

CHAPTER 550

EXECUTIONS; LEVY; SALE; REDEMPTION; EXEMPTIONS

550.01 ENFORCEMENT OF JUDGMENT.

HISTORY. R.S. 1851 c. 71 s. 80; P.S. 1858 c. 61 s. 80; G.S. 1866 c. 66 s. 262; G.S. 1878 c. 66 s. 293; G.S. 1894 s. 5442; R.L. 1905 s. 4287; G.S. 1913 s. 7921; G.S. 1923 s. 9416; M.S. 1927 s. 9416.

An action will not lie to enforce the lien of a judgment where the time prescribed for enforcing it by execution has expired, nor is equitable relief available. *Ashton v Slater*, 19 M 347 (300); *Morrill v Madden*, 35 M 493, 29 NW 193; *Dale v Wilson*, 39 M 330, 40 NW 161.

An execution issued more than ten years from entry of judgment is void and not merely voidable. *Hanson v Johnson*, 20 M 194 (172).

It is not enough to initiate proceedings in execution prior to the expiration of the statutory period. They must be completed. *Newell v Dart*, 28 M 248, 9 NW 732; *Spencer v Haug*, 45 M 231, 47 NW 794.

An execution may issue before the costs are inserted in the judgment. *Richardson v Rogers*, 37 M 461, 35 NW 270.

In computing the period of the years, the day upon which the judgment is entered is to be excluded. *Spencer v Haug*, 45 M 231, 47 NW 794.

A motor vehicle lien is superior to the title acquired through execution sale, the levy being made before the filing of the lien statement but after the furnishing of the labor and material. *Stegmeier v Lanhon*, 184 M 194, 238 NW 328.

A judgment is conclusive, as between the parties, of the facts upon which it is based and all the legal consequences resulting from its rendition, and it may be enforced by the parties thereto, though judgment may be also for the benefit of a third party. *Ingelson v Olson*, 199 M 422, 272 NW 270.

Decrees of divorce are not subject to the same limitations prescribed for the enforcement of ordinary judgments. *Akerson v Anderson*, 202 M 356, 278 NW 577.

Set-off of judgments when allowed. 20 MLR 435.

Writ of execution. 24 MLR 822.

550.02 JUDGMENTS; METHODS OF ENFORCEMENT.

HISTORY. R.S. 1851 c. 71 s. 84; P.S. 1858 c. 61 s. 84; G.S. 1866 c. 66 s. 266; G.S. 1878 c. 66 s. 297; G.S. 1894 s. 5446; R.L. 1905 s. 4288; G.S. 1913 s. 7922; G.S. 1923 s. 9417; M.S. 1927 s. 9417.

The issue of execution, levy upon, and sale of personal property, and application of the proceeds pro tanto, preserves its lien upon real estate. *Davidson v Gaston*, 116 M 230 (202).

To justify ousting the party in possession, the judgment must show clearly that such relief was granted. *Upton v Merriman*, 122 M 163, 142 NW 150.

Under Laws 1907, Chapter 24, as amended by Laws 1913, Chapter 318, the widow of a fireman, otherwise entitled to a pension, who was his common-law wife, is not entitled thereto; and where defendant denied liability to plaintiff, but upon trial of the action such liability was found by the court, and judgment directed prior to the passage of Laws 1913, Chapter 318, but entered afterwards, such judgment will not be enforced by contempt proceedings. *Minegar v Mpls. Fire Dép't*, 126 M 332, 148 NW 279.

Where a judgment debtor appeals from an order in supplementary proceedings appointing a receiver and directing him to convey property to the receiver, and gives a supersedeas bond, the appeal suspends the mandatory provisions of the order. *Wilkins v Corey*, 172 M 102, 214 NW 776.

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A judgment debtor may be found in contempt for refusing to obey a court order such as refusal to give up property to the sheriff; but the sheriff cannot by force enter a house for the purpose of making a levy. OAG Feb. 7, 1935 (390a-6).

Defects in judgment. 24 MLR 822.

550.03 KINDS OF EXECUTION.

HISTORY. R.S. 1851 c. 71 s. 81; P.S. 1858 c. 61 s. 81; G.S. 1866 c. 66 s. 263; G.S. 1878 c. 66 s. 294; G.S. 1894 s. 5443; R.L. 1905 s. 4289; G.S. 1913 s. 7923; G.S. 1923 s. 9418; M.S. 1927 s. 9418.

Plaintiff never sued out execution on his judgment, and more than ten years having elapsed, he cannot have the assistance of the court of equity to enforce his lien against which the limitation has run. *Ashton v Slater*, 19 M 347 (300).

An alias execution may properly be issued as at common law. *Walter v Greenwood*, 29 M 87, 12 NW 145.

In an action to foreclose a mortgage, about a month after the expiration of the time of redemption, and the mortgagor remaining in possession, the court properly incorporated in its final decree a provision that the purchaser have execution for recovery of the premises. *Belknap v Van Riper*, 76 M 268, 79 NW 103.

550.04 EXECUTION, HOW ISSUED; CONTENTS.

HISTORY. R.S. 1851 c. 71 s. 82; P.S. 1858 c. 61 s. 82; G.S. 1866 c. 66 s. 264; 1877 c. 17 s. 1; G.S. 1878 c. 66 s. 295; G.S. 1894 s. 5444; R.L. 1905 s. 4290; G.S. 1913 s. 7924; G.S. 1923 s. 9419; M.S. 1927 s. 9419.

The writ must be dated as of the day on which it is issued from the clerk's office and not as of the day on which it is delivered to the sheriff. *Mollison v Eaton*, 16 M 426 (383).

The fact that it does not run in the name of the state does not render it void. *Thompson v Bickford*, 19 M 17 (1).

