

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



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Use by brothers, joint tenants, of a farm for partnership farming did not destroy their homestead rights therein. 172M200, 214NW793.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the homestead law. 173M576, 218NW108.

8. Debts due laborers or servants.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

§8340. No alienation without consent of spouse—Exceptions.

Use by joint tenants of a farm for partnership farming did not destroy homestead rights therein, where the wife of one of them refused to join in a conveyance of the farm to the partnership. 172M200, 214NW793.

On foreclosure mortgage covering a homestead, and land conveyed to a purchaser by the mortgagor's trustee in bankruptcy subject to existing liens, the judgment correctly directed the land sold by the trustee to be first subjected, and the homestead last. 172M529, 215NW850.

Where the wife does not sign a contract to convey the homestead the contract is a nullity, but a broker may recover a commission from the husband, there being a presumption that he can perform his contracts. 179M42, 228NW339.

§8342. Sale or removal permitted.

1. Sale and removal.

Finding against abandonment of homestead held sustained by the evidence. 172M200, 214NW793.

2. Notice of claim—Abandonment.

No "abandonment" of wife's homestead results from fact that husband makes a lease thereof to third party, not joined in or authorized by wife. 173M576, 218NW108.

There is no "abandonment" of a homestead until the owner removes therefrom and ceases to occupy the same as his home, intention to remove therefrom at some future time not being sufficient. 173M576, 218NW108.

CHAPTER 67

Chattel Mortgages and Conditional Sales

CHATTEL MORTGAGES

§8345. Mortgages, when void.

½. In general.

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may be removed by the seller on default in payments. 173M121, 216NW795.

Evidence held not to require finding that plaintiff authorized or acquiesced or ratified giving of mortgage. 173M166, 216NW801.

In replevin for lunch counter outfit under chattel mortgage given for balance of purchase price, defense of fraudulent misrepresentation held sustained by evidence. 173M443, 217NW505.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditor and vested with the right to attack. 175M47, 220NW400.

Findings in civil suit, held inadmissible in criminal prosecution. 180M378, 230NW818.

A conditional sale of stock of merchandise under which buyer is permitted to retain possession and to sell from and replenish the stock, is valid. 32F(2d)285.

A chattel mortgage covering a stock of merchandise under which mortgagor is permitted to retain possession and to sell from and replenish the stock is fraudulent as a matter of law and void as to creditors. 32F(2d)285.

Judgment of state court as to validity of transfer, held conclusive in bankruptcy court. 39F(2d)969.

1. What must be filed.

This section is applicable, though the chattel mortgage takes the form of a bill of sale. 175M47, 220NW400.

3. Effect of filing.

A duly filed chattel mortgage constitutes constructive notice though the property is thereafter removed to another state. 172M458, 215NW844.

Filing of chattel mortgage given by lessor held not notice to bona fide purchaser of note of

lessee containing mortgage clause on crops. 180M81, 230NW266.

4. Priority among mortgages.

Purchase money mortgage held superior to prior chattel mortgage. 177M441, 225NW389.

8. Burden of proving good faith.

Chattel mortgagee held to have burden of proving that she took her mortgage in good faith and not for the purpose of injuring creditors, as against an attachment levied on such property. 172M355, 215NW517.

This section is not repealed by implication by the uniform fraudulent conveyance act (§8475 et seq.) and is to be held identical to a similar statute existing and construed prior to the revision of 1905. 172M355, 215NW517.

The attaching creditor held to have sufficiently proved the validity of attachment and the cause of action for recovery of money stated therein, and hence was a creditor within the meaning of this section. 172M355, 216NW517.

No reversible error could be predicated upon the submission to the jury of the question whether the attachment creditor was a creditor in fact, for the testimony was undisputed that it was such to the extent of at least \$4,000. 172M355, 215NW517.

The finding of the jury that plaintiff did not sustain the burden of proof that the mortgage was taken in good faith and not for the purpose of hindering attaching creditor, has ample support. 172M355, 215NW517.

Evidence held properly admitted that at the same time plaintiff took this mortgage she also took another form of mortgage covering all the balance of its property within this state. 172M355, 215NW517.

There was no error in admitting evidence of prior mortgages to other parties for the purpose of proving the falsity of the representations of plaintiff's husband, the president of the mortgagor. 172M355, 215NW517.

A sale by a vendor of goods or chattels when there is not an immediate change of possession is presumed to be fraudulent and void as against creditor of the vendor. 175M157, 220NW560.

10. What is good faith.

Evidence sustained finding that chattel mortgage given by father to son was not executed in good faith. 177M84, 224NW457.

13. Crops.

A chattel mortgage on a crop not yet planted or sown attaches only to such interest as the

mortgagor has in the crop when it comes into being. 174M531, 219NW871.

