

CHAPTER 511

CHATTEL MORTGAGES, CONDITIONAL SALES CONTRACTS, AND SEED
LOANS

CHATTEL MORTGAGES

511.01 MORTGAGES, WHEN VOID.

HISTORY. R.S. 1851 c. 27 s. 3; P.S. 1858 c. 22 s. 3; 1860 c. 33 s. 1; G.S. 1866 c. 39 s. 1; G.S. 1878 c. 39 s. 1; G.S. 1894 s. 4129; 1897 c. 292 s. 1; R.L. 1905 s. 3461; G.S. 1913 s. 6966; G.S. 1923 s. 8345; M.S. 1927 s. 8345.

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1. Generally

According to the law of the state where the mortgage was executed and the property located, a chattel mortgage does not pass the title to the mortgagee, and is but a mere lien, but condition being broken, the mortgagee in this case was entitled to immediate possession and could maintain an action in trover for conversion. *Nichols v Minnesota*, 70 M 528, 73 NW 415.

A chattel mortgage stated the residence of the mortgagor and the property as being in his possession, otherwise the description was faulty. Held, it was sufficiently described so it could be supplemented by oral evidence. *Barrett v Magner*, 105 M 118, 117 NW 245.

A chattel mortgage is void as to future creditors of the mortgagor, when it purports to secure a specified debt on all the future earnings of a threshing machine that may accrue during a term of two years and in certain townships. *Dyer v Schneider*, 106 M 271, 118 NW 1011.

Lease of land on a cash rental basis contained a provision for a lien. Held, that under the circumstances the clause in the lease might be effective as a pledge in which case it would not be operative until the landlord took possession and a chattel mortgage given to a bank would be senior. *Bank v Zwart*, 158 M 100, 190 NW 935.

To include after-acquired property in a chattel mortgage, the intent to do so must be expressed in words of the instrument. *Campbell v Nelson*, 159 M 163, 198 NW 401.

Evidence insufficient to sustain a finding that the mortgagee, at the time of taking its mortgage had actual notice of the contents of a lease containing a chattel mortgage clause, but not filed for record. *Steelsmith v Johannsen*, 161 M 529, 201 NW 917.

A mortgagee of a herd of cattle, having acquired possession, is obligated to feed and care for the same in a proper manner, and any neglect renders the mortgagee liable for the damages. *Sutley v Bank*, 162 M 118, 202 NW 338.

Bank having a chattel mortgage on personal property authorized the sale of the property covered, and other personal property with an agreement that all proceeds be applied to the chattel mortgage. Held, an attachment by a creditor that the permission to sell did not extend to the unmortgaged property, and the

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money was attachable until actually paid to the bank. *O'Connor v Einfeldt*, 164 M 422, 205 NW 268.

A death may lawfully give a preference to one creditor over others, and such act does not constitute a purpose to hinder, delay, or defraud creditors. *Grager v Hansen*, 165 M 317, 206 NW 440.

Contract of a commission house. Held, to be secondary to a chattel mortgage the bank had on a grain elevator. *Healy-Owen-Hartzell v-Montevideo*, 165 M 330, 206 NW 646.

The grantee under a contract for the purchase of a farm in the fall of the year placed a chattel mortgage on his next year's crop. The crop was planted in the spring, but his equipment was seized in May, and he abandoned the farm, and the grantee under the contract took possession. Held, the grantor as owner of the land took the crop as senior to the mortgagee. *Bank v Hofschild*, 166 M 58, 206 NW 948.

The language of the clause describing the property covered by chattel mortgage referred to in the opinion discloses the intention of the parties to include property subsequently acquired by the mortgagor for use in his newspaper plant. *Watson v Koochiching Company*, 166 M 383, 208 NW 11.

A chattel mortgage described an oil tank as a 12,000-gallon tank, and in a renewal as a 1,200-gallon tank. Held, the description was insufficient. *Munson v Bessel*, 169 M 434, 211 NW 838.

Hot air furnace installed by tenant with consent of landlord did not become a part of the realty and was subject to seizure under a conditional sales contract. *Holland v Jefferson*, 173 M 121, 216 NW 795.

Plaintiff sent his agent to purchase an edger which he did, and he placed a mortgage, signing plaintiff's name, not only on the edger but on plaintiff's planer as well. Held, the mortgage was good as to the edger, but not as to the planer. *Britton v Enterprise Co.* 173 M 166, 216 NW 801.

Defendants purchased a lunch room, paying part cash and giving a chattel mortgage for the balance. On foreclosure it was found that misrepresentations had been made to the damage of more than the amount claimed under the mortgage, and there could be no foreclosure. *Peoples v Houck*, 173 M 443, 217 NW 505.

A receiver cannot attack a chattel mortgage as void because not recorded unless his appointment was one in which he represented creditors and which vested him with right to attack. *Munck v Bank*, 175 M 47, 220 NW 400.

Owner of land executed a chattel mortgage to intervenor on one-third of the crop to be grown on his land in 1925. Later he rented to a tenant at a cash rental of \$350.00 per year in the form of a note secured by a crop mortgage. The owner transferred the note and mortgage to the plaintiff who took them in good faith. The tenant sold the crop to the defendant, and the plaintiff sued in conversion, and the intervenor intervened. Held, the plaintiff, and not the intervenor, had the right to sue the defendant. *Purdie v Lekve*, 180 M 81, 230 NW 266.

Criminal prosecution for alleged sale of mortgaged property. *State v Ruthkowski*, 180 M 378, 230 NW 818.

Recovery in conversion against a bank which had foreclosed upon and sold under a mortgage given to the bank by one who had no title. *Morrow v Bank*, 186 M 516, 243 NW 785.

Where a senior and a junior mortgage was agreed to be liquidated by a public sale, and the amount obtained is insufficient to pay the senior mortgage, the junior mortgagee has no right of action against the senior mortgagee. *Carity Motors v Eichten*, 189 M 310, 249 NW 190.

A mortgagee of chattels, having procured a judgment against the mortgagor of the debt, levied upon the mortgaged property under a writ of execution but promptly released. Held, that the doctrine of election of remedies is an application of the law of estoppel, and there was no election here, and the mortgagee did not release his security, because he neither received any advantage himself nor caused any loss to another by his levy and release. *Bank v Flynn*, 190 M 102, 250 NW 806.

Assignment of a farm lease whereby lessor assigned all his rights thereunder was not a chattel mortgage so as to require filing, and is valid as against a garnish-

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ment of the tenant by a creditor of the original lessor. *Bank v Smaagaard*, 192 M 21, 256 NW 102.

Evidence sufficient to uphold a finding that the mortgagor executing the mortgage was not the owner of the property. *Utility v Spangenberg*, 193 M 584, 259 NW 544.

Where an alteration is made with no intention to defraud, but merely to correct an error in drawing to make the instrument conform to the undoubted intention of the parties, it is not such an alteration as will avoid the instrument. *Hannah v Bank*, 195 M 54, 261 NW 583.

The transaction was an assignment and not a chattel mortgage. *Killmer v Nelson*, 196 M 420, 265 NW 293.

The statute making a conditional sales contract void as to the creditors of the vendee and subsequent purchasers and mortgagees unless the contract be duly filed, the term "creditors" does not mean creditors generally, but only creditors who have seized the property under legal process. *C. I. T. Corporation v Cords*, 198 M 337, 269 NW 825.

A chattel mortgage on steers located in Iowa and filed for record there is constructive notice even when wrongfully brought into Minnesota and delivered to a registered market agency under the federal packers and stockyards act, and sold by the agency. The agency is liable as converter. *Mason City v Ellingson*, 205 M 537, 286 NW 713.

A conditional sale is valid and a chattel mortgage is void in cases where a stock of merchandise is covered and the buyer or the mortgagor remains in possession and is permitted to sell out of stock and replenish. *In re Horwitz*, 32 F(2d) 285.

Under section 511.01, delay in recording a chattel mortgage invalidates the mortgage only as against creditors who have, prior to the filing thereof, acquired a lien by attachment in execution. *Bradley v Robie*, 266 F 884.

Uniform fraudulent conveyance act. 7 MLR 458, 543.

Status of trustee in bankruptcy. 9 MLR 55, 12 MLR 387.

Conditional sales act. 16 MLR 697.

Trust receipts. 17 MLR 801.

Purchasers at execution sale. 24 MLR 828, 835.

2. Filing

A chattel mortgage is filed, within the meaning of the statute when it is delivered to and received and kept by the proper officer. This does not include endorsing and indexing. Omission to place in the right place does not invalidate the filing. *Gorham v Summers*, 25 M 87; *Appleton v Warder*, 42 M 117, 43 NW 791.

A crop mortgage when filed in the proper office is full and sufficient notice to all persons. *Miller v McCormick*, 35 M 399, 29 NW 52.

A general receiver of the property of a corporation may avoid a chattel mortgage upon the property of the corporation on the ground that it was not filed as required by law. *Trust Co. v Minneapolis*, 35 M 543, 29 NW 349.

An assignee under the statute may avoid transfers and chattel mortgages made by the debtor assignor equally as creditors of the assignor could avoid them, as for instance lack of filing. *Merrill v Ressler*, 37 M 82, 33 NW 117.

To entitle the holder of a second chattel mortgage to a preference over a prior mortgage, which has not been filed, it is incumbent on him to prove that he took the mortgage in "good faith," for a valuable consideration and without knowledge of the prior mortgage. Want of notice may be inferred from the manner of taking. *Wright v Larson*, 51 M 321, 53 NW 712.

A written contract for the severance and removal of standing timber, and in which the owner of the land retains title is an instrument which should be filed.

The filing which was made two months before the making of an assignment by the vendee, and if withheld for the purpose of not impairing the credit by the assignee, it would be a fraud on those creditors who gave credit in good faith. *Clark v Richards*, 68 M 282, 71 NW 389.

A receiver cannot attack a chattel mortgage for lack of filing unless as such receiver he represents the rights of creditors, and is vested with the right to attack. *Munck v Bank*, 175 M 47, 220 NW 400.

Farm lease was duly filed as a chattel mortgage, but the assignment of the lease need not be filed in order to be effective and valid. *Bank v Smaagaard*, 192 M 21, 256 NW 102.

3. Effect of filing

A chattel mortgage, filed pursuant to statute, is constructive notice, to all persons, of its contents. *Eddy v Caldwell*, 7 M 225 (166).

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

When a chattel mortgage is not accompanied by an immediate delivery, and followed by actual and continued possession, is void as against a levying creditor of the mortgagor having no notice, unless it has been duly filed within the statutory time. *McCarthy v Grace*, 23 M 182; *McNeil v Finnegan*, 33 M 375, 23 NW 540; *Baker v Pottle*, 48 M 479, 51 NW 383.

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

Where possession is not delivered, a prior mortgage will be postponed to a subsequent bona fide mortgage, if not duly filed when the latter is executed, though the former may be subsequently filed before the filing of the second mortgage. *Bank v Ellis*, 30 M 270, 15 NW 243.

A junior mortgagee, by reason of a recital in his mortgage, is conclusively deemed to have actual notice of the prior mortgage. *Tolbert v Horton*, 31 M 518, 18 NW 647; *Tolbert v Horton*, 33 M 104, 22 NW 126; *Ludlum v Rothschild*, 41 M 218, 43 NW 137; *King v Lacrosse*, 42 M 488, 44 NW 517.

A chattel mortgage, executed and recorded in Iowa where the property was situated and the mortgagor resided, need not, in order to preserve the rights of the mortgagee, be recorded in Minnesota, on the removal thereto of the property and the mortgagor. *Keenan v Stimson*, 32 M 377, 20 NW 364; *Silver v McDonald*, 172 M 458, 215 NW 844.