It must be under the seal of the court. *Wheaton v Thompson*, 20 M 196 (175).

It must be issued within the time limitations to be effective. *Ashton v Slater*, 19 M 347 (300).

The point that the sheriff had no authority to levy upon real property unless he could find no personal property to levy on, no personal property being shown, is disposed of by the presumption that the sheriff did his duty. *Knox v Randall*, 24 M 496; *Jakobsen v Wigen*, 52 M 6, 53 NW 1016; *Cunningham v Water-Power Co.* 74 M 282, 77 NW 137.

Where an outgoing sheriff levied an attachment on personal property; and an execution on the judgment obtained in the action was delivered to and with the consent of the plaintiff returned "no property found", this was an abandonment of the lien acquired by the levy of the attachment. *Butler v White*, 25 M 432.

A misrecital of the date of the judgment is immaterial if the judgment is otherwise sufficiently identified. *Millis v Lombard*, 32 M 259, 20 NW 187.

An execution to a county other than the one in which the judgment was rendered is valid though taken from the clerk's office before the judgment is docketed in the county to which it runs, but not delivered to the sheriff for service until after the judgment is so docketed. *Gowan v Fountain*, 50 M 264, 52 NW 862.

If an attachment has issued, it is not necessary for the execution to refer to the attachment proceedings, but it may be in the ordinary form. *Hencke v Twomey*, 58 M 550, 60 NW 667.

Under an execution in which an officer is commanded to satisfy the same out of the property of "A" and "B", judgment debtors, he may seize and sell the separate property of either or the joint property of both. *West Duluth Co. v Bradley*, 75 M 275, 77 NW 964.

To procure an alias writ no formalities are required. No order of court is necessary. *Carlsen v Smith*, 127 M 206, 149 NW 199.

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Temporary alimony, paid pendente lite, may be applied as pro tanto on a permanent alimony award. *Bickle v Bickle*, 196 M 392, 265 NW 276.

The court's order confirming the award as and where originally made amounted to and in effect was a judgment bearing legal interest since accruing and until final payment. *Co. of Blue Earth v Williams*, 196 M 506, 265 NW 329.

The sheriff when possible must collect the face of the judgment, interest thereon, costs, and his percentage; but should he be unable to collect in full he may still retain his costs and percentage out of the amount collected. OAG Jan. 13, 1944 (390c-11).

The writ of execution. 24 MLR 822.

Acts or omissions of the sheriff. 24 MLR 823.

550.05 WHEN RETURNABLE; INVENTORY.

HISTORY. R.S. 1851 c. 71 ss. 83, 84; P.S. 1858 c. 61 ss. 83, 84; G.S. 1866 c. 66 ss. 265, 266; 1871 c. 61 s. 1; G.S. 1878 c. 66 ss. 296, 297; Ex. 1881 c. 4 s. 1; G.S. 1894 ss. 5445, 5456; R.L. 1905 s. 4291; G.S. 1913 s. 7925; G.S. 1923 s. 9420; M.S. 1927 s. 9420; 1945 c. 107 s. 1.

1. When returnable
2. The return

1. When returnable

Where a levy has been made before return day it may be completed by sale after such day and the officer may retain the writ in his possession for that purpose. *Barrett v McKenzie*, 24 M 20; *Knox v Randall*, 24 M 479; *Spencer v Haug*, 45 M 231, 47 NW 794; *Bradley v Sandilands*, 66 M 40, 68 NW 321.

Where an officer knows or has reasonable ground for knowing of the existence of property out of which the execution may be made, he acts at his peril in not making an immediate levy. *Guiterman v Sharkey*, 46 M 183, 48 NW 780.

A delay of nine months, in making personal service of a summons without the state, after the making of the sheriff's return that defendant cannot be found, is as a matter of law unreasonable and the return will not support and sustain the service. *Haney v Haney*, 163 M 121, 203 NW 614.

2. The return

In construing the return it is to be presumed in the absence of a contrary showing on its face that the officer has done all that was required of him, both in the prosecution of the case and in the return thereto. *Tullis v Bradley*, 3 M 277 (191); *State v Penner*, 27 M 269, 6 NW 790.

A return which certifies in general terms that officer "levied" on certain property is sufficient; it is not necessary to state the particulars of the levy. *Tullis v Bradley*, 3 M 277 (191); *Rohrer v Turrill*, 4 M 407 (309); *Folsom v Carlil*, 5 M 333 (264); *Hutchins v Co. Commsrs.* 16 M 13 (1); *Hossfeldt v Dill*, 28 M 469, 10 NW 781.

The return need not be made within 60 days of its issuance. *Barrett v McKenzie*, 24 M 20; *Knox v Randall*, 24 M 479; *Spencer v Haug*, 45 M 231, 47 NW 794; *Bradley v Sandilands*, 66 M 40, 68 NW 321.

The return may be made by an officer after the expiration of his term of office. *Knox v Randall*, 24 M 479.

The return of "unsatisfied" is not equivalent to a return that the party had no property, personal or real, out of which the amount specified in the execution, or any part of the same could be collected. The reasons for the non-satisfaction of the writ ought to be stated. *Sherburne v Rippe*, 35 M 540, 29 NW 322.

In a levy on real estate no particular formalities are required. No order of court is necessary. No formal levy is required. *Carlson v Smith*, 127 M 206, 149 NW 199.

550.06 EXECUTION AFTER DEATH.

HISTORY. R.S. 1851 c. 71 s. 86; P.S. 1858 c. 61 s. 86; G.S. 1866 c. 66 s. 267; G.S. 1878 c. 66 s. 298; G.S. 1894 s. 5447; R.L. 1905 s. 4292; G.S. 1913 s. 7926; G.S. 1923 s. 9421; M.S. 1927 s. 9421.

