

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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

A summer cottage, fully furnished for housekeeping and living and having heating and kitchen coal stoves so that it may be lived in during winter, may be claimed and held as a homestead. *Gussman v. R.*, 190M153, 251 NW18. See Dun. Dig. 4207.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. *Rusch v. L.*, 194M469, 261NW186. See Dun. Dig. 4196.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to owners. *Smith v. W.*, 195M539, 263NW903. See Dun. Dig. 4201.

"Homestead" in tax classification statute means abode of owner without limit as to acreage or lots. *Op. Atty. Gen.*, Nov. 7, 1933. Opinion of Oct. 13, 1933, is withdrawn.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. *Op. Atty. Gen.* (421a-9), Sept. 14, 1934.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. *Op. Atty. Gen.* (521-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. *Op. Atty. Gen.* (521g), Apr. 15, 1936.

3. Actual occupancy as home essential.
Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

5. No limitation on use.
Illegal use and occupancy of a homestead does not render it subject to sale on execution. *Ryan v. C.*, 185 M347, 241NW388. See Dun. Dig. 4207.

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, 221 NW534.

13. Selection by bankruptcy court.
Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. *Landy v. M.*, 193M252, 258NW573. See Dun. Dig. 741.

14. Alienation.
An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

15. Estoppel to claim.
That plaintiff's husband, a year before judgment was obtained against plaintiff, went through bankruptcy in another state and in his petition stated his residence to be in that state, was not conclusive against plaintiff claiming homestead in state. *Gussman v. R.*, 190M153, 251NW18. See Dun. Dig. 2817.

Rule that husband has right to fix domicile of family has no special application where it is shown that husband has not determined or fixed any domicile either for himself or for his family. *Id.* See Dun. Dig. 2817.

8337. Area, how limited.

The words "within the laid-out or platted portion" mean that the land in question, though surrounded by platted land, must itself be laid out or platted actually or by some act equivalent to a laying out or plating. *Mintzer v. S.*, 45M323, 47NW973. See Dun. Dig. 4218.

The word "lot" in the former statute meant a city lot according to a survey and plat, and is not synonymous

with "tract" or "parcel." *Wilson v. P.*, 28M13, 8NW830. See Dun. Dig. 4204.

8338. Existing exemption not affected by changes.

Unplatted homestead cannot be reduced in area by extension of city limits to include it and by the laying out or plating of contiguous and surrounding lands owned by others. *Baldwin v. R.*, 39M244, 39NW321. See Dun. Dig. 4218. See, also, 51M316, 53NW711; 61M170, 63NW 490; 68M484, 71NW672; 69M24, 71NW919.

8339. Title may be in husband or wife—Equitable title exempt.

Kingery v. K., 185M467, 241NW583; note under §8340.

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, 215 NW850.

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. 179M 42, 228NW339.

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Husband's signature as witness on new contract for deed to wife did not constitute estoppel to claim that surrender back of former contract was invalid without husband's signature. *Craig v. B.*, 191M42, 254NW440. See Dun. Dig. 3179(83), 4211.

Equitable interest of a vendee under a contract for deed cannot be alienated without signature of other spouse where land covered by contract is occupied by vendee as a homestead. *Id.*

So strong is the public policy behind homestead statute that, where it appears that one spouse has attempted to alienate an interest in homestead without other's consent, supreme court can, on its own motion, assert this defense even though not properly pleaded or even though raised for first time on appeal. *Id.*

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Simmer v. S.*, 195M1, 261NW481. See Dun. Dig. 4282.

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, 218NW 108.

The homestead tax reduction law does not follow the same rules as the homestead exemption law, that the six months' absence period of the homestead exemption law does not apply to the tax law, and that the filing of a notice claiming property under the homestead exemption law will not extend the period of permissible absence to five years. *Op. Atty. Gen.* (414a-9), Aug. 7, 1934.

For purposes of taxation, a person is not entitled to homestead classification of a place in which he does not reside, even though he files a notice of homestead, and maintains furniture in one room. *Op. Atty. Gen.* (408d), June 2, 1936.

CHAPTER 67

Chattel Mortgages and Conditional Sales

CHATTEL MORTGAGES

8345. Mortgages, when void.

½. In general.