Chattel mortgage on crops held subordinate to seed grain notes and subsequent chattel mortgage to lessor of land for rent. 176M90, 222NW 571.

18. Discharge of indebtedness.

Where indemnity company took title to tractor from contractor held that there arose question of merger or extinguishment of mortgage foreclosed by such indemnitor. *Hector v. R.*, 234NW643. See Dun. Dig. 1428.

§8345-1. Mortgage to deliver copy, etc.

Does not apply to conditional sale contracts or notes. Op. Atty. Gen., Feb. 18, 1930.

§8350. Satisfaction—Penalty.

Giving bill of sale of part of mortgaged chattels, held sufficient consideration for agreement to release mortgage. 180M6, 230NW120.

Cannot be released by marginal notation. Op. Atty. Gen., Nov. 19, 1929.

§8352. Foreclosure, when and where made.

2. Possession for foreclosure—Where in an action of replevin under a chattel mortgage given as part of a new contract, constituting an accord and satisfaction, the making of the contract and the default are admitted, a verdict was properly directed for plaintiff. 175M357, 221NW238.

Where plaintiff in replevin for mortgaged chattels declares generally as an owner entitled to possession, the defendant, under general denial, may prove payment of the debts secured by the mortgage. 176M406, 223NW618.

In replevin for mortgaged chattels, plaintiff has the burden of proof that the goods replevined are those mortgaged. 176M406, 223NW618.

§8359. Mortgage of crops.

176M90, 222NW571; note under §8345.

Under ordinary contract between landowner and cropper, they are co-owners, and cropper may mortgage his interest before crops are divided, and a provision authorizing landowner to retain possession of the cropper's share as security for his indebtedness is in legal effect a chattel mortgage. 171M461, 214NW288.

Except as security for rent or the purchase price of the land, the landowner cannot acquire a valid lien on crops to be grown later than the season beginning on May 1st next following the date of the contract. 171M461, 214NW288.

Mortgage on a crop not yet planted or sown attaches only to such interest as the mortgagor has in the crop when it comes into being. 174M 531, 219NW871.

PLEDGES

§8359-1. Perpetuating evidence.—Any party desiring to perpetuate the evidence of any sale made under the terms of any pledge of personal property may, within ten days after such sale, file in the office of the Register of Deeds of the County in which such sale was had, or if had within a city of the first class, then with the City Clerk of such city, a report of the proceedings on such sale, specifying therein the property sold, and that returned, if any, the amount received, the name of the purchaser, an itemized statement of all costs and expenses, the amount applied on the debt secured by the pledge, and the amount, if any, returned to the owner. Such report shall be made by the person conducting the sale and shall be verified or, if he be an officer, certified by him. There may be filed with such report the affidavit or, if he be an officer, the certificate of any person making service of or posting any notice to redeem such pledge or of such sale, and

when so filed, said report of sale and of such service or posting, or a certified copy thereof, shall be prima facie evidence of the facts therein stated. (Act Apr. 24, 1931, c. 329, §1.)

CONDITIONAL SALES

§8360. When void unless filed.

½. Conditional sales in general.

The seller in a conditional sale contract reserves the absolute title which remains in him or passes from him to the purchaser accordingly as to the conditions of the sale are broken or as they are performed. 176M483, 223NW908.

Reducing to judgment a past-due installment payment is an election to treat the sale as absolute. 176M483, 223NW908.

The lien which the seller in a conditional sale contract may foreclose on default is the unpaid seller's common-law lien, which rests upon possession, the reservation of title being the equivalent of the necessary possession. 176 M483, 223NW908.

Vendor in conditional sale contract may upon default retake the property and hold it as his own. 176M493, 223NW911.

Section 8375 does not make conditional sales chattel mortgages, nor give a right of redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M 493, 223NW911.

Plaintiff could recover as damages the value of an automobile lost by a garage through negligence, though plaintiff purchased it under a conditional sale contract and had not paid all of the purchase price. 177M10, 224NW271.

In this action of replevin, the plaintiff failed to prove default under the conditional sales contract upon which it based its right to possession. 181M477, 233NW18. See Dun. Dig. 8652.

1. Who protected.

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may be removed by the seller on default in payments. 173M121, 216NW795.

Only those creditors who seize the property under legal process are protected. 181M25, 231 NW248.

4. Filing.

Conditional sale of automobile filed in the county where buyer resided was notice to subsequent claimants through buyer and his creditors, regardless of the place where the contract was made or payments were to be made. 181 M477, 233NW18. See Dun. Dig. 8281, 8655.

6. Burden of proof.

A sale by a vendor of goods or chattels when there is not an immediate change of possession is presumed to be fraudulent and void as against creditors of the vendor. 175M157, 220 NW560.

§8363. Satisfaction.