A judgment for costs may be collected from the administrator out of his personal assets. *Lough v Flaherty*, 29 M 295, 13 NW 131.

A judgment debtor having died after the judgment had been docketed and become a lien on real estate, the creditor may enforce his lien, after the lapse of the period fixed by statute, even though he had filed his claim in the probate court. *Fowler v Mickley*, 39 M 28, 38 NW 634.

This section only applies to cases where the lien has been acquired on real property prior to the death of the party. It does not apply to personal property. A judgment creditor who has acquired no lien prior to the death of the debtor must proceed to establish and collect his claim as a general creditor in the due course of administration. *Byrnes v Sexton*, 62 M 135, 64 NW 155.

550.07 TO WHAT COUNTY.

HISTORY. R.S. 1851 c. 71 s. 87; P.S. 1858 c. 61 s. 87; G.S. 1866 c. 66 s. 268; G.S. 1878 c. 66 s. 299; G.S. 1894 s. 5448; R.L. 1905 s. 4293; G.S. 1913 s. 7927; G.S. 1923 s. 9422; M.S. 1927 s. 9422.

In issuing an execution to another county, it is common practice for the clerk of the county where the judgment was rendered to deliver to the attorney a transcript of the original docket and an execution with the date of the docketing in the other county left blank, with the understanding that the attorney will have the judgment properly docketed in the latter county and the date of the docketing inserted in the execution before it is delivered to the sheriff of such county; and if this is done an execution so issued is valid. *Dodge v Chandler*, 9 M 97 (87); *Mollison v Eaton*, 16 M 426 (383); *Gowan v Fountain*, 50 M 264, 52 NW 862.

If in such cases the execution is delivered to the sheriff before the judgment is docketed in his county, the subsequent docketing of the judgment will cure the defect as against the judgment creditor and all who are not bona fide purchasers. It is not necessary to withdraw the writ and redeliver it to the sheriff or issue a new writ. *Hoerr v Mehofer*, 77 M 228, 79 NW 964.

Writs of execution. 24 MLR 822.

550.08 EXECUTION AGAINST PROPERTY, HOW EXECUTED.

HISTORY. R.S. 1851 c. 71 s. 108; P.S. 1858 c. 61 s. 109; G.S. 1866 c. 66 s. 284; G.S. 1878 c. 66 s. 316; G.S. 1894 s. 5465; R.L. 1905 s. 4294; G.S. 1913 s. 7928; G.S. 1923 s. 9423; M.S. 1927 s. 9423.

A sheriff may bring an action in his own name for the collection of things in action on which he has levied. *Rohrer v Turrill*, 4 M 407 (309); *Mower v Stickney*, 5 M 397 (321); *Robertson v Sibley*, 10 M 323 (253).

A sheriff selling real estate on execution may maintain an action in his own name against the purchaser for the amount bid at the sale. *Armstrong v Vrooman*, 11 M 220 (142); *Hokanson v Gunderson*, 54 M 499, 56 NW 172; *Blexrud v Kuster*, 62 M 455, 64 NW 1140.

After the expiration of the time fixed by statute within which an execution may issue on a judgment, the court of equity can be of no assistance in the enforcement of the out-dated lien. *Ashton v Slater*, 19 M 347 (300).

Things in action can only be sold if the court so orders. A judgment is a thing in action within the meaning of this rule. *Thompson v Sutton*, 23 M 50; *Henry v Traynor*, 42 M 234, 44 NW 11.

Within reasonable limits the sheriff has discretionary power to put personal property into shape for sale, as for example, to cause grain to be threshed. *Ladd v Newell*, 34 M 107, 24 NW 366.

He may bring action against the bailee or receptor to whom he turns over property in his legal custody. *Holcomb v Nelson*, 39 M 342, 40 NW 354.

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Where a satisfaction of judgment has been improperly entered of record, the sheriff may have the same vacated on motion. *Henry v Traynor*, 42 M 234, 44 NW 11.

On a levy good as against an assignee under the insolvency law, Laws 1881, Chapter 148, it was held that the sheriff might bring an action against the assignee to recover money or property in his hands. *Bean v Schmidt*, 43 M 505, 46 NW 72.

If a person unlawfully interferes with property in the custody of the sheriff or receptor under him, an action by the sheriff will lie. *Horgan v Lyons*, 59 M 217, 60 NW 1099.

When the sheriff has levied on the property of a judgment debtor and advertised it for sale, the debtor may not interrupt the execution of the process of the court by attaching the judgment. *Barnes v Verry*, 154 M 252, 191 NW 589.

The sheriff in making a levy performs ministerial duties only; and has no personal interest, and is merely the legally authorized agent of the creditor. In an action to enjoin the sale of real estate on execution the execution creditor is a necessary party. *Cheney v Bengston*, 193 M 586, 259 NW 59.

Defendant, a member of respondent federal savings and loan association, had, in substance, a savings account in the association, and this was subject to levy of execution as a chose in action. The share certificate need not be seized to make the levy effective. *Benton's v Hegna*, 213 M 271, 7 NW(2d) 3.

550.09 LEVY ON MONEY.

HISTORY. G.S. 1866 c. 66 s. 277; G.S. 1878 c. 66 s. 308; G.S. 1894 s. 5457; R.L. 1905 s. 4295; G.S. 1913 s. 7929; G.S. 1923 s. 9424; M.S. 1927 s. 9424.

The officer making levy on the pay envelope of an employee, should allow out of wages so attached the legal exemptions of the employee whether demanded or not. 1936 OAG 440, April 20, 1935 (843k).

Money held for debtor by a state agency is not subject to execution. OAG Nov. 1, 1934 (843i).