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. In re *Horwitz*, (USDC-Minn), 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. In re *Horwitz*, (USDC-Minn), 32F(2d)285.

Judgment of state court as to validity of transfer, held conclusive in bankruptcy court. In re *Ruthkowski*, (USDC-Minn), 39F(2d)969.

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. 173 M121, 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.

Tenant permitting third party under authority from landlord to cut wood and pile it on railroad right of way had no title which he could mortgage. Morrow v. P., 186M516, 243NW785. See Dun. Dig. 1427(85).

Transaction evidenced by a trust receipt, and acceptance of a time draft held a chattel mortgage upon automobiles named in trust receipt. McLeod Nash Motors v. C., 187M452, 246NW17. See Dun. Dig. 1425.

Junior chattel mortgagee held not entitled to recover in conversion by reason of private sale of chattels for purpose of paying debts. Carity Motors v. E., 189M310, 249NW190.

Mortgagee of chattels has legal title, but mortgagor has real interest in nature of equity of redemption. First Nat. Bank v. F., 190M102, 250NW806. See Dun. Dig. 1455, notes 80, 81.

Fact that assignee of lessor was to pay to assignor any proceeds derived from sale of crops over and above amount necessary to satisfy debt did not make it a mortgage. Federal Land Bank v. S., 192M21, 256NW102. See Dun. Dig. 1426.

No particular words are necessary to create a mortgage, but an instrument, absolute on its face, clearly must be shown to have been executed merely as security before the court will declare the same to be a mortgage. Id. See Dun. Dig. 1431, 6157.

Assignment of farm lease whereby lessor assigned all his rights and interest thereunder, held not to constitute a chattel mortgage so as to require filing in order to be valid against creditor attaching lessor's interest subsequent to date of assignment. Id. See Dun. Dig. 1426.

In replevin by mortgagee to recover automobile, evidence held to sustain finding that one of defendants was owner of car and that his son, other defendant, had no authority to execute chattel mortgage thereon. Utility Finance Co. v. S., 193M584, 259NW544. See Dun. Dig. 1430.

Where an alteration of a chattel mortgage is made without any intent to defraud, merely to correct an error in drawing instrument so as to make instrument conform to undoubted intention of parties, it will not avoid instrument. Hannah v. S., 195M54, 261NW583. See Dun. Dig. 259.

Evidence held to sustain finding that assignment to cover amounts due on contract for deed was absolute and not intended to be merely a security transaction in nature of a chattel mortgage. Killmer v. N., 196M420, 265NW 293. See Dun. Dig. 1426.

1. What must be filed.

This section is applicable, though the chattel mortgage takes the form of a bill of sale. 175M47, 220NW 400.

Assignment of chattel mortgage need not be filed. Federal Land Bank v. S., 192M21, 256NW102. See Dun. Dig. 1440, 1465.

Difference between a chattel mortgage and a pledge is that a defeasible title passes by mortgage while only possession passes by pledge. Thoen v. F., 199M47, 271 NW111. See Dun. Dig. 1424.

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.

A notary's certificate of acknowledgment without the seal is a nullity, and filing of chattel mortgage in office of register of deeds without seal of notary attached was not constructive notice to a subsequent mortgagee in good faith. Hartkopf v. F., 191M595, 256NW169. See Dun. Dig. 71, 1445.

On appeal from judgment for plaintiff in action by conditional vendor of tires and battery against mortgagee foreclosing on car, supreme court cannot consider contention of defendant that mortgagor and plaintiff acted unlawfully in removing old casings and battery, stipulation of facts not showing that anything was removed or in what condition old casings and battery were at time. Goodrich Silvertown Stores, Etc. v. P., 198M259, 269 NW464. See Dun. Dig. 1429a.

Farm lease containing chattel mortgage properly filed in office of register of deeds was good as against purchaser of hay from mortgagor, but could not be enforced where purchaser was State Emergency Relief Administration. Op. Atty. Gen. (400f), Dec. 13, 1934.

Filing of defectively executed instrument as constructive notice. 15MinnLawRev235.

3½. Priority in general.