After a fire loss a creditor garnisheed the insurance money. Lovejoy intervened, claiming the money as the holder of an unrecorded chattel mortgage. Held, that the intervenor was entitled to have his claim paid because the policy was payable to him "as his interest may appear," and there was no proof of payment. *Coykendall v Ladd*, 32 M 529, 21 NW 733.

Filing in town of Belle Plaine, rather than in the borough. Held, to be proper. *Bannon v Bowler*, 34 M 416, 26 NW 237.

Under the statute, Laws 1883, Chapter 38, the filing in the proper office in the town, city or village in which lies the land on which the crop is grown is sufficient notice as to a crop mortgage. *Miller v McCormick*, 35 M 399, 29 NW 52; *Close v Hodges*, 44 M 204, 46 NW 335.

The statute providing the filing of contracts in which the vendor retains the title is not operative to avoid such contracts, although not filed, as to creditors who have actual notice of the date of their levy. *Dyer v Thorstad*, 35 M 534, 29 NW 345.

A mortgage covered both real and personal property. It was filed with the register of deeds, making it notice as to the real estate, but it was not filed with the city clerk as to the personal property. Held, that the receiver, in this case representing the general creditors, could maintain an action to sell the chattels free and clear of the mortgage. *Farmers' v Minneapolis*, 35 M 543, 29 NW 349; *Merrill v Ressler*, 37 M 82, 33 NW 117.

Where a mortgage is properly filed, a copy certified to by the filing officer is admissible as evidence with like effect as if it were the original. *Ellingboe v Brakken*, 36 M 156, 30 NW 659.

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Notice to or knowledge of by an assignee or receiver of the contents of an outstanding but unrecorded conditional sales contract cannot be imputed to him in his official capacity. He is in no sense the agent of the creditors. *Thomas v Foote*, 46 M 240, 48 NW 1019.

Only a subsequent purchaser or mortgagee or an attaching creditor can object that the mortgage was not executed in good faith. *Howe v Cochran*, 47 M 403, 50 NW 368.

Holder of second mortgage is entitled to a preference over a prior unrecorded mortgage if he took his second mortgage in good faith and for a valuable consideration and without notice. *Wright v Larson*, 51 M 321, 53 NW 712.

When it appears on the trial that a mortgage of chattels is bona fide, it devolves on the creditor to establish his superior equity by showing he belongs to a class who are entitled to challenge the validity of an unrecorded mortgage. *Trust Co. v Berkey*, 52 M 497, 55 NW 60.

A preexisting debt is a sufficient consideration for a chattel mortgage. A receiver appointed to wind up the affairs of a partnership does not represent creditors, so as to avoid a lien for lack of legal recording. *Berlin v Security*, 60 M 161, 61 NW 1131; *Walsh v St. Paul*, 60 M 397, 62 NW 383.

The presumption arising from the continued possession of the mortgagor obtains only in favor of creditors and purchasers. *Hazlett v Babcock*, 64 M 254, 66 NW 971.

The filing of a chattel mortgage on a growing crop of grain continues to be constructive notice to all the world, and follows though the grain is threshed and removed from the premises. *Hogan v Atlantic*, 66 M 344, 69 NW 1.

A chattel mortgage executed before but not filed until after the mortgagor assigns for the benefit of creditors, is: (1) Void as to such creditors; (2) A purchaser from the assignee has a right of action; (3) The burden of proving the creditors had actual notice of the mortgage is on the party asserting the fact. *Shay v Bank*, 67 M 287, 69 NW 920.

Owner of land rented it on shares, two-thirds to the tenant and one-third to owner. The contract contained provisions that owner of the land should have title to the crop until all provisions were complied with. The contract was filed in May. The tenant thereafter gave a crop mortgage to another filed in July. The holding was in favor of the owner of the land. *Anderson v Liston*, 69 M 82, 72 NW 52.

A statute requiring a chattel mortgage to be filed in the town where the property is, and a copy where the mortgagor resides, requires that both statutory filings be made, and the fact that the instrument erroneously stated the mortgagor to reside in the town where the filing was had, does not cure the defect. *Nickerson v Wells*, 71 M 230, 73 NW 959.

If a mortgagee files his mortgage or takes possession of the property before any right or lien attaches, it is good, if it was previously valid as between the parties, assuming that the fact that he did not immediately take possession or file is the only objection. *Clarke v Bank*, 74 M 58, 76 NW 965, 1125.

If a mortgagee or pledgee takes possession before any other lien attaches, his title is valid, there being no fraud, and this although the mortgage was not filed nor the chattels delivered when the contract was made. *Prouty v Barlow*, 74 M 130, 76 NW 946.

A purchaser of grain from the mortgagor, without any knowledge that it was mortgaged except constructive notice by the record of the mortgage is not protected as an innocent purchaser by the fact the mortgagee permitted the harvesting and sale. *Endreson v Larson*, 101 M 417, 112 NW 628.

A written lease contained a chattel mortgage clause, and thereafter, each time with the consent of the lessor, there were successive assignments by the successive lessees. The original lease and the various assignments were filed. The last lessor mortgaged to a third party. Held, the landlord had the prior lien. *Steas v Lind*, 106 M 485, 119 NW 67.

Mortgage foreclosed a crop mortgage and intervenor claimed an interest by reason of having furnished seed potatoes. Held, as the intervenor had not complied with the terms of the seed grain statute, he had no rights as to the plaintiff who held a bona fide mortgage. *Opatril v Cook*, 156 M 57, 194 NW 103.

A notary's certificate of acknowledgment without his official seal is a nullity. The filing of such mortgages in the office of the register of deeds was not constructive notice to the plaintiff who was a subsequent mortgagee in good faith. *Hartkopf v Bank*, 191 M 595, 256 NW 169.

A chattel mortgagor in possession and having unconditional authority to sell can transfer good title as against mortgagee, to subsequent purchaser for value, even though the mortgage was recorded. *Pioneer Bank v Johnson*, 215 M 331, 9 NW(2d) 760.

Filing as constructive notice. Chattel mortgage on unplatted crops. 3 MLR 194.

Filing of defectively executed instrument as constructive notice. 15 MLR 235.
Execution sales; chattel mortgages. 24 MLR 836.

4. Priority

J. R. executed, at the same time, two chattel mortgages on the same property, one to P. H. R. and P. M. T., and the other to P. H. R. alone. It was agreed that the first named mortgage was to be prior, but on renewal of the mortgages, the second was filed first. Held, the first named mortgage had priority. *Chadbourn v Rahilly*, 28 M 394, 10 NW 420.

A prior mortgage will be postponed to a subsequent bona fide mortgage, if not filed when the latter is executed, although the former may subsequently be filed prior to the latter. *Bank v Ellis*, 30 M 270, 15 NW 243.

Priority as between contemporaneously filed mortgages may be shown by parol. *Minor v Sheehan*, 30 M 419, 15 NW 687.

As between mortgages upon separate undivided shares of a growing crop, the dates of execution, delivery, and filing are immaterial. The mortgagees are tenants in common. *McRae v O'Hara*, 62 M 143, 64 NW 146.

Corporations A and B, each a creditor of D, a third corporation, agreed that if B would extend the time of payment, it should in all circumstances be preferred, and be paid in full before any payments were made to A. Subsequently a receiver was appointed, and it was held that A's dividends should go to B until B's claim was paid in full. *Plymouth v Seymour*, 67 M 311, 69 NW 1079.

In an agreement for the cultivation of the land on shares, held, that the landlord and tenant were tenants in common, the title, however, remaining in the owner as security for the performance of the agreement, and in this case the chattel mortgage clause in the lease, the lease having been filed, gave the landlord priority over another crop mortgage. *Anderson v Liston*, 69 M 82, 72 NW 52.

When two chattel mortgages are executed contemporaneously and no agreement as to priority, the liens are coordinate, and the mortgagees become tenants in common in proportion to their respective rights, and neither can gain priority by filing first. *Sheldon v Brown*, 72 M 496, 75 NW 709.

Plaintiff sold a threshing machine to Muntean. While negotiations were pending, the machine was left in Muntean's yard, and he placed a chattel mortgage on his personal property including this thresher. Later, the sale to Muntean was completed, and he gave a chattel mortgage to plaintiff. Held, that as Muntean had no property interest in the machine at the time he gave the first mortgage, the purchase money mortgage has priority. *Schnirring v Stubbe*, 177 M 441, 225 NW 387.

Holding that the senior of two mortgages had priority. *Carity v Eichten*, 189 M 310, 249 NW 190.

Against a subsequent chattel mortgagee having notice of the facts, a levy, otherwise good, upon an automobile is not invalidated by leaving the automobile with the execution defendant who gives his receipt therefor. *Wallerbeck v Haaven*, 189 M 604, 250 NW 565.

A conditional sales contract or purchase money mortgage is superior to any lien or mortgage on the property, and such prior lien or mortgage attaches only to such interest as the purchaser of the property acquires at the time of purchase, subject to any lien or conditional sales contract given to the seller for part or all of the purchase price at the time of the sale. *C. I. T. Corp. v Cords*, 198 M 337, 269 NW 825.

One holding a chattel mortgage on a truck which, by its terms, covered after acquired property attached to the truck. Held, to take no title to tires and tubes thereafter purchased by the mortgagor and attached to the truck as against a conditional vendor of the tires and tubes who reserved title thereto, and that even though the conditional sales contract was not filed until after seizure by the mortgagee. *Goodrich v Credit System*, 200 M 265, 274 NW 172.

Priority as between a landlord's lien for rent and a mortgage on tenant's chattels. 20 MLR 436.

5. Good faith

When the mortgagee in possession sells the mortgaged property to a third person, the burden of proof does not rest on the purchaser to show that the chattel mortgage to his vendor was executed in good faith and not for the purpose of defrauding any creditor. *Marsh v Palmer*, 20 M 81 (66).

A mortgage of chattels coupled with an agreement that the mortgagor may retain possession of the mortgaged property, and sell and dispose of it as his own without satisfaction of the debt, is fraudulent and void as against the mortgagor's creditors and subsequent purchasers or mortgagees. *Horton v Williams*, 21 M 187. Distinguished in *Bannon v Bowler*, 34 M 416, 26 NW 237.

When a chattel mortgage is not accompanied by an immediate delivery and followed by continuous possession, though it appears to have been executed in "good faith," and not for the purpose of defrauding any creditor, it is void as against a levying creditor having no notice of the existence of the mortgage unless it has been filed within the statutory period. *McCarthy v Grace*, 23 M 182.

Where a chattel mortgage, or a copy, is duly filed, the leaving of possession of the property with the mortgagor only makes the mortgage *prima facie* fraudulent. *Bradley v Byrnes*, 25 M 297; *Glasser v O'Brien*, 172 M 355, 215 NW 517.

"Good faith" means for a valuable consideration and without notice. The good faith of a second mortgage may be inferred from the payment of a valuable consideration, where the transaction occurs in the ordinary course of business, and is free from suspicious circumstances. *Bank v Ellis*, 30 M 270, 15 NW 243; *Mullen v Noonan*, 44 M 541, 47 NW 164.

Where a mortgagee accepts a mortgage in which there is recited the existence of a prior unpaid mortgage, the second is junior to the first mortgage even if the first is fraudulent. *Tolbert v Horton*, 31 M 518, 18 NW 647.