550.10 WHAT MAY BE LEVIED ON; LIEN.

HISTORY. R.S. 1851 c. 71 s. 91; P.S. 1858 c. 61 s. 88; G.S. 1866 c. 66 s. 269; 1875 c. 62 s. 1; G.S. 1878 c. 66 s. 300; G.S. 1894 s. 5449; R.L. 1905 s. 4296; G.S. 1913 s. 7930; G.S. 1923 s. 9425; M.S. 1927 s. 9425.

1. Subject to levy
2. Not subject to levy
3. Generally

I. Subject to levy

The following property or property rights are subject to levy:

The interest of an obligor under a bond for a deed. *Steele v Taylor*, 1 M 274 (210); *M & St. L. v Wilson*, 25 M 382; *Welles v Baldwin*, 28 M 408, 10 NW 427; *Collbaugh v Roemer*, 30 M 424, 15 NW 869; *Berryhill v Potter*, 42 M 279, 44 NW 251;

An unpublished book. *Banker v Caldwell*, 3 M 94 (46);

The interest of one member of a firm in an action against such member alone. *Caldwell v Auger*, 4 M 217 (156); *Allis v Day*, 13 M 199 (189); *Day v McQuillan*, 13 M 205 (192); *Barrett v McKenzie*, 24 M 20; *Wickham v Davis*, 24 M 167; *Hankey v Becht*, 25 M 212; *Moquist v Chapel*, 62 M 258, 64 NW 567;

The interest of pledgor in a promissory note. *Mower v Stickney*, 5 M 397 (321);

Land transferred by debtor in defraud of creditors. *Arper v Baze*, 9 M 108 (98); *Campbell v Jones*, 25 M 155; *Jackson v Holbrook*, 36 M 494, 32 NW 852;

Property of the judgment debtor conveyed by him to another in fraud of creditors. *Campbell v Jones*, 25 M 155; *Kugarth v Meyers*; 62 M 398, 64 NW 1138; *Fisher v Utendorfer*, 68 M 226, 71 NW 29;

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Interest of judgment debtor during period of redemption from sale of his land on execution. *Parke v Hush*, 29 M 434, 13 NW 668;

The interest of a beneficiary in an unauthorized trust who takes the legal title by virtue of the statute of uses. *Farmers' Bank v Moran*, 30 M 165, 14 NW 805;

Interest of a purchaser at an execution sale even before the period of redemption expires. *Lindley v Crombie*, 31 M 233, 17 NW 372;

A judgment for money. *Henry v Traynor*, 42 M 234, 44 NW 11; *Wheaton v Spooner*, 52 M 417, 54 NW 372; *Barnes v Verry*, 154 M 257, 191 NW 589;

Interest of an obligee under bond for a deed. *Reynolds v Fleming*, 43 M 513, 45 NW 1099;

Equitable interests in land. *Reynolds v Fleming*, 43 M 513, 45 NW 1099; *Atwater v Manchester Bank*, 45 M 341, 48 NW 187; *Hook v N. W. Thresher*, 91 M 482, 98 NW 463;

The property of one partner to satisfy a partnership debt. *Daly v Bradbury*, 46 M 396, 49 NW 190;

The right to cut timber on land. *Pine Co. v Tozer*, 56 M 288, 57 NW 796;

A vested interest of a legatee. *Watkins v Bigelow*, 93 M 361, 101 NW 497;

The stock exchange seat of a non-resident. *Wagner v Farmers' Coop.* 147 M 382, 180 NW 231.

A judgment creditor who claims that his debtor has conveyed real estate for the purpose of defrauding his creditors may disregard such conveyance and levy upon and sell the real estate under execution leaving the claim of fraud to be litigated later. *Doland v Burns*, 156 M 238, 194 NW 636.

Shares of stock are personal property and subject to garnishment as the property of the defendant in the main action, irrespective of whether or not the stock certificates have been delivered to the shareholder. *Wackerbarth v Weisman*, 207 M 506, 292 NW 214.

2. Not subject to levy

The following property or property rights are not subject to levy:

Money or other personal property on the debtor's person and all personal property not in view and which he refuses to surrender. *Caldwell v Sibley*, 3 M 406 (300);

Property in custodia legis. *Buck v Colbath*, 7 M 310 (238); *Davis v Seymour*, 16 M 210 (184); *Langdon v Thompson*, 25 M 509; *Lord v Meachem*, 32 M 66, 19 NW 346; *Noyes v Beaupre*, 32 M 496, 21 NW 728; *North Star v Lovejoy*, 33 M 229, 22 NW 388; *Watkins v Mpls. Thresher*, 41 M 150, 42 NW 862; *Strong v Brown*, 41 M 304, 43 NW 67; *Second Nat'l v Schranck*, 43 M 38, 44 NW 524; *Wheaton v Spooner*, 52 M 417, 54 NW 372; *Wright v Robinson*, 79 M 272, 82 NW 632; *Kelso v Youngren*, 86 M 177, 90 NW 316;

Interest of agent holding property for sale on commission. *Vose v Stickney*, 8 M 75 (51); *Benz v Geissel*, 24 M 169;

The interest of a bailee. *Williams v McGrade*, 13 M 174 (165); *Heberling v Jaggar*, 47 M 70, 49 NW 396;

A mortgage never recorded not accompanied by any evidence of personal liability, and which has been lost. *Gale v Battin*, 16 M 148 (133);

Interest of partner in profits only. *Hankey v Becht*, 25 M 212;

A claim of unliquidated damages. *Stromberg v Lindberg*, 25 M 513; *Paine v Gunnis*, 60 M 257, 62 NW 280;

The interest of a mortgagee in either real or personal property, so long, at least, as he holds it in good faith as security and has not applied it to the satisfaction of the debt by foreclosure or otherwise, and it is immaterial whether there has been a breach in the conditions of the mortgage or not. *Butman v James*, 34 M 547, 27 NW 66;

The equitable interest of a residuary legatee in a trust fund. *Merriam v Wagener*, 74 M 215, 77 NW 44;

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Contingent interest in nature of lien created by reservation in a deed (but may be reached by a creditor's bill). *Fryberger v Berven*, 88 M 311, 92 NW 1125;

An equitable conversion of realty into personalty, in future, sold under a will. *Greenman v McVey*, 126 M 21, 147 NW 812.