As against a subsequent chattel mortgagee having notice of facts, a levy, otherwise good, upon an automobile is not invalidated by leaving automobile with execution defendant who gives his receipt therefor. Wallerbeck v. H., 189M604, 250NW565. See Dun. Dig. 3519.

In action by mortgagee for conversion of automobile, plaintiff's offer in evidence of prior chattel mortgage on car, held properly refused where it appeared plaintiff had knowledge of levy of execution prior to taking mortgage. Id.

A conditional sales contract or purchase-money mortgage is superior to any prior lien or mortgage on property of purchaser, and such prior lien or mortgage attaches only to such interest as purchaser of property acquires at time of purchase, subject to any lien or conditional sales contract given to seller for part or all of purchase price at time of sale. C.I.T. Corp. v. C., 198M 337, 269NW825. See Dun. Dig. 1449, 8651.

One holding a chattel mortgage on a motor truck covering after-acquired property attached to truck, took no title to tires and tubes thereafter purchased by mortgagor as against a conditional vendor. Goodrich Silvertown Stores v. A., 274NW172. See Dun. Dig. 1449.

4. Priority among mortgages.

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

Senior mortgages providing for future advances were valid as against junior chattel mortgagee having knowledge of what was taking place. Carity Motors v. E., 189 M310, 249NW190. See Dun. Dig. 1448.

Priority as between landlord's lien for rent and mortgage on chattels. 20MinnLawRev436.

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, 215 NW517.

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, 216NW 517.

No reversible error could be predicated upon the submission to the jury of the question whether the attaching 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.

Creditors and subsequent mortgagee have burden of proving good faith as against prior unfilled mortgages. Holt Motor Co. v. R., 196M527, 265NW313. See Dun. Dig. 1451.

10. What is good faith.

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

12. Stocks of goods.

Chattel mortgage on stock of merchandise without limitation as to the right of the mortgagor to dispose of the property and apply the proceeds to his own use is void as to creditors under Minnesota law. Essen, (DC-Minn), 2FSupp646.

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, 222NW571.

14. Motor vehicles.

Where articles later purchased by owner of automobile are so closely incorporated with principal article that they cannot be identified and detached therefrom without injury thereto, they become a part thereof and will pass by accession to one having a prior chattel mortgage or lien on such principal article, but this was not true as to new casings and battery acquired under title retaining

contracts. *Goodrich Silvertown Stores, Etc. v. P.*, 198M 259, 269NW464. See Dun. Dig. 1429a.

One holding a chattel mortgage on a motor truck covering after-acquired property attached to truck, took no title to tires and tubes thereafter purchased by mortgagor as against a conditional vendor. *Goodrich Silvertown Stores v. A.*, 274NW172. See Dun. Dig. 1449.

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.*, 182M413, 234NW643. See Dun. Dig. 1428.

19. Pledges.

Contract whereby decedent in his lifetime deposited collateral with bank as security held a pledge of his collateral account as security which did not terminate upon his death. *Browning v. E.*, 189M375, 249NW573. See Dun. Dig. 7736.

Corporate stock pledged to secure debt of another was not released by renewal of debt, in view of written waiver of notice. *Stewart v. B.*, 195M543, 263NW618. See Dun. Dig. 7745.

As between owner of stock pledged by borrower without knowledge of owner and person signing as surety before delivery of note, such surety held not partner of borrower, as affecting primary liability on note, and right to exoneration of stock pledged. *Id.*

Pledgor of stock and endorsers held co-sureties and each entitled to contribution. *Id.*

Difference between a chattel mortgage and a pledge is that a defeasible title passes by mortgage while only possession passes by pledge. *Thoen v. F.*, 199M47, 271NW 111. See Dun. Dig. 7734.

A pledge is a bailment of personal property as security for a debt or other obligation. *Id.*

Where insurance company notwithstanding notice of pledge paid face of policy to beneficiary without requiring surrender of policy duly released as its contract gave it the right to require, pledgee by failing to bring proceedings to prevent such action did not waive its rights as pledgee nor was it estopped. *Janesville State Bank v. A.*, 274NW232. See Dun. Dig. 4693.

8345-1. Mortgagee to deliver copy, etc.

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

8345-2. Mortgage to contain receipt of mortgagor.