An insurance policy was made payable to B as his interest might appear, that interest being represented by a chattel mortgage, and a loss occurring and the money being garnished by a creditor, B intervened. Held, that such creditor may call in question the good faith and validity of B's mortgage, and the burden is on B to show such good faith. *North Star v Ladd*, 32 M 381, 20 NW 334.

A chattel mortgage, although unrecorded, is effectual as between mortgagor and mortgagee, and it is incumbent upon one who asserts an adverse claim to the mortgaged property, by subsequent purchase from the mortgagor, to show that he is such a purchaser and without notice of the prior mortgage. *McNeil v Finnegan*, 33 M 375, 23 NW 540.

Statement as to whether or not a demand should be made before instituting proceedings. *Kellogg v Olson*, 34 M 103, 24 NW 364.

If a mortgage is withheld from record, pursuant to an agreement between the mortgagor and mortgagee in order that the credit of the former may not be impaired, it would be deemed a fraud as to anyone who should become a creditor of the mortgagor. *Baker v Pottle*, 48 M 479, 51 NW 383.

To entitle the holder of a second chattel mortgage to preference over a prior mortgage which has not been filed, it is incumbent on him to prove that he took his mortgage "in good faith." *Wright v Larson*, 51 M 321, 53 NW 712.

Where it is made to appear that a mortgage, though not filed, is *bona fide*, it devolves upon opposing creditor to establish his superior equity by showing that he belongs to the class of creditors who are entitled to challenge the validity of the mortgage as against them because not seasonably recorded. *Trust Co. v Berkey*, 52 M 497, 55 NW 60.

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Where there is a chattel mortgage on the tenant's share of a crop, in asking for affirmative relief or in opposing the title of another, the burden of proof is on the mortgagee to show good faith. *Fitzpatrick v Hanson*, 55 M 195, 56 NW 814.

Where a chattel mortgage is taken in good faith, but it is in fact for a larger sum than is actually due, it is still valid for the actual amount due, but such overstatement of the debt unexplained, indicates fraud, and there is a burden on the mortgagee to explain the overstatement and to establish the bona fides of his mortgage. *Heim v Chapel*, 62 M 338, 64 NW 825.

The presumption arising from the continued possession of the mortgagor that a chattel mortgage was not executed in good faith obtains only in favor of creditors and purchasers of the mortgagor. *Hazlett v Babcock*, 64 M 254, 66 NW 971.

The fact that the defendant bought the grain for an adequate consideration in the usual course of business was prima facie evidence that it was a purchaser in good faith, and the burden was on one who claimed under a chattel mortgage to show that it was executed in good faith. *Hogan v Atlantic*, 66 M 344, 69 NW 1.

Defendant to secure a preexisting debt gave his father a chattel mortgage on the first 2,500 bushels of corn grown on the farm, with the proviso that the mortgagor might for a time feed a part of the corn to his stock. The total amount of corn was 3,000 bushels. Plaintiff attached. Held, that the permission did not render the chattel mortgage void, but might be void as to creditors, but such constructive fraud would not be a sufficient basis under the statute for an attachment. *Harris v Spencer*, 130 M 141, 153 NW 125.

The mortgagee of a second mortgage attacks the first mortgage. The first mortgage was held valid, although it contained a provision that out of the crop the farmer should take what was needed to live on and feed the animals on the farm. The auction sale of the property made by the mortgagor at the instance of the first mortgagee was in good faith. *Berkner v Lewis*, 133 M 375, 158 NW 612.

The rule that a chattel mortgage is fraudulent as to creditors of the mortgagor where the mortgagor is permitted to sell without applying the proceeds, and as construed in *Braley v Byrnes* was not changed or abrogated by Revised Laws 1905. *Bank v Wiggins*, 154 M 84, 191, NW 264; *Kelly v Reed*, 156 M 39, 194 NW 103.

Vendor sold gasoline shovel under a conditional sales contract which was not filed, and is presumptively void. The presumption is, however, rebuttable. A replevin action brought by a company having a later contract was brought, but as the second claimant failed to bear the burden of proof imposed on it, the title remained in the original vendor. *Mack v Burns*, 175 M 157, 220 NW 560.

Evidence amply sustains the finding of the trial court that a chattel mortgage given by a father to his son was fraudulent. *Nelson v Ruthkowski*, 177 M 84, 224 NW 457.

Where a conditional sales contract is made in good faith, but was not filed as required by statute, is void as to creditors who attack without notice of the contract, and the burden is on the levying creditor to prove that he acted without actual notice or knowledge of the unfiled contract. *Holt v Photophone Co.* 196 M 527, 265 NW 313.

Presumption of fraud through possession. 12 MLR 408.

6. Specific articles covered by

Motor vehicles should be described in mortgages and the like by giving such details as will furnish means of identifying the property as fully as possible, such as the name of the manufacturer, the model, and the factory or model number. *Walker v Fitzgerald*, 157 M 319, 196 NW 269, 197 NW 259.

A drive belt used in connection with a steam threshing outfit is an entirely distinct article from the engine separator or other parts of the outfit. *Campbell v Nelson*, 159 M 163, 198 NW 401.

An electric power line on highway, and not a part of a real estate plant, is personal property; a real estate mortgage filed in the office of the register of deeds is not notice as to personal property; a chattel mortgage upon a power line

can only attach to such property in the condition in which it comes into the mortgagor's hands. *St. Paul v Baldwin*, 159 M 221, 199 NW 9.

A chattel mortgage of a stock of merchandise with possession by the mortgagor and sale at retail, the mortgagor agreeing that "at least the amount of the wholesale price of that which is sold" shall be applied on the mortgage debt, is constructively fraudulent. *Secord v Northwestern*, 159 M 473, 199 NW 84.

Description which read: "also all interest in and to any and all crops" is sufficient and is construed to mean only the interest of the mortgagor.

When proceeds from the sale of mortgaged chattels are turned over to the mortgagee to apply on an unsecured note which he holds, he cannot recover the mortgaged property from the purchaser. *Helgeson v Farmers*, 160 M 110, 199 NW 821.

Contract between a sugar mill and a tenant farmer relative to the production of sugar beets. Held, to be superior to rights of landlord who had a crop chattel mortgage lease not recorded. *Griffin v Minnesota*, 162 M 240, 202 NW 445.

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. *Bank v Farmers*, 174 M 531, 219 NW 871.

Brown gave to a harvester company a chattel mortgage on a crop to be raised on land he planned to rent. The instrument was filed. He leased land, the lease containing a chattel mortgage clause, and procured seed under a seed grain note. The grain when delivered to the defendant's elevator was sufficient to pay the rent, the seed grain note, and \$69.70 also due the landlord. Held, upon garnishment by the harvester company that the rent and seed grain loan were superior, but the \$69.70 might be applied on the plaintiff's mortgage. *Massey v Moorhead*, 176 M 90, 229 NW 571.

A transaction evidenced by a trust receipt executed by plaintiff to the defendant's order, and the acceptance by the plaintiff of a time draft to the defendant's order was a chattel mortgage upon the automobile named in the trust receipt, and the sale of the automobile without foreclosure was conversion. *McLeod-Nash v Commercial Credit*, 187 M 452, 216 NW 17.

Where articles later purchased by the owner of an automobile or other principal article of personal property are so closely incorporated with the principal article that they cannot be identified and detached without injury, they pass by accession, but where they can be readily identified and detached without injury, they do not pass to the one holding the mortgage. Held, in this case that certain casings and a battery do not so attach. *Goodrich v Pratt*, 198 M 259, 269 NW 464; *Goodrich v Credit System*, 200 M 265, 274 NW 172.

Repurchase agreement requiring assignor of conditional sales contract to repurchase automobile covered thereby within 15 days of default in first payment was not breached or violated by failure of assignor to pay repurchase price, in the absence of a tender or delivery to him of the automobile involved. *Midland v Madsen*, 217 M 267, 14 NW (2d) 475.

Mortgages covering stocks of merchandise without limitation either in mortgage or by oral agreement on part of mortgagor to dispose of property mortgaged is void. *In re Essen*, 2 F. Supp. 646.

7. Assignment or discharge

Signing of past due rental note by the son of the lessee is not a settlement and discharge of the chattel mortgage clause in the lease. *Gage v Van Dusen*, 156 M 332, 194 NW 769.

An assignment of a chattel mortgage containing a blank for the insertion of the name of the assignee is valid if the assignor delivers the assignment to the purchaser of the note, and receives the consideration.

A mortgage securing a debt remains in force and effect until the debt is paid. No change in the form of the evidence of the debt or the mode or time of payment will discharge the mortgage. *Farmers v Nummedahl*, 166 M 144, 207 NW 313.

A chattel lien is discharged by the mortgagee's unconditional consent to the mortgagor selling the property. *Singer v Bank*, 166 M 327, 207 NW 631.

The renewal of a note and mortgage does not necessarily discharge the first note and mortgage; nor does the writing of the word "renewed" on the face of the first notes operate as a cancelation. *Munson v Bensel*, 169 M 434, 211 NW 838.

Indemnity company under its indemnity agreement took over this tractor and completed the contract. There was evidence that in so taking over they agreed to pay a first and also a second mortgage. They purchased and foreclosed the second mortgage, and the owners of the second mortgage sued in conversion, and there arose the question of merger. New trial granted. *Hector v Royal*, 182 M 413, 235 NW 675.

The withdrawal of a chattel mortgage from the office of the register does not in itself constitute a satisfaction of the mortgage. *Carity v Eichten*, 189 M 310, 249 NW 190.

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

8. Pledges

Money deposited with a creditor may be applied against a past due note. *Meighan v Cohen*, 161 M 302, 201 NW 431.

A contract was entered into by the decedent in his lifetime with the bank, depositing certain bonds and giving the bank at its discretion the right to sequester his deposit at any time to apply on any indebtedness to the bank. The bank notes were not due at the time of his death, but as they came due, the bank properly applied the deposit in payment in full of the notes, crediting the balance of the deposit, and released the bonds to the administrator. *Estate of Browning v Eiken*, 189 M 375, 249 NW 573.

Holding as to the respective rights of an endorser on notes to the bank and one who deposited stock as further security. *Stewart v Bowman*, 195 M 543, 263 NW 618.

The difference between a pledge and a chattel mortgage is that a defeasible title passes by the mortgage while only possession passes by pledge. A pledge is a bailment of personal property as security for a debt or other obligation. *Thoen v Bank*, 199 M 47, 271 NW 111.

When a debtor deposits property with his creditor, there is a presumption that it was deposited as collateral security.

Hoffman, while indebted to the plaintiff bank deposited a life insurance policy; the wife did not consent; the company did not waive a proviso in the policy, and after the death of *Hoffman* and on notice by the insurance company that unless restrained, the money would be paid to the widow. The bank did not bring injunction proceedings. Held, that the money being paid to the widow, the bank could recover from the widow and the insurance company. *Bank v Aetna*, 200 M 312, 274 NW 232.

Pledge of an insurance policy by father to son to secure advances made by son held invalid because of non-compliance with the conditions and restrictions laid down in the fraternal policy of insurance. *United v Ward*, 201 M 70, 275 NW 422.

Held, in the absence of evidence showing an express agreement to the contrary, that it was a condition of the loan agreement that defendant obtain the consent of the third party to the disposition of the grain, (covered by the storage tickets pledged) in compliance with the demand. *State Bank v Joyce*, 213 M 380, 7 NW(2d) 385.

Where stock was pledged for payment of a note "or any other liability or liabilities due or to become due or that may thereafter be contracted", pledgee who marked the note "paid in full" was not precluded from asserting its rights as to other indebtedness. *McGhie v First and American Bank*, 217 M 325, 14 NW(2d) 436.