A levy by plaintiff on a debt said to be due from defendant to Otter Lake Mills. The action must be dismissed because prior to the levy Otter Lake Mills assigned the debt to Canadian Bank of Commerce, and defendant accepted to the bank. *Swift v Waite*, 176 M 461, 229 NW 776.

An alimony judgment in favor of a divorced woman cannot be taken on execution by her pre-existing judgment creditor; not because it is exempt but because of the peculiar characteristics of alimony. *Bensel v Hall*, 177 M 178, 225 NW 104.

3. Generally

An inchoate lien by garnishment cannot be tacked to the lien of an execution on the judgment against the defendant and levied upon the indebtedness owing by the garnishee so as to make up the four months specified by the federal bankruptcy act. *Marsh v Wilson*, 124 M 255, 144 NW 959.

When a defendant in a garnishee proceeding moves for a dismissal thereof upon the ground, among others, that the debt disclosed is not due him unconditionally from the garnishee, he cannot, to defeat a levy on the same debt, claim the order of dismissal to be res judicata that the debt sought to be reached by the creditor did not belong to him. *Wickstrand v Pine Oil Co.* 159 M 263, 198 NW 811.

The provisions of the bankruptcy act providing that levies within four months before the filing of the petition are deemed void, apply only to levies on property passing to the trustee. *Swaney v Hasera*, 164 M 416, 205 NW 274.

When the defendant sheriff, under an execution, levied upon certain personal property of the judgment debtor, he knew that a writ of attachment against the same person would issue in an action brought by another creditor. Whether the sheriff, with this knowledge, used due diligence in levying under the execution upon sufficient of the available personal property of the judgment debtor was a question of fact for the jury under the evidence. *Reaume v Winkelman*, 192 M 5, 255 NW 81.

Validity of restraints upon the involuntary alienation of beneficiary's right to receive the principal of a trust. 21 MLR 82.

Duration of the judgment lien. 24 MLR 664.

Rights of bona fide purchasers at execution sales; fixtures. 24 MLR 830.

550.11 LEVY ON PROPERTY SUBJECT TO JUDGMENT LIEN; RELEASE.

HISTORY. G. S. 1866 c. 66 s. 270; 1871 c. 62 s. 1; G. S. 1878 c. 66 s. 301; G. S. 1894 s. 5450; R. L. 1905 s. 4297; G. S. 1913 s. 7931; G. S. 1923 s. 9426; M. S. 1927 s. 9426.

No formal levy on real property is necessary. *Tullis v Brawley*, 3 M 277 (191); *Rohrer v Turril*, 4 M 407 (309); *Folsom v Carli*, 5 M 333 (264); *Bidwell v Coleman*, 11 M 78 (45); *Lockwood v Bigelow*, 11 M 113 (70); *Hutchins v Co. Commsrs.* 16 M 13 (1).

The validity of a sale does not depend on an exact compliance with this section as to the "minute" to be made on the writ. *Hutchins v Co. Commsrs.* 16 M 13 (1).

Though a formal levy was not necessary to a valid levy upon real estate, it was regularly proper as a step in the regular execution of a writ of execution under the law as it stood in Public Statutes 1858. *Knox v Randall*, 24 M 479.

Because his return imports absolute verity, he is estopped from denying the statements of his return. If the return is erroneous, his remedy is to get it amended in accordance with the facts, upon application to the court and leave granted. *State v Penner*, 27 M 269, 6 NW 790.

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Adverse claim to vacant real estate. The defendant claimed title through purchase at sheriff's sale. Plaintiff claims sale at an inadequate price. Evidence as to the value of the property at the time of the sale was properly held to be inadmissible. *Duford v Lewis*, 43 M 26, 44 NW 522.

If a sheriff levies on real estate before the return day of an execution, he may make sale after such day. *Spencer v Haug*, 45 M 231, 47 NW 794.

The writ of execution. 24 MLR 822.

550.12 LEVY ON PERSONALTY.

HISTORY. R. S. 1851 c. 70 s. 140; P. S. 1858 c. 60 s. 148; G. S. 1866 c. 66 s. 271; G. S. 1878 c. 66 s. 302; G. S. 1894 s. 5451; R. L. 1905 s. 4298; G. S. 1913 s. 7932; G. S. 1923 s. 9427; M. S. 1927 s. 9427.

Where an officer has an execution against one part owner he must seize the whole chattel, though he can sell only the interest of the judgment debtor. In levying on the interest of one partner in partnership property, the officer may take actual possession of the property to the exclusion of the other partner and retain the same while the levy continues. But the purchaser at the sale does not acquire any right of possession, but only the right of an accounting. *Caldwell v Auger*, 4 M 217 (156); *Allis v Day*, 13 M 199 (189); *Day v McQuillan*, 13 M 205 (192); *Barrett v McKenzie*, 24 M 20; *Hankey v Becht*, 25 M 212; *Moquist v Chapel*, 62 M 258, 64 NW 567.

The officer must take the property into his actual possession and out of the possession of the debtor. *Wilson v Powers*, 21 M 193; *Barber v Amundson*, 52 M 358, 54 NW 733.

The assignee of a cause of action pendente lite becomes the real party in interest, and may sue in his own name on an appeal bond given by defendant after assignment, but running to the original plaintiff. *Bennett v McGrade*, 15 M 132 (99).