An instrument in effect a chattel mortgage may not be filed with register of deeds where it does not contain a mortgagor's receipt. *Op. Atty. Gen.* (373b-5), Aug. 20, 1934.

8346. Where filed.

½. In general.

Chattel mortgage may not be altered after filing. *Op. Atty. Gen.* (373b-5), May 27, 1937.

2. Acknowledgment.

As between the parties, a chattel mortgage properly signed and delivered is good regardless of witnesses or acknowledgment, and is void only as to subsequent good faith purchasers without notice, actual or constructive. *Miller Motor Co. v. J.*, 193M85, 257NW653. See Dun. Dig. 1431.

Whether acknowledgment of chattel mortgage was sufficient to entitle mortgagee to be filed need not be determined; for, under facts disclosed, defendant took title from vendor in conditional sales contracts subject to lien of chattel mortgage. *Id.* See Dun. Dig. 1447.

8347. Duties of recording officer—Fee.

Where a chattel mortgage is withdrawn by mistake from register of deeds office it does not constitute a satisfaction in absence of countervailing equities in party to gain by it. *Carity Motors v. E.*, 189M310, 249 NW190. See Dun. Dig. 6264.

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.

No provision is made for marginal release of chattel mortgages. *Op. Atty. Gen.* (373b-10(c)), July 13, 1935.

Register of Deeds should not file an instrument purporting to satisfy chattel mortgage which does not bear original signature of proper party, but which bears a carbon copy of such signature. *Op. Atty. Gen.* (373b-5), June 16, 1936.

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.

8353. Notice and sale.

½. In general.

Procedure for filing and foreclosing liens for stallion services. *Op. Atty. Gen.* (520j), May 7, 1936.

1. The notice.

Sale of property by vendor-mortgagee after repossession, without giving notices required does not foreclose vendee-mortgagor's right of redemption, but constitutes a conversion. *Kettwig v. A.*, 191M500, 254NW 629. See Dun. Dig. 8652a.

There was no ratification of sale made without proper notice by request for additional time to make redemption and consent thereto. *State Bank of Loretto v. L.*, 198M 222, 269NW399. See Dun. Dig. 1460(43).

Foreclosure of a chattel mortgage by notice requires strict adherence to statutory requirements. *Id.*

When posting was made in Minneapolis only and none in town where mortgaged property was located and had its situs, sale was invalid. *Id.*

2. Mortgagee a trustee.

Bank, in selling pulp wood under mortgage, was guilty of conversion where mortgagor had no title. *Morrow v. P.*, 186M516, 243NW735. See Dun. Dig. 1463.

3. Conversion.

Sale of automobiles by mortgagee without a foreclosure was a conversion. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1459.

Measure of damages was correctly submitted as market value of cars at place where they were converted by mortgagee, less amount due on time draft. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1474, 1955.

A trustee in bankruptcy, who brings suit in state court alleging conversion of property of bankrupt estate by reason of an invalid foreclosure of chattel mortgage, is bound by measure of damages in state jurisdiction and is entitled to recover only difference between value of property and amount of lien, and where property converted was worth less than amounts of chattel mortgage liens, judgments were rightly entered for defendants. *Ingalls v. E.*, 194M332, 260NW302. See Dun. Dig. 1474.

8354. Report of sale—Filing.

Sheriff's signature to certificate of chattel mortgage foreclosure sale need not be acknowledged, but signature of police officer should be. *Op. Atty. Gen.* (390a-19), Dec. 23, 1936.

8358. Mortgaged property subject to garnishment, etc.

Where mortgagee of chattels obtained judgment and levied upon mortgaged property under execution, release of levy was not an election of remedies so as to bar right to proceed under mortgage. *First Nat. Bank v. F.*, 190M102, 250NW806. See Dun. Dig. 2914.

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. 171M 461, 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. 174M531, 219NW871.

A clause in a real estate mortgage assigning rents to mortgagee is not such a mortgage on crops as to come within section. *Mutual Ben. Life Co. v. C.*, 190M 144, 251NW129. See Dun. Dig. 1432.

Clause "together with sufficient feed and roughage to care for the above named livestock during the life of this mortgage," following description of livestock, does not impress a lien upon growing crops. *Op. Atty. Gen.* (301a-3), June 3, 1935.