Under contract, providing that all securities, commodities, and other property held by a correspondent broker for brokers' account should stand as security for all indebtedness arising, correspondents had a lien on stock purchased for and on behalf of brokers. *Koons v Thomson*, 22 F. Supp. 442.

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511.02 COPY OF MORTGAGE TO MORTGAGOR.

HISTORY. 1925 c. 68 s. 1; M. Supp. s. 8345-1.

This section does not apply to conditional sales contracts or notes. OAG Feb. 18, 1930.

Delivery of copy of chattel mortgage to mortgagor. 15 MLR 235.

511.03 MORTGAGE TO CONTAIN RECEIPT OF MORTGAGOR.

HISTORY. 1925 c. 68 s. 2; M. Supp. s. 8345-2.

Chattel mortgage which does not contain receipt not entitled to be filed. 1934 OAG 250, Aug. 20, 1934 (373b).

Receipt of mortgagor. 15 MLR 235.

511.04 FILING.

HISTORY. R.S. 1851 c. 27 ss. 2, 5; P.S. 1858 c. 22-ss. 2, 5; 1860 c. 33 ss. 2, 5; G.S. 1866 c. 39 s. 2; G.S. 1878 c. 39 s. 2; 1883 c. 38 s. 1; G.S. 1894 s. 4130; 1897 c. 292 ss. 2, 4; 1899 c. 18; R.L. 1905 s. 3462; G.S. 1913 s. 6967; G.S. 1923 s. 8346; M.S. 1927 s. 8346.

1. Generally
2. Place of filing
3. Acknowledgments

1. Generally

A "competent attesting witness" is a competent witness who, at the request of the person making the writing, subscribes the same as such witness. *Williams v Reid*, 130 M 256, 153 NW 324, 593.

The lien of the mortgagee in foreclosing upon and having a receiver appointed for a crop of potatoes, was superior to that of the intervenor who had furnished seed under a contract. The intervenor had failed to take the necessary formalities so that his lien could be construed as a seed grain loan. *Opatril v Cook*, 156 M 57, 194 NW 103.

Since the passage of Laws 1915, Chapter 364, (Sections 511.20 to 511.27), this section, 511.04, applies to cities of the first class only.

Chattel mortgages must not be altered after filing. OAG Feb. 18, 1930.

2. Place of filing

Chattels personal, such as horses, are presumed to be located at the residence of the mortgagor. *Horton v Williams*, 21 M 187; *Nickerson v Wells*, 71 M 230, 73 NW 959, 74 NW 891.

A chattel mortgage executed and filed in another state where the mortgagor then resided and the property was situated, need not be filed on the removal of the mortgagor and the property to Minnesota. *Keenan v Stimson*, 32 M 377, 20 NW 364; *Reiff v Bakken*, 36 M 333, 31 NW 348; *Strickland v Minnesota*, 77 M 210, 79 NW 674.

Prior to the passage of Laws 1915, Chapter 364, chattel mortgages where the mortgagor resided in the borough of Belle Plaine were filed with the town clerk. *Bannon v Bowler*, 34 M 416, 26 NW 237.

A crop mortgage, when filed as required by statute, and in relation to the place where the crop is to be grown, is sufficient notice to all. *Miller v McCormick*, 35 M 399, 29 NW 52.

Where the mortgagor of chattels resides in one town and the property mortgaged in another, the mortgage must, as to subsequent purchases, be filed in both. *Lundberg v Northwestern*, 42 M 37, 43 NW 685; *Nickerson v Wells*, 71 M 230, 73 NW 959, 74 NW 891.

Where the land on which the seed is sown is situated partly within and partly without a village, the crop mortgage must be filed in both. This, under

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the 1883 amendment, changes the rule in *Moriarty v Gullickson*, 22 M 39. *Minnesota v Northwestern*, 58 M 536, 60 NW 671.

A party claiming under a mortgage must prove that the mortgagor resided where the mortgage was filed. A recital in the mortgage as to residence is not evidence as to subsequent mortgagors or purchasers. *Nickerson v Wells*, 71 M 230, 73 NW 959, 74 NW 891; *Tweto v Horton*, 90 M 451, 97 NW 128.

The requirement as to filing in the place where the property is situated only applies where by reason of its character or treatment it acquires a situs different from the place of the mortgagor's residence. *Sheldon v Brown*, 72 M 496, 75 NW 709.

Except as provided in section 511.26, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. *Good v Brown*, 175 M 354, 221 NW 239; *Miller v Jaax*, 193 M 85, 257 NW 653.

3. Acknowledgments

In taking an acknowledgment, the certificate being under the hand and seal of the notary, the name J. H. Hennepin was used instead of J. H. Huntington, the real name of the signer and the name used throughout the body of the instrument. Held, to be a mere clerical error which did not affect the body of the instrument. *Brunswick v Brackett*, 37 M 58, 33 NW 214.

Where in taking an acknowledgment, the notary fails to attach his seal, the filing of the instrument is not notice to subsequent purchasers in good faith. *Thompson v Scheid*, 39 M 102, 38 NW 801.

Where the seal was impressed on the instrument but at the wrong place, the acknowledgment was held to be sufficient authentication. *Evans v Smith*, 43 M 59, 44 NW 880.

A chattel mortgage is valid as between the parties without acknowledgment. *Benson v Hove*, 45 M 40, 47 NW 449.

The fact that the acknowledgment was taken before a person who has an interest does not prevent the filing, and the filing operates as constructive notice. *Benson v Hove*, 45 M 40, 47 NW 449.

Variance in spelling of name in the acknowledgment held not fatal, and the instrument sufficiently authenticated. *Rodes v St. Anthony*, 49 M 370, 52 NW 27.

An instrument in the nature of a chattel mortgage filed but not acknowledged is not constructive notice to subsequent purchasers or mortgagees, but since the object of the record is to give notice, if the creditors have actual notice, the purpose of the record is served, and the chattel mortgage, though not acknowledged, will be held senior to that of an attaching creditor. *St. Paul v Berkey*, 52 M 497, 55 NW 60.

Instrument void as to subsequent creditors or purchasers unless recorded, and as it was not acknowledged, it could not be filed. *Hargreaves v Reese*, 66 M 434, 69 NW 223.

Witnessing and acknowledging are unnecessary prerequisites to the filing of conditional sales contracts. *Good v Brown*, 175 M 354, 221 NW 239.

511.05 DUTIES OF RECORDING OFFICER; FEE.

HISTORY. 1897 c. 29 s. 3; R.L. 1905 s. 3463; G.S. 1913 s. 6968; G.S. 1923 s. 8347; M.S. 1927 s. 8347.

Copy of mortgage delivered to mortgagor; receipt of mortgagor to be filed with mortgage. *Laws 1925, Chapter 68.*

Where a chattel mortgage is withdrawn by mistake from the registry office, it does not constitute a satisfaction in the absence of countervailing equities in the party to gain by it. *Carity v Eichten*, 189 M 310, 249 NW 190.

511.06 INDEX; NOTICE; LIEN.

HISTORY. R.S. 1851 c. 27 s. 3; P.S. 1858 c. 22 s. 3; 1860 c. 33 s. 3; G.S. 1866 c. 39 s. 3; 1870 c. 59 s. 1; 1875 c. 50 s. 1; G.S. 1878 c. 39 s. 3; 1879 c. 65 s. 5; G.S. 1894 s. 4131; 1897 c. 292 s. 4; 1901 c. 146; R.L. 1905 s. 3464; G.S. 1913 s. 6969; G.S. 1923 s. 8348; M.S. 1927 s. 8348.

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Mortgagee's chattel mortgage on cattle duly filed for record in Iowa was constructive notice to all the world of mortgagee's rights, and when the steers were wrongfully brought into and sold in Minnesota, the mortgagor's selling agent liable notwithstanding the federal packers and stockyards act. *Mason v Ellingson*, 205 M 537, 286 NW 713.

Defendant gave his unsecured note due November 15, 1931. On March 7, 1932, he executed a mortgage to secure payment of the note. No payment was made, and foreclosure was instituted March 4, 1938. The defense of the statute of limitations will not lie. It is well established that an unqualified and unconditional acknowledgment of a debt implies a promise to pay, and the giving of the chattel was such a promise. *Reconstruction v Osven*, 207 M 146, 290 NW 230.

The vendee, under a conditional sales contract, was W. G. Hause. The record indicated W. G. House. Held, to be *idem sonans*, and the record good and sufficient notice. *Fidelity v House*, 210 M 220, 297 NW 705.

Index as part of the chattel record. 2 MLR 386.

Recording in realty records of mortgage covering realty and personalty as notice as to personalty. 5 MLR 144.

Purchaser at chattel mortgage sale. 24 MLR 828, 836.

511.07 MORTGAGE OF EXEMPT PROPERTY; SPOUSES MUST JOIN.

HISTORY. 1897 c. 292 s. 5; 1901 c. 12; R.L. 1905 s. 3465; G.S. 1913 s. 6970; G.S. 1923 s. 8349; M.S. 1927 s. 8349.

A chattel mortgage upon exempt personal property, executed by a married man, a householder, to secure the purchase money, given pursuant to the agreement upon which the property was purchased, is valid without the wife's signature. *Barker v Kelderhouse*, 8 M 207 (178); *Strickland v Minnesota*, 77 M 210, 79 NW 674.

511.08 SATISFACTION; PENALTY.

HISTORY. 1872 c. 62 s. 1; G.S. 1878 c. 39 s. 13; G.S. 1894 s. 4141; 1897 c. 292 s. 6; R.L. 1905 s. 3466; G.S. 1913 s. 6971; G.S. 1923 s. 8350; M.S. 1927 s. 8350.

The giving of a bill of sale of part of the mortgaged chattels by the mortgagor is sufficient consideration for the mortgagee's release or promise to release the rest of the mortgaged property. *Central v Boettcher*, 180 M 6, 230 NW 120.

No provision is made for marginal release. OAG Nov. 19, 1929; OAG July 13, 1935 (373b-10(c)).

Register of deeds may not accept a carbon copy of mortgagee's signature. The original signature is required on a satisfaction. OAG June 16, 1936 (373b-5).

The register of deeds must conform to the law and insist that chattel mortgages be satisfied in the manner which the law prescribes. 1942 OAG 204, Dec. 22, 1942 (373-B-5).

511.09 REDEMPTION BEFORE SALE; SUBROGATION.

HISTORY. G.S. 1866 c. 39 s. 5; G.S. 1878 c. 39 s. 8; G.S. 1894 s. 4136; 1897 c. 292 ss. 7, 8; R.L. 1905 s. 3467; G.S. 1913 s. 6972; G.S. 1923 s. 8351; M.S. 1927 s. 8351.

1. Redemption
2. Rules as to tender

1. Redemption

The right of redemption is an essential element of every mortgage. This right is a property right and subject to levy on execution, attachment, or garnishment. *Daly v Proetz*, 20 M 411 (363); *Stromberg v Lindberg*, 25 M 513; *Becker v Dunham*, 27 M 32, 6 NW 406; *Dyckman v Sevaton*, 39 M 132, 39 NW 73; *Dyson v Bank*, 74 M 439, 77 NW 236.

The redemptioner is obligated to pay all reasonable and lawful charges and expenses incurred in the care and custody of the property. *Ferguson v Hogan*,

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25 M 135; Latusek v Davies, 79 M 279, 82 NW 587; Reisan v Mott, 42 M 49, 43 NW 691; Mjones v Bank, 45 M 335, 47 NW 1072.