After the officer has taken property into his custody, he may leave it in charge of a receptor. *Easton v Goodwin*, 22 M 426; *Holcomb v Nelson*, 39 M 342, 40 NW 354; *Horgan v Lyons*, 59 M 217, 60 NW 1099.

A levy may be good as against the debtor or a trespasser although left in the possession of the debtor; but may not be good as against other creditors or as against bona fide creditors. *Horgan v Lyons*, 59 M 217, 60 NW 1099.

Where an officer levies on the wages of an employee, he should, as a matter of course return to the employee his exemptions. 1936 OAG 440, April 20, 1935 (843k).

Effect of non-disturbance of possession. 12 MLR 406.

Defects in judgment; fixtures. 24 MLR 830.

550.13 LEVY ON BULKY ARTICLES.

HISTORY. G. S. 1866 c. 66 ss. 272; G. S. 1878 c. 66 ss. 303, 304; 1881 c. 63 s. 2; G. S. 1894 ss. 5452, 5453; R. L. 1905 s. 4299; G. S. 1913 s. 7933; 1923 s. 420 s. 1; G. S. 1923 s. 9428; M. S. 1927 s. 9428.

A wrongful levy under this section constitutes a conversion for which an action will lie against the officer. *Hossfeldt v Dill*, 28 M 469, 10 NW 781; *Howard v Rügland*, 35 M 388, 29 NW 63.

Effect of non-disturbance of possession. 12 MLR 406.

550.14 ON OTHER PERSONAL PROPERTY.

HISTORY. R. S. 1851 c. 70 s. 140; P. S. 1858 c. 60 s. 148; G. S. 1866 c. 66 s. 274; G. S. 1878 c. 66 s. 305; G. S. 1894 s. 5454; R. L. 1905 s. 4300; G. S. 1913 s. 7934; G. S. 1923 s. 9429; M. S. 1927 s. 9429.

This section provides the mode of levying on all debts except those which pass by delivery of the instruments on which they rest such as promissory notes, bills of exchange, and negotiable bonds. Book accounts cannot be levied on by

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the officer merely taking the books in which they are entered into his custody. For the purpose of a levy, they stand just as debts of which there is no written evidence and must be levied on under this section. *Tullis v Brawley*, 3 M 277 (191); *Swart v Thomas*, 26 M 141, 1 NW 830; *Ide v Harwood*, 30 M 191, 14 NW 884; *Weston v Loyhed*, 30 M 321, 15 NW 309.

A judgment may be levied on without leaving a copy of the execution and a notice with the clerk of court where the judgment is docketed. *Wheaton v Spooner*, 52 M 417, 54 NW 372.

Levy insufficient because the cause of action on which they levied was not sufficiently liquidated. *Paine v Gunniss*, 60 M 261, 62 NW 280.

The judgment creditor acquires a lien by levy where he serves a certified copy of an execution upon the person holding personal property belonging to the judgment debtor and makes application to such person for a certificate showing the description and amount of property of the judgment debtor held by her and is furnished with a false certificate to the effect that she has no personal property in her hands belonging to the debtor and that she owed him no money. *Murphy v Casey*, 157 M 1, 195 NW 627.

The status and interest of a member of respondent association is not subject to the provisions of the uniform stock transfer act relating to levy of execution, and the share certificate need not be seized to make the levy effective. *Benton's Apparel v Hegna*, 213 M 272, 7 NW(2d) 3.

The uniform stock transfer act does not apply as the certificates had been issued prior to the effective date of the act. The levy and sale were conducted pursuant to sections 570.05 and 550.14, under which physical possession of the certificates by the sheriff at the time of making the sale was not necessary. *Brennan v Friedell*, 215 M 501, 10 NW(2d) 355.

An execution creditor who, through the sheriff levied on debtor's bank account and obtained the money eight days prior to the bankruptcy of the defendant, is an adverse party, and the trustee cannot by summary proceedings compel the return of the money. *Stone v Mark*, 227 Fed. 975.

Where a levy has been made on an alleged debt and the debt is denied, recovery can only be had by action. Judgment cannot be ordered on evidence taken at an examination in supplementary proceedings. *Freeman v Larson*, 199 M 446, 272 NW 155.

Situs of corporate stock under uniform stock transfer act for purposes of attachment. 23 MLR 381.

550.15 CERTIFICATE TO BE FURNISHED OFFICER.

HISTORY. R. S. 1851 c. 70 s. 142; P. S. 1858 c. 60 s. 152; G. S. 1866 c. 66 s. 135; G. S. 1878 c. 66 s. 152; G. S. 1894 s. 5294; R. L. 1905 s. 4301; G. S. 1913 s. 7935; G. S. 1923 s. 9430; M. S. 1927 s. 9430.

When a levy is made on personal property in the hands of a third party, a receipt taken, and no further steps for a period of seven months, the levy becomes ineffectual as a lien. *Holland v Nichols*, 136 M 354, 162 NW 468; *Wagner v Farmers' Coop*, 147 M 378, 180 NW 231.

Procedure when the custodian of the property levied on furnishes a false certificate. *Murphy v Casey*, 157 M 5, 195 NW 627.

Shares of stock are personal property and subject to garnishment even if no certificate issued to the debtor; and the garnishee may be compelled to disclose particulars of the stock transaction. *Wackerbarth v Weisman*, 207 M 507, 292 NW 214.

550.16 ON PLEDGED OR MORTGAGED CHATTELS.

HISTORY. G. S. 1866 c. 66 s. 278; G. S. 1878 c. 66 s. 309; 1883 c. 60 s. 1; G. S. 1894 s. 5458; R. L. 1905 s. 4302; G. S. 1913 s. 7936; G. S. 1923 s. 9431; M. S. 1927 s. 9431.