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.

$\frac{1}{2}$. 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. 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 redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M493, 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.

In conditional seller's suit for conversion of motor truck, evidence held to sustain finding that purchaser had actual notice of contract. International Harvester Co. of America v. N., 184M635, 239NW662. See Dun. Dig. 1951(91).

Where a seller in a conditional sale contract repossesses the property because of default in payments, and sells the same, the contract is functus officio. Stemland v. C., 186M384, 243NW708. See Dun. Dig. 8652.

A contract transferring a gasoline powered shovel to highway subcontractor did not impose liability on principal contractor or his bondsman for rentals provided for, where contract was, in fact, conditional sale. Motor Power Equipment Co. v. P., 188M370, 247NW244. See Dun. Dig. 1054.

Contract denominated a lease and requiring payment of rentals, held, in law, a conditional sales contract. Id. See Dun. Dig. 8648.

Plumbing and heating equipment installed under title retaining contract could be removed by seller where property would not be damaged thereby. North Shore Co. v. B., 188M433, 247NW505. See Dun. Dig. 3770a(78).

Where defendant sold farm machinery under conditional sale contract to a dealer and it was in possession of dealer for sale on taxing day, it should not have been taxed to seller. State v. J. L. Case Co., 189M180, 248NW726. See Dun. Dig. 9199(62).

A vendor in a conditional sales contract, by accepting from vendee a chattel mortgage upon property so sold, recognizes title in vendee, and vendor's title under conditional sales contract is destroyed. Kettwig v. A., 191M500, 254NW629. See Dun. Dig. 8653.

Error in year designating model of an automobile did not vitiate description in conditional sales contract filed of record. C. I. T. Corp. v. D., 194M169, 259NW807. See Dun. Dig. 8655.

A conditional sales contract or purchase-money mortgage is superior to any prior lien or mortgage on property of purchaser, and such prior lien or mortgage attaches only to such interest as purchaser of property acquires at time of purchase, subject to any lien or conditional sales contract given to seller for part or all of purchase price at time of sale. C.I.T. Corp. v. C., 198M337, 269NW825. See Dun. Dig. 1449, 8651.

Seller has three remedies: he may retake property; sue for unpaid contract price; or he may, while retaining possession, bring suit in equity to have a lien decreed and enforced. The suit in equity is not a remedy under contract, but under common law, and now under the Uniform Sales Act. Id.

By retaking possession under title retaining contract, seller waives his right to sue for purchase price, and contract is at an end. Id.

Retention of title by seller in a conditional sales contract is not a lien, but a reservation of title. Id.

Remedies of conditional seller upon buyer's default—foreclosure of lien. 17MinnLawRev66.

Rights of seller retaining title to or lien on chattels annexed to realty as against third persons. 18MinnLawRev812.

1. Who protected.

That a conditional sale was not recorded can be asserted only by a creditor who has acquired a superior

lien. Williams, (DC-Minn), 60F(2d)130. See Dun. Dig. 8655.

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 processes are protected. 181M25, 231NW248.

Furnace sold under conditional sale contract remains personal property as between vendors and purchasers, even though annexed to realty. Pennig v. S., 189M262, 249NW39. See Dun. Dig. 3770a(78).

Where articles later purchased by owner of automobile are so closely incorporated with principal article that they cannot be identified and detached therefrom without injury thereto, they become a part thereof and will pass by accession to one having a prior chattel mortgage or lien on such principal article, but this was not true as to new casings and battery acquired under title retaining contracts. Goodrich Silvertown Stores, Etc. v. P., 198M269, 269NW464. See Dun. Dig. 1429a.

Term "creditors" does not mean creditors generally, but only creditors who have seized property under legal process. C. I. T. Corp. v. C., 198M337, 269NW825. See Dun. Dig. 8655.

One is not a creditor unless he has seized property under legal process. Goodrich Silvertown Stores v. A., 274NW172. See Dun. Dig. 1447.

One holding a chattel mortgage on a motor truck covering after-acquired property attached to truck, took no title to tires and tubes thereafter purchased by mortgagor as against a conditional vendor. Id.