Where the mortgagee unnecessarily or in bad faith sells more of the property than is needed to pay the amount due, the redemptioner has a right of action against the mortgagee for damages. Stromberg v Lindberg, 25 M 513.

An action for conversion will lie where a mortgagee, who has taken property into his custody for the purpose of foreclosing a chattel mortgage, refuses to restore possession to a mortgagor who has made redemption in accordance with the provisions of the statute. Latusek v Davies, 79 M 279, 82 NW 587.

2. Rules as to tender

A tender must be sufficient in amount, made at the proper place, and unconditional. Nelson v Robson, 17 M 284 (260); Coffin v Reynolds, 21 M 456; Ferguson v Hogan, 25 M 135; Reisan v Mott, 42 M 49, 43 NW 691; Bank v Hove, 45 M 40, 47 NW 449; Mjones v Bank, 45 M 335, 47 NW 1072; Moore v Norman, 52 M 83, 53 NW 809; Davies v Dow, 80 M 223, 83 NW 50.

Prior to the passage of Laws 1897, Chapter 292, Section 8, a tender of a sufficient amount once made after default, and not accepted, extinguished the lien even if not kept good. Nelson v Robson, 17 M 284 (260); Moore v Norman, 43 M 428, 45 NW 857; Benson v Hove, 45 M 40, 47 NW 449; Davies v Dow, 80 M 223, 83 NW 50.

The sufficiency of the tender is for the jury to decide. Nelson v Robson, 17 M 284 (260); Moore v Norman, 43 M 428, 45 NW 857.

The mortgagee must be given an opportunity to ascertain the amount due. Moore v Norman, 43 M 428, 45 NW 857.

It may be made to one of several joint mortgagees. Flanigan v Seelye, 53 M 23, 55 NW 115.

It may be made to an attorney who represents the mortgagee and has the item for collection. Salter v Shove, 60 M 483, 62 NW 1126.

It may be made to an assignee in insolvency or to a vendee. Davis v Dow, 80 M 223, 83 NW 50.

An acceptance must be unqualified and objection to the legal right of any party to make the tender must be made at the time, or it is waived. Davies v Dow, 80 M 223, 83 NW 50.

511.10 FORECLOSURE, WHEN AND WHERE MADE.

HISTORY. G.S. 1866 c. 39 s. 7; G.S. 1878 c. 39 s. 10; G.S. 1894 s. 4138; 1897 c. 292 s. 9; R.L. 1905 s. 3468; G.S. 1913 s. 6973; G.S. 1923 s. 8352; M.S. 1927 s. 8352.

1. Actions and parties thereto

2. Forfeiture

3. Rights of, and procedure for possession

1. Actions and parties thereto

Resort need not be had to the statutory foreclosure under power of sale. An action will lie to foreclose a chattel mortgage, although it contains a power of sale, and although the mortgagee may recover possession of the property by action. Forepaugh v Pryor, 30 M 35, 14 NW 61; Anderson v Liston, 69 M 82, 72 NW 52.

A chattel mortgage vests the legal title, and unless it provides otherwise, the right of possession in the mortgagee, and if possession is denied him, he may sue in conversion. Fletcher v Neudeck, 30 M 125, 14 NW 513.

Injunction proceedings to restrain a mortgagor under a crop mortgage from disposing of his crop is not the proper remedy. The mortgagee is entitled to possession and if denied him, he may proceed by replevin. Minnesota v Maginnis, 32 M 193, 20 NW 85.

The mortgagor may, upon the issue of the right of the mortgagee to proceed with foreclosure, show, in opposition, the real nature of the transaction, such as want of consideration or fraud. *Bickford v Johnson*, 36 M 123, 30 NW 439.

An equitable owner of a mortgage may foreclose. *Carpenter v Bank*, 44 M 521, 47 NW 150.

In an action to enforce a purchase money mortgage, the mortgagor may set up and have adjudicated in the same action his claim for damages for breach of warranty of the property in reduction of the amount due on the mortgage, an assignment of the mortgage is without prejudice of the right of setoff. *Massachusetts v Welch*, 47 M 183, 49 NW 740; *Nichols v Wiedemann*, 72 M 344, 75 NW 208, 76 NW 41.

A junior mortgagee may bring an action to foreclose and make the senior mortgagee a party thereto, but if the senior mortgagee is in possession of the property, the court will not permit a sale unless the senior mortgagee be paid or protected from loss. *Tiedt v Boyce*, 122 M 283, 142 NW 195.

2. Forfeiture

The question as to the existence of a default or a breach of the condition of the mortgage depends on the facts of each case. *Daly v Proetz*, 20 M 411; *Houston v Nord*, 39 M 490, 40 NW 568; *Williams v Wood*, 55 M 323, 56 NW 1066; *Plano v Hallberg*, 61 M 528, 63 NW 1114.

Prior to the passage of Laws 1879, Chapter 65, Section 2, the mortgagee might arbitrarily take possession whenever he deemed himself insecure. *Braley v Byrnes*, 21 M 482; *Boice v Boice*, 27 M 371, 7 NW 687; *Deal v Osborne*, 42 M 102, 43 NW 835.

Since the passage of Laws 1879, Chapter 65, Section 2, the mortgagee may seize and foreclose upon the property if he considers himself insecure, but he must show reasonable grounds for that insecurity. *Cushing v Seymour*, 30 M 301, 15 NW 249; *Deal v Osborne*, 42 M 102, 43 NW 835; *Nash v Larson*, 80 M 458, 83 NW 451; *Casper v Regional*, 202 M 444, 278 NW 896.

Placing a junior mortgage on the property is not grounds for forfeiture. *Donovan v Sell*, 64 M 212, 66 NW 722.

Unless the mortgagee's interests are jeopardized, the mere fact that a levy was made on part of the mortgagor's property is not ground for forfeiture. *Galde v Forsyth*, 72 M 248, 75 NW 219.

Whether there has been a waiver of a breach of condition, or whether there is just cause for declaring a forfeiture, and whether or not a breach exists is a question of fact, and should be determined as such. *Nash v Larson*, 80 M 458, 83 NW 451.

3. Right of and procedure for possession

The mortgagee may, for his security, take possession of the whole, but with respect to the mortgagor's rights in the property is a trustee and must exercise care not to sacrifice those rights. *Stromberg v Lindberg*, 25 M 513.

Injunction proceedings to restrain the marketing of a crop is the wrong remedy. The mortgagee has the right of immediate possession without foreclosure, and in case of a breach of the covenants of the mortgage. *Minnesota v Maginnis*, 32 M 193, 20 NW 85.

A surety upon a note given by his principal for the purchase of a chattel, the title remaining in the vendor until the debt is paid, is, on payment of the debt, subrogated to the rights of the vendor and has the same rights as to possession as had the original mortgagee. *Torp v Gulseth*, 37 M 135, 33 NW 550.

A mortgagee, after default, has the right to possession only for the purpose of foreclosure, and not for the purpose of using the property. *Thompson v Scheid*, 39 M 102, 38 NW 801.

The mortgagee has the right to charge the expenses incidental to the taking and holding possession, but this does not include attorney's fees unless there is a foreclosure. *Reisan v Mott*, 42 M 49, 43 NW 691.

After condition broken, the mortgagee, unless it is otherwise stipulated, becomes immediately vested with the right of possession of the mortgaged property.

and the purchaser in possession will be liable in conversion upon his refusal to deliver same on demand. *Close v Hodges*, 44 M 204, 46 NW 335.

In a replevin action by the mortgagee to recover possession for the purpose of foreclosure, he need only allege that he is the "owner and entitled to possession," and under that allegation may prove the mortgage and any kind of breach of the covenants. *Miller v Adamson*, 45 M 99, 47 NW 452.

The mortgagee may not take the property without foreclosure in satisfaction of the debt. If he does so, the mortgagor may sue in conversion for the value of the property, crediting on the recovery the amount of the debt. If the mortgagee takes the property, and the mortgagor acquiesces, the debt is discharged. *Powell v Gagnon*, 52 M 232, 53 NW 1148.

Whether there has been a waiver of any breach of the conditions of the mortgage is a question of fact. *Davies v Dow*, 80 M 223, 83 NW 50.

Regional agricultural corporations are not immune from suit. Whether defendant as a chattel mortgagee in good faith deemed itself insecure in foreclosing a chattel mortgage was a question of fact for the jury. *Casper v Regional*, 202 M 433, 278 NW 896.

511.11 NOTICE AND SALE.

HISTORY. G.S. 1866 c. 39, ss. 8, 9; G.S. 1878 c. 39 ss. 11, 12; G.S. 1894 ss. 4139, 4140; 1897 c. 292 ss. 9, 10; R.L. 1905 s. 3469; G.S. 1913 s. 6974; G.S. 1923 s. 8353; M.S. 1927 s. 8353.

1. Notice
2. Sale and disposition of proceeds
3. Construction
4. Conversion

1. Notice

Under Laws 1885, Chapter 171, personal service is not dispensed with if it can be made, and Laws 1879, Chapter 65, Section 1, does not dispense with personal service if it can be made. *Powell v Gagnon*, 52 M 232, 53 NW 1148.

See as to effect of wrong statement as to nature of default. *Berg v Olson*, 88 M 392, 93 NW 309.

Personal service of the notice need not be made on subsequent mortgagees. They must rely on the public notice. The provisions of the statute relating to posting must be strictly complied with, and the affidavit must so show. *Powell v Hardy*, 89 M 229, 94 NW 682.

Failure to serve a copy of the notice of sale upon the person in actual possession of the mortgaged property as required by statute, renders the proceeding invalid. *Jankowitz v Kaplan*, 138 M 452, 165 NW 275.

Sufficiency of notice as to description of property. *Watson v Koochiching*, 166 M 383, 208 NW 11.

Vendor in a conditional sales contract, accepted a chattel mortgage from the vendee and this destroyed vendor's title. Repossession and sale without giving the notice required by statute was illegal and constitutes a conversion. *Kettwig v Aero Co.* 191 M 500, 254 NW 629.

Foreclosure of a chattel mortgage by notice requires strict adherence to statutory requirements. *Bank v Loose*, 198 M 222, 269 NW 399.

Procedure for enforcement of stallion liens. 1936 OAG 290, May 7, 1936 (520j).

2. Sale and disposition of proceeds

Sale is presumed to have been fairly conducted and clear of fraud. *Richards v Spicer*, 23 M 212.

When the chattel mortgage provides for payment of "all expenses of sale" only such expenses are intended as are incurred in the proceedings. *Ferguson v Hogan*, 25 M 135.

When the interest of the mortgagor requires it, and if it does not cause too great expense or inconvenience, it is the duty of the mortgagee to sell only such part of the mortgaged property as will pay the amount due, plus expenses. *Stromberg v Lindberg*, 25 M 513.

Attorney's fees as specified are chargeable only if there is a foreclosure, and the necessary expense of obtaining possession. *Reisan v Mott*, 42 M 49, 43 NW 691.

Inadequacy in price is not of itself grounds for relief as to the sale. *Oswald v O'Brien*, 48 M 333, 51 NW 220; *Watson v Koochiching*, 166 M 383, 208 NW 11.

Those who have a beneficial interest in a mortgage are entitled to receive their share, and distribution of the proceeds of the foreclosure must be made accordingly. *Gorman v Lamb*, 89 M 136, 94 NW 435.

Filing and foreclosing for stallion service. 1936 OAG 290, May 7, 1936 (520j).