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When levying after default but before possession has been taken by the mortgagee, the officer may take the chattels into his actual possession, and, as against the mortgagee, detain them for the purposes of sale. *Chaphard v Bayard*, 4 M 533 (418); *Barber v Amundson*, 52 M 358, 54 NW 733.

If the maker of a pledged note pays it to the pledgee, after it has been levied on by the sheriff, with notice of the levy, he is not thereby discharged as to the balance above the debt for which it was pledged. *Mower v Stickney*, 5 M 397 (321).

In the case of a contract, for work and payment therefor, between employer and employee, secured by the former by chattel mortgage, the right of the employee to go on under the contract and hold and enforce the mortgage as security therefor, is not affected by a levy by a creditor of the mortgagor on the mortgaged property. *Minor v Sheehan*, 30 M 419, 15 NW 687.

The levy must in all cases be confined to the "rights and interest" of the mortgagor. *Appleton Mill v Warder*, 42 M 117, 43 NW 791; *Johnson v Gerber*, 114 M 174, 130 NW 995.

A railroad, with its rolling stock, and personal property belonging to the road and appertaining thereto, is, in favor of the mortgagees, one property, and the different items cannot, as to such mortgagees, be levied on separately. *Central Trust v Moran*, 56 M 188, 57 NW 471.

In the absence of a showing of prejudice, a levy will not be set aside for failure of the sheriff to seize all the mortgaged property. *Golde v Forsyth*, 72 M 248, 75 NW 219.

If a mortgagee or pledgee takes possession of the mortgaged or pledged chattels before any other heir attaches thereto, his title is valid as against subsequent attachment or execution creditors, there being no fraud in fact, although the mortgage was not filed nor the chattels delivered when the contract of pledge was made. *Prouty v Barlow*, 74 M 130, 76 NW 946.

The enactment of the statute relating to fraudulent transfers of real estate but omitting personal property does not abrogate the common-law rule; and the assignment of personal property for the purpose of defrauding creditors is void as to such creditors. *Murphy v Casey*, 157 M 1, 195 NW 627.

Where an officer levies upon mortgaged property, his return and notice of sale should show that the property is mortgaged. A failure in this respect renders the sale voidable, the remedy being an application to the court to vacate the sale. *Swaney v Hasard*, 164 M 416, 205 NW 274.

The doctrine of election of remedies is an application of the law of estoppel. So that, as in this case where the mortgagee procured a judgment and levied on the mortgaged property and later dismissed, he did not make a determinate decision. *First Nat'l v Flynn*, 190 M 102, 250 NW 806.

When an assignment of accounts is made by debtor more than four months prior to bankruptcy, the fact that the accounts are not collected by the creditor within four months does not make the transaction a preference. *In re Bird*, 180 F. 229.

Election of remedies; effect of levy on mortgaged property by mortgagee. 18 MLR 354.

Rights of bona fide purchasers; fixtures. 24 MLR 830.

550.17 ON GROWING CROPS.

HISTORY. R. S. 1851 c. 71 s. 104; P. S. 1858 c. 61 s. 105; G. S. 1866 c. 66 s. 283; 1871 c. 63 s. 1; G. S. 1878 c. 66 s. 315; G. S. 1894 s. 5464; R. L. 1905 s. 4303; G. S. 1913 s. 7937; G. S. 1923 s. 9432; M. S. 1927 s. 9432.

Growing grain may be levied on at any period of its growth whether the growth is going on below or above the surface of the soil. *Gillet v Truax*, 27 M 528, 8 NW 767.

Practice, method and remedy relating to a levy on growing crops. *Hossfeldt v Dill*, 28 M 469, 10 NW 781; *Howard v Rugland*, 35 M 388, 29 NW 63.

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Effect of fraudulent transfer by judgment debtor of exempt real property with growing crops thereon subject to levy. *Erickson v Paterson*, 47 M 525, 50 NW 699.

Blackberries, while growing on bushes, are not subject to levy as personal property. It is only annual crops, that is, plants requiring fresh planting or sowing each year, that are subject to levy as personalty. *Sparrow v Pond*, 49 M 412, 52 NW 36; *Kirkeby v Erickson*, 90 M 299, 96 NW 705.

A quitclaim deed to land, given after a grain crop thereon has been harvested and severed from the land, conveys no title to such crop. *Schuchard v St. Anthony*, 176 M 37, 222 NW 292.

550.18 NOTICE OF SALE.

HISTORY. R. S. 1851 c. 71 ss. 109, 110; P. S. 1858 c. 61 ss. 110, 111; G. S. 1866 c. 66 ss. 285, 286; 1867 c. 68 s. 2; G. S. 1878 c. 66 ss. 317, 318; G. S. 1894 ss. 5466, 5467; R. L. 1905 s. 4304; G. S. 1913 s. 7938; G. S. 1923 s. 9433; M. S. 1927 s. 9433.

Under an early statute it was held that a judgment creditor purchasing at the sale was charged with notice of defects in the notice of sale. *Pettingill v Moss*, 3 M 222 (151).

The validity of the sale does not depend on the sheriff's "minute" on the execution. *Hutchins v Co. Commsrs.* 16 M 13 (1).

A defect in the notice, or failure of the sheriff to give proper notice of sale does not affect the validity of the sale, either as to third parties or to parties to the action. *White v Leeds*, 72 M 352, 75 NW 761; *Bigelow v Chatterton*, 51 F 614.

A notice of mortgage sale specifying as the place of sale "the front door of the court house" in a village named, when in fact, there was no court house in such village, is void. *Battineau v Aetna Life*, 31 M 125, 16 NW 849.

"Lot 5, Block 39" without stating in what village or city is too indefinite to sustain the validity of a notice. *Herrick v Ammeman*, 32 M 544, 21 NW 836.

