349
Satisfaction—Penalty	8350
Redemption before sale	8351
Foreclosure, when and where made	8352
Notice of sale	8353
Report of sale—Filing	8354
Attorney's fee	8355
Redemption after sale	8356
Mortgagee may purchase, when	8357
Mortgaged property subject to garnishment, etc.	8358
Mortgage of crops	8359

Conditional Sales, §§ 8360-8363.

When void unless filed	8360
Notice—Limit of time	8361
Same	8362
Satisfaction	8363

Filing Chattel Mortgages, Bills of Sale of Chattels and Conditional Sale Contracts Except in Cities of First Class §§ 8364-8375.

Bill of sale and other instruments to be filed with the register of deeds	8364
Fees	8365
Index to be kept	8366
Municipal clerk to deliver documents to register of deeds	8367
Fees for delivering documents	8368
Fees for recording documents so filed	8369
Application	8370
Report of sale—Filing	8371
Seed grain loans—Agreement—Contract	8372
Seed grain contracts to be filed with the register of deeds—Filing—Duration of lien	8373
Lienor may take possession	8374
Chattel mortgage provision, how applicable	8375

CHATTEL MORTGAGES

8345. Mortgages, when void—Every mortgage of personal property shall be void, as against the creditors of the mortgagor and subsequent purchasers and incumbrancers of the property, in good faith, unless it appears that such mortgage was executed in good faith, and not for the purpose of hindering, delaying, or defrauding any creditor of the mortgagor, and unless, in addition thereto, the giving of such mortgage is accompanied by immediate delivery, and followed by actual and continued change of possession of the mortgaged property, or, in lieu thereof, the mortgage is filed as hereinafter provided. (3461) [6966]

½. In General.

166-58, 206+948.
Held, that lease could not be construed as creating a chattel mortgage but only as an attempt to create a pledge; that the lessor had no lien thereunder until he took possession of the grain; and that the claim under a chattel mortgage given by the tenant before the lessor took possession was superior to the claim under the lease. 158-100, 196+935.

Action in replevin for possession of property claimed under a chattel mortgage. The finding that the mortgage never became operative or binding is sustained by the evidence. 159-149, 198+412.

A drive belt used in connection with a steam threshing outfit held to be an entirely distinct and independent article of manufacture from the engine, separator, or other parts of the outfit. 159-163, 198+401.

As a general rule, to include after-acquired property in a chattel mortgage, the intent so to do must be expressed by words in the instrument. 159-163, 198+401.

Powers of bank and officers. 162-118, 202+338.

A debtor may lawfully give a preference to one creditor over others, and an intention to give such a preference does not constitute a purpose to hinder, delay, or defraud creditors. 165-317, 206+440.

An agreement between the owner of personal property