3. Construction

Where the mortgagee forecloses, under the power of sale in the mortgage, he stands, with respect to the mortgagor's rights in the property, in the position of a trustee, and is held to the exercise of good faith and proper care and diligence to avoid any sacrifice of those rights not necessary to the reasonable enforcement of his own. *Stromberg v Lindberg*, 25 M 513.

Rule in *Stromberg v Lindberg* construed as to a contract for the cutting and removal of pulpwood. *Morrow v Bank*, 186 M 516, 243 NW 785.

Comparison between chattel mortgages and conditional sales contracts. 17 MLR 81.

4. Conversion

Where a farm lease contained a mortgage clause, and there was an act of forfeiture, and the landlord took a writing from the tenant authorizing to harvest the crop and apply the proceeds to the rent account, this did not create a total forfeiture, but the landlord, as trustee for the tenant, must account for the excess, if any. *Warran v Driscoll*, 186 M 3, 242 NW 346.

In selling pulp wood under a mortgage, and when the mortgagor had no title to the property, the bank could be held liable in conversion. *Morrow v Bank*, 186 M 516, 243 NW 785.

A transaction evidenced by a trust receipt executed by dealer to finance company, and the acceptance of a time draft by the dealer payable to broker's order was a chattel mortgage upon automobiles named in the receipt, and a sale by the finance company without foreclosure, was a conversion. *McLeod v Commercial Credit*, 187 M 452, 246 NW 17.

A trustee in bankruptcy brought suit in conversion against a bank proving a void foreclosure. It was held that the trustee may recover the difference between the value of the property and the amount of the mortgage lien. *Ingalls v Bank*, 194 M 332, 260 NW 302.

511.12 REPORT OF SALE; FILING.

HISTORY. G. S. 1866 c. 39 s. 9; G.S. 1878 c. 39 s. 12; G.S. 1894 s. 4140; 1897 c. 292 s. 11; R.L. 1905 s. 3470; G.S. 1913 s. 6975; G.S. 1923 s. 8354; M.S. 1927 s. 8354.

The signature of a police officer to a certificate of chattel mortgage foreclosure must be acknowledged. The signature of the sheriff needs no acknowledgment. OAG Dec. 23, 1936 (390a-19).

Rights of secured creditors in bankruptcy. 17 MLR 81.

511.13 ATTORNEY'S FEE ON FORECLOSURE; ATTORNEY'S AFFIDAVIT.

HISTORY. 1897 c. 292 s. 12; R.L. 1905 s. 3471; G.S. 1913 s. 6976; G.S. 1923 s. 8355; M.S. 1927 s. 8355.

The attorney's fee is not chargeable if there has been no foreclosure. *Reisan v Mott*, 42 M 49, 43 NW 691.

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The mortgagee is not entitled to a fee even if so stipulated in the mortgage, nor for the services of an attorney unless one has actually been employed. *Bank v Hove*, 45 M 40, 47 NW 449.

511.14 REDEMPTION AFTER SALE.

HISTORY. G. S. 1866 c. 39 s. 5; G.S. 1878 c. 39 s. 8; G.S. 1894 s. 4136; 1897 c. 292 s. 13; R.L. 1905 s. 3472; G.S. 1913 s. 6977; G.S. 1923 s. 8356; M.S. 1927 s. 8356.

511.15 MORTGAGEE MAY PURCHASE, WHEN.

HISTORY. 1897 c. 292 s. 14; R.L. 1905 s. 3473; G.S. 1913 s. 6978; G.S. 1923 s. 8357; M.S. 1927 s. 8357.

A policeman, having all the powers of a constable, is authorized, under Laws 1885, Chapter 171, to conduct a chattel mortgage sale at which the mortgagee might be purchaser. *Oswald v O'Brien*, 48 M 333, 51 NW 220.

A void attempt to foreclose a chattel mortgage in which the mortgagee bids in and retains the property, is not a conversion. *Powell v Gagnon*, 52 M 232.

Laws 1925, Chapter 223, is a curative act relating to foreclosures conducted by someone other than an officer, and at which the mortgagee was the purchaser.

511.16 MORTGAGOR'S INTEREST SUBJECT TO GARNISHMENT, ATTACHMENT, OR EXECUTION.

HISTORY. 1897 c. 292 s. 15; 1901 c. 355; R.L. 1905 s. 3474; G.S. 1913 s. 6979; G.S. 1923 s. 8358; M.S. 1927 s. 8358.

The doctrine of election of remedies is an application of the law of estoppel, so where the mortgagee made an abortive attempt to levy on the property and dismissed without judgment, he retains his full rights of foreclosure. *Bank v Flynn*, 190 M 102, 250 NW 806.

Where a bank was garnisheed, it claimed the property was pledged to it for a loan, and it was held the action was in every way the proper remedy, but nothing was attached by the garnishment because the title to the property in question was subject to a contingency. *McKnight v Tomkinson*, 209 M 399, 296 NW 569.

Effect of levy on mortgaged property by mortgagee. 18 MLR 353.

Comparison between chattel mortgages and conditional sales contracts. 24 MLR 830, 849.

511.17 MORTGAGE OF CROPS.

HISTORY. 1887 c. 176; G.S. 1878 Vol. 2 (1888 Supp.) c. 39 s. 14d; G.S. 1894 s. 4154; 1897 c. 292 s. 16; 1901 c. 320; R.L. 1905 s. 3475; G.S. 1913 s. 6980; G.S. 1923 s. 8359; M.S. 1927 s. 8359.

A chattel mortgage executed on August 15th of one year, mortgaging the crops to be grown the next year, is not void. *Plano v Hallberg*, 61 M 528, 63 NW 1114.

Title reserving lease construed to be a chattel mortgage, and having been given more than a year in advance of the sowing of the seed, and not having been given to secure payment of the purchase price, it is void. *Ward v Rippe*, 93 M 36, 100 NW 386.

Where the intervenor claimed under a seed potato lien, as opposed to a mortgagee foreclosing a prior mortgage, his claim was denied superiority because his crop lien was not properly filed. *Opatril v Cook*, 156 M 58, 194 NW 104.

The inclusion in a chattel mortgage of crops for a season prohibited by statute does not invalidate such mortgage as to the crops for the season thereby permitted. *Strandin v Spreiter*, 166 M 396, 208 NW 26.

The form of contract between a landowner and a cropper in common use in this state makes them coowners of the crops until they are divided. The cropper may mortgage his interest before the crops are divided. A provision authorizing the landowner to retain possession of the cropper's share as security for his indebtedness is in legal effect a chattel mortgage. If, without the consent of the

cropper, the landowner retains more than his share, he must account, and cannot apply the overage on an unsecured claim he has against the cropper. *Bank v St. Anthony*, 171 M 461, 214 NW 288.

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. *Bank v Farmers Grain Co.* 174 M 531, 219 NW 871.

Brown gave plaintiff a chattel mortgage on a crop to be grown on land on which he had no lease. Later, he leased the land and the lease had the usual crop mortgage clause. He obtained seed under a seed grain note. Although plaintiff's mortgage was first recorded, it was held subordinate to the two prior liens. *Massey v Moorhead*, 176 M 90, 272 NW 571.

A clause in a real estate mortgage assigning rents to the mortgagee is not invalidated as to crops grown later than the next succeeding crop season. *Mutual v Canby*, 190 M 144, 251 NW 130.

In a chattel mortgage on live stock, the clause "together with sufficient feed for said stock during the life of the mortgage" does not cover or include a lien on growing crop. OAG June 3, 1935 (301a-3).

Assignability of future book accounts. 2 MLR 40.

Contracts to farm on shares. 2 MLR 47.

Chattel mortgage on unplanted crops. 3 MLR 197.

CONDITIONAL SALES

511.18 CONDITIONAL SALES CONTRACTS.

HISTORY. 1873 c. 65 ss. 1 to 3, 5; G.S. 1878 c. 39 ss. 15 to 17, 19; 1883 c. 38 s. 2; 1885 c. 76; G.S. 1894 ss. 4148 to 4150, 4152; 1897 c. 292 ss. 17 to 20; 1905 c. 178; R.L. 1905 ss. 3476 to 3478; G.S. 1913 ss. 6981 to 6984; G.S. 1923 ss. 8360 to 8363; M.S. 1927 ss. 8360 to 8363.

1. **Generally**
2. **Filing**
3. **Notice**
4. **Applicability**
5. **Protection**

1. Generally

Where the vendor sold farm machinery to the insolvent on a conditional sales contract but failed to file it legally, the assignee stands on the same plane as creditors, and as the creditors had no actual notice, and as the filing did not meet the requirements, the title of the assignee was permanent. *Thomas v Foote*, 46 M 240, 48 NW 1019.

In replevin action by the vendor and where the conditional sales contract was not filed, the vendor prevailed because it was proven that the purchaser from the vendee had actual knowledge of the vendor's lien. *Larson v Johnson*, 83 M 351, 86 NW 350.

A sale by a vendor of chattels when there is no immediate change in possession is presumed to be fraudulent, unless made in good faith. This presumption is rebuttable, but in this case the vendor failed to bear the burden of proof imposed upon it, and its title was therefore junior to that of a prior vendor under a prior unfiled conditional sales contract. *Mack v Burns*, 175 M 157, 220 NW 560.

The seller in a conditional sales contract reserves the absolute title which remains in him, or passes from him to the purchaser accordingly as the conditions are broken or performed, and in case of a default by the vendee may (1) reclaim the property, (2) treat the sale as absolute and collect the debt, or (3) sue to foreclose the lien. The vendor is bound by whichever remedy he selects. *Holmes v Schnedler*, 176 M 483, 223 NW 908.

The vendor in a conditional sales contract may, upon default, retake the property and hold it as his own. The conditional vendee has no right of redemption, and cannot recover in conversion. *Penchoff v Heller*, 176 M 493, 223 NW 911.

Plaintiff stored his car with auto company under agreement that the auto company would take the car at a price and later deliver a new car at a stated price. The car was insured, and there was a certain amount due under a conditional sales contract. The car was stolen. The auto company was negligent. Held, that the plaintiff may recover the full value. *Solberg v Minneapolis*, 177 M 10, 224 NW 271.

Dealer sold motor car to his clerk evidenced by a conditional sales contract duly recorded. Dealer assigned the contract to Drew. The car was not registered. The car was left on dealer's sales room floor for 30 days when it was sold to the defendant, a purchaser in good faith. He at once registered the car and took possession. This is an action in replevin.

Held, that plaintiff should prevail, as the filing of his conditional sales contract was sufficient notice, except that under the provisions of section 513.12 he must establish the good faith of the sale from the dealer to his clerk, and from the clerk to Drew. *Drew v Feuer*, 185 M 133, 240 NW 114.

When a seller in a conditional sales contract repossesses the property because of default in payments and sells the same, the contract is *functus officio*; and a payment after demand made by one of the customers who did not know of the seizure is not ground for an action in conversion. *Stemland v C. I. T. Corp.* 186 M 384, 243 NW 708.

A contract denominated a lease, but which contained the clauses usually found in conditional sales contracts and which provided for unconditional payment by instalments of the full agreed value of the property, and in case of destruction, payment nevertheless is a conditional sales contract. *Motor Power v Park*, 188 M 370, 247 NW 244.

The vendee in possession under a conditional sales contract is the person to be taxed. *State v Case*, 189 M 180, 248 NW 726.

Where a vendor under a conditional contract accepts a chattel mortgage, the vendor's title under the contract is lost, and if he takes possession without foreclosure, he may be held liable in conversion. *Kettwig v Aero*, 191 M 500, 254 NW 629.