Rights of assignee of conditional sale contract against subsequent bona fide purchaser from original vendor. 16MinnLawRev689.

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. 181M477, 233NW18. See Dun. Dig. 8281, 8655.

5. Notice.

If creditor has actual knowledge or notice of an unfilled conditional sales contract, or is charged with such notice or knowledge, he is not protected by statute. Holt Motor Co. v. R., 196M527, 265NW313. See Dun. Dig. 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, 220NW560.

Attaching or levying creditor has burden of proving that he acted without actual notice or knowledge of unfilled contract. Holt Motor Co. v. R., 196M527, 265NW313. See Dun. Dig. 8655.

8361. Notice—Limit of time.

Rights of an innocent purchaser of a new and unregistered automobile from a retail dealer may be subject to those of the assignee of a prior and duly recorded conditional sales contract. Drew v. F., 185M133, 240NW114. See Dun. Dig. 8655.

8362. Same.

Correction—The citation 156-57 to the note under this section should be 156-39.

8363. Satisfaction.

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

Conditional sales contract should be satisfied by assignee of vendor, which assignment should be filed. Op. Atty. Gen. (373b-6), Apr. 25, 1936.

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.)

Editor's Note. Uniform Conditional Sales Act has been adopted in: Alaska, Arizona, Delaware, New Jersey, New York, Pennsylvania, South Dakota, West Virginia and Wisconsin.

This act did not affect a contract entered into before its passage. Grossman v. L., 184M446, 238NW893. See Dun. Dig. 8648.

It was error to charge that manufacturer of milking machines was liable for electrocution of cows if it reserved title until machines were paid for and dealer had not yet paid for them, the machines being in the possession and control of the dealer. Diddams v. E., 185M270, 240NW895. See Dun. Dig. 6995.

A wrongful demand for and receipt of further payment from conditional purchaser who did not know that property had been reclaimed does not authorize purchaser to sue seller for a conversion of property prior to passage of this act. *Stemland v. C.*, 186M384, 243NW 708. See Dun. Dig. 8652a.

In action by seller on conditional sale note, jury was warranted in finding that seller in repossessing conditionally sold car accepted same in full and complete satisfaction of balance due on note and did not repossess it as buyer's agent for purpose of reselling. *Ahlers v. J.*, 193M544, 259NW397. See Dun. Dig. 8651.

Conditional seller has lien similar to that accorded a chattel mortgagee and may foreclose same by bringing action in equity and may thus secure deficiency judgment, and to protect himself, he may couple foreclosure action with action of replevin, thereby obtaining possession of property while foreclosing. *Id.* See Dun. Dig. 8651.

Conditional seller taking possession absolutely, and not as agent for purposes of foreclosure properly shown, accomplishes an election to take back the goods and forfeit right to recover any part of purchase money. *Id.* See Dun. Dig. 8651.

What law governs the conditional buyers right of redemption. 18MinnLawRev429.

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.)

A purchaser on conditional sales contract is not entitled to recover payments made by him on the purchase price when the property is repossessed under the contract by the seller. *Livingstone v. H.*, 191M623, 255 NW120. See Dun. Dig. 8652.

In action by purchaser for conversion of automobile by finance company, wherein plaintiff claimed that conditional sales contract was signed in blank, invoice was properly received, as it bore on the price. *Saunders v. C.*, 192M272, 256NW142. See Dun. Dig. 3349a.

One acquiring property without foreclosure pursuant to this act, with knowledge of outstanding chattel mortgage, took subject to such mortgage, though it was not properly witnessed and acknowledged. *Miller Motor Co. v. J.*, 193M85, 257NW653. See Dun. Dig. 1431.

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.)

A vendor in a conditional sales contract may retake property on default in payments and treat it as his own, and purchaser's only remaining interest is right to redeem. *C.I.T. Corp. v. C.*, 198M337, 269NW825. See Dun. Dig. 8651.

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. Bill of sale and other instruments to be filed with register of deeds—Exceptions—As notice—Conditional sales contracts excepted.—(1) Any bill of sale, instrument evidencing a lien on, or reserving title to personal property and satisfactions of liens on personal property, shall be filed with the register of deeds in the county in which the said personal property is situate.