No release by marginal notation. Op. Atty. Gen., Nov. 19, 1929.

§8363-1. Definitions.—For the purposes of this act a conditional sale contract shall include all agreements where possession of personal property under either an agreement where title is reserved until the purchase price is paid or where personal property is rented under an agreement that when the entire rental is paid that title thereto shall be transferred. (Act Apr. 25, 1931, c. 339, §1.)

§8363-2. Seller to give notice.—Whenever the seller shall have the right to retake possession of the property under a conditional sale contract because of default in payment only, the seller may serve upon the buyer personally or by registered mail directed to the last known address of the buyer, at least ten days prior to the retaking, a written notice of intention to retake the property on account of the buyer's default. The notice shall state the default and the period at the end of which the property will be retaken and the amount which the buyer will be required to pay within said time to avoid such retaking. If the notice is so served and the buyer does not pay the delinquent installment, or installments, or at the election of the then owner of the contract, pay the entire balance of the purchase price if the contract so provides, together with the actual costs and expenses of preparing and serving said notice before the day set for retaking, the seller may retake the property and the buyer shall have no right of redemption. (Act Apr. 25, 1931, c. 339, §2.)

As respects motor vehicles, the seven-day redemption clause for failing to report transfer begins to run from the time the seller retakes the vehicle. Op. Atty. Gen., June 20, 1931.

§8363-3. Period to redeem.—If the seller does not give the notice of intention to retake prescribed in Section 2 hereof, he shall retain the property for ten days after the retaking, during which period the buyer, upon payment or tender by him of the amount due under the contract at the time of retaking, together with all costs and expenses of the retaking, may redeem the property and become entitled to the possession thereof, and to continue in the performance of the contract as if no default had occurred. Provided however, that if the then owner of the contract so elects and the contract so provides, the buyer may be required to pay the entire balance of the purchase price, together with the costs and expenses of retaking the same. If the buyer pays such entire balance together with the costs and expenses he shall then have possession of and title to said property. Provided further, that if the property is perishable so that retention for ten days, as herein prescribed, would result in its destruction or substantial injury, the provisions of this section shall not apply and the buyer shall have no right of redemption. (Act Apr. 25, 1931, c. 339, §3.)

Where conditional seller retakes a motor vehicle without having given notice of intention to retake, the seller is not required to report the retaking until the redemption period has expired. Op. Atty. Gen., June 20, 1931.

§8363-4. Provisions may not be waived.—

No act or agreement of the buyer before or at the time of the making of the contract, or any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of this act, but the buyer, by an agreement in writing executed subsequent to his default in payment, may waive the right of redemption hereby given. (Act Apr. 25, 1931, c. 339, §4.)

§8363-5. Application.—This act shall not apply in any case where the conditional sale contract and the rights of the buyer thereunder shall be foreclosed by action in any court of this state. (Act Apr. 25, 1931, c. 339, §5.)

FILING CHATTEL MORTGAGES, BILLS OF SALE OF CHATTELS, AND CONDITIONAL SALE CONTRACTS EXCEPT IN CITIES OF FIRST CLASS

§8364. Filed with register of deeds.

See §§8346, 8370.

The reference "205NW481" in 1927 Statutes should be "202NW481."

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

Witnessing and acknowledging are unnecessary prerequisites to the filing of conditional sales contracts. 175M354, 221NW239.

Extension note agreement signed by purchaser is entitled to record, but assignment from original seller to finance corporation need not be recorded. Op. Atty. Gen., Feb. 18, 1930.

§8365. Fees.

Witnessing and acknowledging are unnecessary prerequisites to the filing of conditional sales contracts. 175M354, 221NW239.

§8370. Application.

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

§8373. Seed grain contracts to be filed, etc.

Chattel mortgage on crops held subordinate to seed grain notes and subsequent chattel mortgage to lessor of land for rent. 176M90, 222NW571.

Findings failed to show that defendants converted wheat or received proceeds from sale of wheat grown from seed furnished by plaintiff under a seed grain note given by tenant. *McCarthy v. T.*, 234NW591. See Dun. Dig. 247(51).

§8375. Chattel mortgage provision, how applicable.

This section does not make conditional sales chattel mortgages, nor give a right of redemption after forfeiture thereof, nor prevent the vendor from retaking and forfeiting of property. 176M493, 223NW911.

CHAPTER 67A

Sale of Goods

PART I

FORMATION OF THE CONTRACT

§8376. Contracts to sell and sales.

There is no reason why the Uniform Sales Act does not apply to a conditional sale contract,

except that the contract itself is to control as to those elements which it covers. 176M483, 223NW908.

Vendor in conditional sale contract may upon default retake the property and hold it as his own. 176M493, 223NW911.

Section 8375 does not make conditional sales chattel mortgages, nor give a right of redemp-