A conditional sales contract or purchase money mortgage is superior to prior lien or mortgage. *C. I. T. v Cords*, 198 M 337, 269 NW 825.

It is not a fraud upon creditors within the meaning of section 511.18 for a debtor to transfer to the true owner the latter's property. *Bolton v Owens*, 201 M 162, 275 NW 855.

Modifying and clarifying earlier cases, it is held that seller's suit for the price is not inconsistent with his reserved right to repossess upon buyer's default. It is not such an election of remedies as to bar a subsequent exercise of the right of repossession. *Midland v Osterberg*, 201 M 210, 275 NW 681.

A conditional seller has an equitable lien on the property conditionally sold which may be foreclosed by action; and a replevin to get possession is not an election of remedies, and as an incident to the foreclosure, the seller may recover a deficiency judgment; and the fact that the stipulated payments are designated rentals does not affect the nature of the instrument. *National v Ness*, 204 M 148, 282 NW 827.

The trial court is sustained in its holding that the contract was usurious and directed its cancellation, but awarded possession to the defendants. *Seebold v Eustermann*, 216 M 568, 13 NW(2d) 739.

Under Minnesota law, the description of a refrigerator by its model and serial number in a conditional sales contract which contained references to a refrigerator was not so defective as to prevent the record of the contract from operating as "constructive notice" to the conditional buyer's trustee in bankruptcy. *Miller v McGray Co.* 130 F(2d) 873.

Foreclosure of lien. 17 MLR 66.

Trust receipts. 17 MLR 801.

2. Filing

Contract duly filed and construed as not authorizing the vendee to sell the property in its original or changed form and apply the proceeds to its own ac-

count. The contract was mandatory that the proceeds go to the vendor until it was fully paid. *Wilkinson v Akeley*, 56 M 401, 57 NW 940.

Conditional sales contracts must be filed in the town, village or city where the vendee resides at the time of making the contract and not where he resides at the time of filing. *Creamery v Tagley*, 91 M 79, 97 NW 412.

Except as provided in section 511.26, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. *Good v Brown*, 175 M 354, 221 NW 239.

A conditional sales contract, filed with the register of deeds in the county of the vendee's residence in this state, protects the title of the seller from the date of filing, regardless of the place where the contract was made, or the place where the payments were to be made. *Iowa Guarantee v Kingery*, 181 M 477, 233 NW 18.

Register of deeds should not record a typewritten copy of a conditional sales contract where the signature on the copy is typewritten. OAG Aug. 9, 1938 (373b-6).

An instrument is entitled to record if it be a duplicate original in the form of a carbon impression of the original signature and writing. OAG Sept. 18, 1939 (373B-6).

Conflict of laws; recording conditional sales contracts. 5 MLR 310.

Conditional sales; recording acts. 16 MLR 696.

Fraudulent conveyance of chattels. 24 MLR. 848.

3. Notice

The statute does not operate to avoid a contract, although not filed as prescribed as to creditors of the vendee having actual notice. *Dyer v Thorstad*, 35 M 534, 29 NW 345.

Notice to or knowledge of an assignee of the contents of an instrument not filed as required by law, is not notice to creditors who themselves have no notice, and in his official capacity as assignee he is only chargeable with such notice as came to the creditors. *Thomas v Foote*, 46 M 240, 48 NW 1019.

The legal presumption that upon delivery of goods to a common carrier the title vests in the consignee, is not affected by the provision of section 511.18, and the carrier has the right to rely on that presumption in case of loss of the consignment. *Dyer v Great Northern*, 51 M 345, 53 NW 714.

Description of auto held sufficient, though wrong year of model was designated in the contract. *C. I. T v De Graff*, 194 M 169, 259 NW 807.

Under the statute a conditional sales contract is void as to creditors unless filed, but if the creditor at the time he attaches has actual notice of an unfiled contract he is not protected by the filing statute. The burden of proof is on the attaching creditor to prove he did not have actual notice. *Hold v Photophone*, 196 M 527, 265 NW 313.

4. Applicability

The filing statute applies to an exchange of horses in which one of the parties reserves the right to trade back in case the one delivered to him should prove to have glanders. *Kinney v Cay*, 39 M 210, 39 NW 140.

Where goods are sold for cash on delivery, and payment is made by check such payment is only conditional, and the delivery is also conditional, and if the check is dishonored, the vendor may take the goods in the hands of a subvendee for value. *Bank v Wisconsin Central*, 44 M 224, 46 NW 342.

By the terms of a written contract, the plaintiff consigned to his customer certain vehicles, price lists attached, but there was no transfer of title nor contingent agreement for such transfer. Held, that this is a consignment contract only, and is not such a contract as to require filing. *Cortland v Sharvy*, 52 M 216, 53 NW 1147.

An innocent purchaser of personal property in good faith from a bailee gets no title to the same and the filing statute is not applicable. *Bjork v Bean*, 56 M 244, 57 NW 657.

Where the consignor sold for cash and shipped goods to the consignee, drew drafts on him for the purchase price, sent the draft with bill of lading attached to a third party, no title to the goods passed to the consignee, and the consignor conferred no indicia of ownership on the consignee, and where the carrier delivered the goods to a third person on an order from the consignee, no title passed, and the subvendee is liable in conversion. *Freeman v Kraemer*, 63 M 242, 65 NW 455.

A written instrument for the sale of standing timber by which the title of the timber and products manufactured from same remain in the owner of the land until paid for is one that should be filed according to statute. *Clark v Richards*, 68 M 282, 71 NW 389.

Vendor delivered goods to the vendee under a contract by which the agent agreed to sell the goods on account of the shipper or at his option execute his note for his accommodation for the list price of the goods, or at shipper's option pay for such goods as might be on hand after a certain date. Held, that by demanding payment of the note after a certain date had expired, title to the goods passed to the vendee. *Favorite v Walsh*, 71 M 292, 74 NW 137.

While the written contract purports to be a consignment, yet it appears on its face that its real purpose is to cover up a conditional sale, and was intended to keep the contract off the record so as to give the vendee a false credit, and as to assignor's creditors it is a conditional sale, and as it was not filed of record, is void as to them. *Babcock v Williams*, 75 M 147, 77 NW 791.

A contract in the nature of a conditional sales contract executed more than four months prior to the bankruptcy, but filed 20 days prior is a conditional contract, but as it was not intended as a preference, and as title never vested in the bankrupt, the vendor may recover from the goods from the trustee in bankruptcy. *Bradley v Benson*, 93 M 91, 100 NW 670.

Section 511.18 does not apply to a bailment. *Bolton v Owens*, 201 M 162, 275 NW 855.

5. Protection

A conditional sales contract not being filed as of the date of an assignment by vendee for the benefit of his creditors is void as to creditors not having actual notice, and it is the duty of the assignee to defend against replevin proceedings brought by the vendor. *Thomas v Drew*, 69 M 69, 71 NW 921.

Where a tenant in possession, with consent of landlord, installed a furnace under a conditional sales contract, and such furnace and attachments are removable without injury to the building, the items may be removed by the seller on default in payments. *Holland v Jefferson*, 173 M 121, 216 NW 795; *North Shore v Broman*, 188 M 433, 247 NW 505; *Pennig v Schmitz*, 189 M 262, 249 NW 39.

The rights of a trustee in bankruptcy are superior to the rights of a vendor in personal property held by the bankrupt under a conditional sales contract note which has not been filed for record under section 511.18, prior to the filing of the petition in bankruptcy. *Neils v Bohlsen*, 181 M 25, 231 NW 248.

Where articles later purchased by the owner of personal property are so closely incorporated with the principal article that they cannot be identified or detached therefrom without injury thereto, they become a part thereof and pass by accession to one having a prior lien on the principal article, but when they can be identified and detached, they do not so pass. *Goodrich v Pratt*, 198 M 259, 269 NW 464.

Under section 511.18 making a conditional sales contract void as to creditors of the vendee unless filed, the term "creditors" refers to only creditors who have seized the property under legal process. *C. I. T. v Cords*, 198 M 337, 269 NW 825.

One holding a chattel mortgage on a motor truck which by its terms covered after-acquired property, held to take no title to tires and tubes thereafter purchased and attached as against a conditional vendor of tires and tubes who reserved the title thereto. *Goodrich v Credit System*, 200 M 265, 274 NW 172.

Rights of a good faith purchaser from the registered automobile owner are subject to those of the assignee of a prior and duly recorded conditional sales contract, there being no evidence to impugn the good faith of the conditional sales contract. *Slawik v Christensen*, 209 M 428, 296 NW 496.

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The fact that a conditional sale was not recorded can be asserted only by a creditor who has acquired a superior lien. *Robie v Minneapolis*, 60 F(2d) 130.

Bankruptcy law as applicable to liens. 9 MLR 55.

Rights of assignee of conditional sales contract against subsequent bona fide purchaser from original vendor. 16 MLR 689.

Protection as to purchase money when title fails. 24 MLR 828.

511.19 RETAKING OF POSSESSION.

HISTORY. 1931 c. 339 ss. 1 to 5; M. Supp. ss. 8363-1 to 8363-5.

In contracts made before the taking effect of Laws 1931, Chapter 339, the purchaser did not have a right of redemption. *Grossman v Lockedell*, 184 M 446, 238 NW 893.

Milking machines being in control of the retail dealer, the manufacturer, even if he reserves title, is not liable for death of cattle due to faulty electrical connection. *Diddams v Empire*, 185 M 270, 240 NW 895.

Where a seller in a conditional sales contract executed and in effect prior to the enactment of Laws 1931, Chapter 339, repossesses the property because of default and sells same, the contract is *functus officio*, and the mistaken payment and receipt of a payment by one of the contract debtors does not authorize the purchaser to sue the seller for a conversion of the property. *Stemland v C. I. T.* 186 M 384, 243 NW 708.

A purchaser on a 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 Havens*, 191 M 623, 255 NW 120.

Although the contract was signed by the husband and when blanks unfilled, parol evidence was admissible to show the wife the real owner, and invoices to show the terms of the agreement were similar to the filling in of the blanks. *Saunders v Commercial Credit*, 192 M 272, 256 NW 142.

Purchaser under the practice laid down by section 511.19, and without foreclosure, took title subject to a chattel mortgage of which he had notice, and that, even if the chattel mortgage was deficient in execution and not entitled to be recorded. *Miller v Jaax*, 193 M 85, 257 NW 653.

The conditional seller has a lien similar to a chattel mortgage and may replevin in order to obtain possession for foreclosure, and if the sale under foreclosure does not produce enough to wipe out the debt, a deficiency judgment may be entered, but if the seller seizes the property without foreclosure, the property is accepted by him in full discharge of the debt. *Ahlers v Jones*, 193 M 544, 259 NW 397.

A vendor in a conditional sales contract may retake the property on default in payments and treat it as his own, the vendee's only remaining interest being the right of redemption under the provisions of section 511.19. *C. I. T. v Cords*, 198 M 337, 269 NW 825.

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

The seven-day redemption clause for failing to report transfer of motor vehicle begins to run from the date of the retaking. OAG June 20, 1931.

There is no statutory authority for change of registration merely upon affidavit of compliance with section 511.19. OAG April 26, 1939 (632d).

Remedies of conditional seller on buyer's default. 17 MLR 71.