(2) Chattel mortgages, assignments, releases and satisfactions thereof, and instruments relating to the priority or status of a lien on personal property shall be filed with the register of deeds in the county in which said property is situate except in cities of the first class. Copies of any such instrument certified by any officer with whom it has been filed pursuant to law, may be filed in any other place wherein such property or any part thereof is situated at the date of such instrument or to which it or any part thereof may be thereafter removed.

(3) The filing of any such instrument shall operate as notice thereof to all subsequent purchasers and encumbrancers as to so much of said property as is situate in the counties or city where such instrument, or certified copy of any thereof, is filed.

(4) The provisions of subdivisions 2 and 3 shall not apply to conditional sales contracts. ('15, c. 364, §1; '17, c. 158, §1; Apr. 13, 1935, c. 169.)

Correction.—Citation 162-261, 205+481 should be 162-261, 202+481.

See notes under §§8346, 8370.

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.

A conditional sales contract of ambulatory property is to be filed in the county where the parties have fixed its situs. *Miller Motor Co. v. J.*, 193M85, 257NW653. See Dun. Dig. 8655(6).

The finding that plaintiff took mortgage in good faith without notice or knowledge of conditional sales contract is justified by evidence. *Id.* See Dun. Dig. 8655.

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.

Where contract for deed upon a crop payment plan, giving chattel mortgage upon crop, is offered with request to file only as chattel mortgage, it is duty of register of deeds to file it only as a chattel mortgage and not to file it as a real estate transfer, or index it as such. *Op. Atty. Gen.* (373b-17(d)), Mar. 15, 1937.

Chattel mortgage may not be altered after filing. *Op. Atty. Gen.* (373b-5), May 27, 1937.

8365. Filing—Fees.—Every register of deeds on and after July 1st, 1915, shall receive and file any such instrument, which shall be executed, witnessed, and acknowledged according to law, or a true copy

thereof and shall immediately number and index the same, and certify on each instrument the exact time of receipt, which certificate shall be prima facie evidence of the facts stated therein. No such instrument shall be removed from the office where filed until cancelled, released, or satisfied. The fees for filing such instruments shall be twenty-five cents for each instrument and twenty-five cents for a certified copy thereof, when copy is furnished, said amount to be paid to the register of deeds at the time of filing, and such fee shall be retained by the register of deeds, as additional salary and compensation for filing such instruments. The register of deeds shall, upon request, furnish and certify an abstract of all such chattel mortgages, bills of sale, conditional sales contracts, assignments, releases, renewals, affidavits and all other instruments relating to any thereof on file in his office, giving the number of the instrument, date and time of filing, name of grantor, name of grantee, name of instrument, date of instrument, amount, and brief description of the property, upon payment of twenty-five cents for the first four entries and ten cents for each subsequent entry on each instrument abstracted and twenty-five cents for his certificate thereon, with a minimum fee of twenty-five cents. ('15, c. 364, §2; Apr. 13, 1935, c. 168, §1.)

Sec. 2 of Act Apr. 13, 1935, cited, provides that the act shall take effect from its passage.

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

Recourse cannot be had against surety on a bond of a public officer, conditioned for faithful performance of his official duties, because of negligence in acts done not within scope of his statutory duties, and furnishing of an abstract of chattel mortgages on hogs was not official duty of a register of deeds. Federal Intermediate Credit Bank v. M., 194M150, 259NW793. See Dun. Dig. 8349.

Fees in connection with filing of chattel mortgage and rural credit lease, stated. Op. Atty. Gen., Feb. 27, 1934.

Original bill of sale filed with register of deeds cannot be removed from file. Op. Atty. Gen., Mar. 13, 1934.

A register of deeds is not required to furnish a filing receipt or a certificate without charge when a chattel mortgage is filed. Op. Atty. Gen. (373b-10(c)), July 5, 1934.

Laws 1929, c. 69, as amended by Laws 1933, c. 143, have not been modified or the original provision of this section reinstated, as to Otter Tail County, by operation of Laws 1935, c. 168. Op. Atty. Gen. (373b-10(c)), June 18, 1935.