At common law the buyer under a conditional sales contract was not entitled to a right of redemption. Nor was it recognized that he had any property right in the subject matter of the conditional sales contract, but modern text writers agree and later cases indicate that the buyer is for all practical purposes the owner of the chattel; and the seller merely holds legal title as security for payment of the purchase price. With this change in attitude respecting the buyer's rights came also the feeling that the buyer ought to have a right of redemption in the event of his default on the contract. Several states, including Minnesota, have enacted statutes giving the conditional buyer a right of redemption; Alaska, Arizona, Delaware, Indiana, New Jersey, New York, Pennsylvania, South Dakota,

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West Virginia and Wisconsin have adopted the uniform conditional sales act; and a few jurisdictions by judicial interpretation, have acknowledged the existence of an equity of redemption in the absence of any statutory declaration. 18 MLR 429.

FILINGS

511.20 REGISTER OF DEEDS TO ACCEPT FILINGS; NOTICE; EXCEPTIONS; CONDITIONAL SALES.

HISTORY. 1915 c. 364 s. 1; 1917 c. 158 s. 1; G.S. 1923 s. 8364; M.S. 1927 s. 8364; 1935 c. 169.

The rights of the holder of a chattel mortgage on an engine and boiler given to secure the purchase price thereof, are superior to those of lien claimants who were charged with notice of the mortgage by the filing thereof before the mortgaged property was annexed to the realty. *Dower v Rodewald*, 157 M 314, 196 NW 473.

Except in cities of the first class, sections 511.20, et seq, requires filing of lien statements on motor vehicles with the register of deeds of the county where the property is situated, and where the storage has been continuous, the statement may cover charges, some of which are of an earlier date than the 60 days prior to filing the lien. *Snyder v Boyle*, 162 M 261, 202 NW 481.

Except as provided in section 511.26 conditional sales contracts should be filed in the county wherein the property is given a fixed status. *Good v Brown*, 175 M 354, 221 NW 239; *Miller v Jaax*, 193 M 85, 257 NW 653.

Report of sale by dealer, on registration pursuant to statute, may be varied by parol evidence to show true ownership. *Bolton v Owens*, 201 M 162, 275 NW 855.

Registration of an automobile under state motor law is prima facie but not conclusive evidence of title in the party in whose name the car is registered, but if there is evidence of other ownership it presents a fact question for the jury. *Flaugh v Egan*, 202 M 615, 279 NW 582.

As respects unrecorded or improperly recorded chattel mortgage, chattel mortgagor's bankruptcy trustee is in position of creditor having lien. Question of chattel mortgagor's residence is to be determined from facts and circumstances shown by evidence, on issue of place where chattel mortgage must be filed. *In re Wilson*, 18 F(2d) 108.

As to trust receipts. 17 MLR 801.

511.21 FILING; FEES.

HISTORY. 1915 c. 364 s. 2; G.S. 1923 s. 8365; M.S. 1927 s. 8365; 1935 c. 168 s. 1.

Except in cities of the first class, sections 511.21 to 511.26 require the filing of statements of liens on motor vehicles with the register of deeds of the county where the property is situated. *Snyder v Boyle*, 162 M 261, 202 NW 481.

Except as provided in section 511.26, conditional sales contracts should be filed in the county wherein the property is given a fixed status; witnessing and acknowledging are unnecessary prerequisites to the filing of such contracts. *Good v Brown*, 175 M 354, 221 NW 239.

Recourse cannot be had against the surety on a bond of a public officer because of negligence in acts done not within the scope of his statutory duties. *Federal v Maryland*, 194 M 150, 259 NW 793.

511.22 INDEX TO BE KEPT.

HISTORY. 1915 c. 364 s. 3; G.S. 1923 s. 8366; M.S. 1927 s. 8366.

Passage of Laws 1915, Chapter 364, indicates a legislative purpose to adopt a new plan for recording all liens on personal property evidenced by written contract or statutory statement. *Snyder v Boyle*, 162 M 261, 202 NW 481.

Index as part of the chattel mortgage record. 2 MLR 386. Recording in realty records of mortgage covering realty and personalty as notice as to personalty. 5 MLR 143.

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511.23 MUNICIPAL CLERK TO DELIVER DOCUMENTS TO REGISTER OF DEEDS.

HISTORY. 1915 c. 364 s. 4; G.S. 1923 s. 8367; M.S. 1927 s. 8367.

511.24 FEES FOR DELIVERING DOCUMENTS.

HISTORY. 1915 c. 364 s. 5; G.S. 1923 s. 8368; M.S. 1927 s. 8368.

Effect of Laws 1915, Chapter 364. Snyder v Boyle, 162 M 261, 202 NW 481.
Chattel mortgage on fixtures. 15 MLR 242.

511.25 COMPENSATION OF REGISTER OF DEEDS.

HISTORY. 1915 c. 364 s. 6; G.S. 1923 s. 8369; M.S. 1927 s. 8369.

511.26 APPLICATION.

HISTORY. 1915 c. 364 s. 7; G.S. 1923 s. 8370; M.S. 1927 s. 8370.

Sections 511.21 to 511.26 apply to Ramsey County. 1938 OAG 150, Mar. 4, 1938 (373a).

511.27 REPORT OF SALE; FILING.

HISTORY. 1913 c. 143 s. 5; G.S. 1913 s. 6989; G.S. 1923 s. 8371; M.S. 1927 s. 8371.

A contract under which the owner delivers property to another to sell and which provides that the title to the property shall remain in the owner until sold to an actual purchaser, and that all property not sold, and the proceeds of all sales shall be returned to the owner and which imposes no obligation on the consignee to pay the purchase price for any of the consignments, constitutes a bailment with power of sale and not a conditional sale. Norris v Boston, 129 M 198, 151 NW 971.

Mortgagee could not foreclose her mortgage until other cases, one of levy, one of garnishment, and decision as to amount due on a prior mortgage. Holland v Nichols, 136 M 354, 162 NW 468.

PLEDGES

511.28 RECORD PROCEEDINGS OF SALE OF PLEDGED PROPERTY.

HISTORY. 1931 c. 329 s. 1; M. Supp. s. 8359-1.

511.285 PLEDGEE PERMITTED TO BUY PLEDGE WHERE SOLD AT PUBLIC SALE.

HISTORY. 1917 c. 305 s. 1; G.S. 1923 s. 8561; M.S. 1927 s. 8561.

Plaintiff owned a \$10,000 note and mortgage and loaned it to his father to be used as collateral for a note to the bank of \$680.00. His assignment disclosed the purpose and added "and for any other indebtedness of" the father to the bank. The bank purchased from one Hunt a \$13,000 note signed by the father and held the pledged note as security for the \$13,000 debt. Plaintiff sued for recovery of the \$10,000 note and had judgment in his favor. "Indebtedness" means a state of being indebted or a sum owed. A "debt" is that which is due from one person to another, a liability of one to another. The pledgee's actual interest is purely contingent in that it depends for effect on something that may or may not occur; and the term "indebtedness" as used is construed as meaning a direct and not a contingent liability. McCrea v Bank, 162 M 455, 203 NW 220.

If a pledgor effectually affirms an unauthorized sale by the pledgee to himself, he affirms it in its entirety. His right is to have credited on his debt the amount realized from the sale with payment to him of the surplus, if any. If the unauthorized sale is disaffirmed, he being in possession, the contract remains in force and the pledgee in possession cannot be charged with conversion. Erickson v Midland, 205 M 224, 285 NW 611.

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The sheriff is entitled to fees (\$4.50) for posting notices and making sale. OAG May 20, 1929.

Rights of bona purchasers; chattels. 24 MLR 829.

SEED GRAIN LOANS

511.29 SEED GRAIN LOANS; AGREEMENT; CONTRACT.

HISTORY. 1875 c. 93 s. 1; G.S. 1878 c. 39 s. 21; G.S. 1894 s. 4155; 1897 c. 282 s. 21; R.L. 1905 s. 3479; G.S. 1913 s. 6994; 1923 c. 48 s. 1; G.S. 1923 s. 8372; M.S. 1927 s. 8372.

Plaintiff held a valid chattel mortgage on the crops of the defendant mortgagor. The intervenor furnished the mortgagor with seed potatoes for planting under an agreement to furnish certain potatoes at close of crop season. Held, that non-compliance by the intervenor of the statutory procedure of the seed loan act made the intervenor junior to the mortgagee. *Opatril v Cook*, 156 M 57, 194 NW 104.

Conservator of rural credit may furnish seed and take security. OAG April 30, 1934 (7701).

Federal grain notes constitute a lien upon all crops produced from any part of the grain included therein. 1936 OAG 341, Dec. 28, 1935 (833c).

511.30 SEED GRAIN CONTRACTS TO BE FILED WITH THE REGISTER OF DEEDS; FILING; DURATION OF LIEN.

HISTORY. 1883 c. 38 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 39 s. 22; G.S. 1894 s. 4156; 1897 c. 292 s. 22; R.L. 1905 s. 3480; G.S. 1913 s. 6995; 1915 c. 191 s. 1; G.S. 1923 s. 8373; M.S. 1927 s. 8373.

A lien arising upon a crop by virtue of a seed grain note, executed and filed in accordance with the provisions of the statute, has priority over a lien upon the same crop acquired by means of a previously executed and filed chattel mortgage. *McMahan v Lundin*, 57 M 84, 58 NW 827; *Massey v Moorhead*, 176 M 90, 222 NW 571; *McCarthy v Thorson*, 182 M 409, 234 NW 591.

As to place of filing prior to the passage of Laws 1915, Chapter 364. *Minnesota v Northwestern*, 58 M 536, 60 NW 671.

Non-compliance with the statutory procedure for filing seed liens, may cause it to become junior to a prior chattel mortgage. *Opatril v Cook*, 156 M 57, 194 NW 103.

511.31 LIENOR MAY TAKE POSSESSION.

HISTORY. 1883 c. 38 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 39 s. 23; G.S. 1894 s. 4157; 1897 c. 292 s. 23; R.L. 1905 s. 3481; G.S. 1913 s. 6996; G.S. 1923 s. 8374; M.S. 1927 s. 8374.

Prayer for a restraining order enjoining the mortgagor from disposing of his crop denied because the mortgage has an adequate remedy in replevin. *Minnesota v Maginnis*, 32 M 193, 20 NW 85.

The statute authorizes the holder of a seed grain note, upon condition broken, to take possession of the crop and to sue in conversion any subordinate lienor who takes possession. *Nash v Brewster*, 39 M 530, 41 NW 105.

One who furnishes seed must comply with the provisions of the statute in order to be senior to prior chattel mortgage. *Opatril v Cook*, 156 M 57, 194 NW 103.

511.32 CHATTEL MORTGAGE PROVISION, HOW APPLICABLE.

HISTORY. 1883 c. 38 s. 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 39 s. 24; G.S. 1894 s. 4158; 1897 c. 292 s. 24; R.L. 1905 s. 3482; G.S. 1913 s. 6997; G.S. 1923 s. 8375; M.S. 1927 s. 8375.

MINNESOTA STATUTES 1945 ANNOTATIONS

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CHATTEL MORTGAGES, ETC. 511.32

The provisions of section 511.32 do not make conditional sales contracts chattel mortgages, and the provisions relating to exemption and forfeiture still exist. *Penchoff v Heller*, 176 M 493, 223 NW 911.

A vendor in a conditional sales contract may retake the property on default in payments and treat it as his own. The retention of title by the seller in a conditional sales contract is not a lien, but a reservation of title. *C. I. T. Corp. v Cords*, 198 M 344, 269 NW 825.

Vendor under a conditional sales contract has three remedies: he may retake the property; sue for the contract price; or bring suit in equity under the terms of the uniform sales act. If the vendor takes possession, the debt is wiped out. Vendee's only right is a statutory exemption. *C. I. T. v Cords*, 269 NW 825.