"Twenty-five cents for the first four entries" means 25c for each of the four entries. Op. Atty. Gen. (373b-10(c)), July 13, 1935.

It is duty of register of deeds to furnish complete abstract without additional fees where a church is requested for more than customary six years. Op. Atty. Gen. (373b-1), Oct. 4, 1935.

8370. Application.

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 176M354, 221NW239.

8372. Seed grain loans—Agreement—Contract.

Conservator of rural credit has authority to loan money to tenants on foreclosed lands to be used to buy seed to be planted on such land provided he take security in the way of notes or contracts. Op. Atty. Gen. (770i), Apr. 30, 1934.

Federal grain notes constituted a lien upon all of crop produced from any part of the grain included therein. Op. Atty. Gen. (833c), Dec. 28, 1935.

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., 182M409, 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.

A vendor in a conditional sales contract may retake property on default in payments and treat it as his own, and purchaser's only remaining interest is right to redeem. C.I.T. Corp. v. C., 198M337, 269NW825. See Dun. Dig. 8651.

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 sales 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 redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M493, 223NW911.

Evidence held to sustain finding that mother and not son living in the same house purchased groceries. Buro v. M., 183M518, 237NW186.

The terms "measurement and acceptance" in the contract were ambiguous, and the meaning intended by the parties was likewise properly submitted. Hayday v. H., 184M8, 237NW600. See Dun. Dig. 8629b.

Contract for the sale of 20,000 cords of pulpwood, for "measurement and acceptance" on board cars at buyer's dock, as Erie, Pa., was properly held ambiguous as to being entire or severable in cargoes, and its construction with respect to intent correctly submitted to the jury. Hayday v. H., 184M8, 237NW600. See Dun. Dig. 8629b.

A remainder in personal property cannot be created by parol. Mowry v. T., 189M479, 250NW52. See Dun. Dig. 3171a, 8870.

Oral remainder in personal property having failed, there was reversion of property to donor by operation of law and subsequent conveyance thereof by donor to remainderman gave him right to recover same from executors of donee. Id.

Where money was deposited both as consideration for option to purchase considerable amount of stock and also with right to accept stock equivalent to amount of deposit, and depositor elected to take smaller amount of stock just after death of other party, there existed no right to rescind and recover amount of money deposited by reason of delay in appointment of administrator. Miller's Estate, 196M543, 265NW333. See Dun. Dig. 8500a.

Evidence held to sustain finding that caskets were sold upon consignment and were returned to plaintiff within a reasonable time. J. J. Meany Casket Co. v. M., 199M117, 271NW99. See Dun. Dig. 728.

Validity of oral agreement to execute mutual wills bequeathing personality. 20MinnLawRev238.

Quasi contractual recovery in law of sales. 21MinnLawRev529.

8377. Capacity—Liabilities for necessities.

When infant, by fraudulent representation that he is of age, induces another to sell property to him, such other person may recoup damage due to depreciation of property when infant rescinds purchase and sues for what he has paid. Steigerwalt v. W., 186M558, 244NW 412. See Dun. Dig. 4435(18).

A minor may purchase stock in a credit union. Op. Atty. Gen., Dec. 21, 1931.

FORMALITIES OF THE CONTRACT

8379. Statute of frauds.

Evidence sustains finding that the time of performance of a written contract for the sale of merchandise was extended by a parol agreement. Bemis Bros. Bag Co. v. N., 183M577, 237NW586. See Dun. Dig. 8870.

The time of performance of a written contract for the sale of merchandise may be extended by parol without additional consideration and without offending the statute of frauds. Bemis Bros. Bag Co. v. N., 183M577, 237 NW586. See Dun. Dig. 8870.

Where parties concerned with application for an order extending period for redemption from mortgage foreclosure made a settlement in regard to extension by agreeing that period of redemption should be extended to a certain date and that petitioner should have right to receive and retain rents from that date and receive a certain sum for a mechanical stoker, the agreement was a binding settlement of the litigation, notwithstanding terms had not been incorporated in a written stipulation or memorial of the completed settlement, and the agreement was not vitiated under the statute of frauds or otherwise by reason of inclusion of transfer of personal property or fixtures. State v. District Court, 194M 32, 259NW542. See Dun. Dig. 8875.