While evidence of extrinsic facts and circumstances is admissible to apply the description or to identify the premises sold, yet an inherently insufficient description in a sale on execution cannot be helped out by evidence of facts tending to show what property the officer probably intended to sell. *Herrick v Morrill*, 37 M 250, 33 NW 849.

A sheriff making a sale of real property under a decree of foreclosure, in the absence of a statute authorizing the adjournment of the sale, possesses the power, for good cause shown, in the exercise of a sound discretion subject to the control of the court over the whole matter of the sale, to adjourn the sale from time to time. *Singer v Novak*, 167 M 208, 208 NW 654.

In partition proceedings where the correctly described premises were offered for sale and bids received thereon, the validity of the sale is not affected because of a defective notice of sale. *Jollo v Jollo*, 219 M 241, 17 NW(2d) 710.

550.19 SERVICE ON JUDGMENT DEBTOR.

HISTORY. R. S. 1851 c. 70 s. 140; P. S. 1858 c. 60 s. 148; G. S. 1866 c. 66 s. 275; 1875 c. 63 s. 1; G. S. 1878 c. 66 s. 306; 1879 c. 22 s. 1; G. S. 1894 s. 5455; R. L. 1905 s. 4305; G. S. 1913 s. 7939; G. S. 1923 s. 9434; M. S. 1927 s. 9434.

The failure of the sheriff to comply with this provision does not affect the title of the purchaser. *Duford v Lewis*, 43 M 26, 44 NW 522.

Where the sheriff collected upon execution money due upon an exempt judgment, and applied the same upon an execution against the judgment creditor, in his hands, before a lawful levy thereon, without any notice to such creditor, or opportunity for him to make a demand, no subsequent demand upon him was necessary before suit brought to recover the same. *Wylie v Grundysen*, 51 M 360, 53 NW 805.

That the copy of the execution served on the judgment debtor did not bear the signature or seal of the clerk of the court, does not invalidate a sale of real estate made under the execution. *Carlson v Smith*, 127 M 203, 149 NW 199.

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Acts or omissions of the sheriff. 24 MLR 823.

550.20 SALE, WHEN AND HOW.

HISTORY. R. S. 1851 c. 71 s. 111; P. S. 1858 c. 61 s. 112; G. S. 1866 c. 66 s. 287; G. S. 1878 c. 66 s. 319; G. S. 1894 s. 5468; R. L. 1905 s. 4306; G. S. 1913 s. 7940; G. S. 1923 s. 9435; M. S. 1927 s. 9435.

The sale must be to the highest bidder. *Tillman v Jackson*, 1 M 183 (157).

A sale of several parcels in gross not void but only voidable on a showing of actual fraud or material prejudice. *Tillman v Jackson*, 1 M 183 (157); *Worley v Naylor*, 6 M 192 (123); *Paquin v Braley*, 10 M 379 (304); *Merrill v Nelson*, 18 M 366 (335); *Lamberton v Mchts. Nat'l*, 24 M 281; *Collbaugh v Roemer*, 32 M 445, 21 NW 472; *Gunz v Heffner*, 33 M 215, 22 NW 386; *Abbott v Peck*, 35 M 499, 29 NW 194; *Willard v Finnegan*, 42 M 476, 44 NW 985; *Duford v Lewis*, 43 M 26, 44 NW 522; *Ryder v Hulett*, 44 M 353, 46 NW 559; *Clark v Kraker*, 51 M 444, 53 NW 706.

The execution creditor may bid off the property and so may his assignee. If one of the two joint judgment creditors bids off the property he will be held a trustee for the other. *Holmes v Campbell*, 10 M 401 (320).

Debtor's attorney has no implied authority to stipulate that property levied on shall be sold at private sale or by a person other than the sheriff. *Kronsch noble v Knoblouch*, 21 M 56.

Sale not set aside merely because price realized is far below the real value of the property. *Coolbaugh v Roemer*, 32 M 445, 21 NW 472; *White v Leeds*, 72 M 352, 75 NW 595 (761).

Upon a sale of personal property on execution, the sheriff made the sale in terms, but without authority, "subject" to a certain mortgage. The execution creditor, having purchased the property under that condition, will not be heard to deny its effect. *Cable v Byrne*, 38 M 534, 38 NW 620.

The sale must be for cash. *Kumler v Brandenburg*, 39 M 59, 38 NW 704; *Hokanson v Gunderson*, 54 M 499, 56 NW 172.

Where land is sold under an execution, and the amount bid therefor is in excess of what is required to satisfy the execution and costs of sale, it is the duty of the sheriff to apply the overage to the satisfaction of a junior judgment which is a lien upon the same land. *Carlson v Headlim*, 100 M 327, 111 NW 259.

A cotenant is not prevented, by the fact of his cotenancy, from buying at an execution sale, on a judgment which is a lien only on the undivided interest of his cotenant. *Murray v Murray*, 159 M 111, 198 NW 307.

Where the owner gives a mortgage on an entire tract of land and conveys away a part, one who obtains a judgment lien upon the part unsold has no such equity or right as to entitle him to control a sale of the premises upon foreclosure of the mortgage and require that the tract conveyed away be first sold, or that the entire mortgaged tract be sold as one parcel. *Bowers v Norton*, 175 M 541, 222 NW 71.

The seller under a conditional sales contract has three remedies: He may retake the property; sue for the unpaid contract price; or he may, while retaining possession, bring suit in equity to have a lien decreed and enforced. The suit in equity is not a remedy under the contract, but under the common law, and now under the uniform sales act. *C. & I. T. Corp. v Cords*, 198 M 337, 269 NW 825.

550.21 SALE OF CORPORATE STOCK.

HISTORY. R. S. 1851 c. 70 s. 148; P. S. 1858 c. 60 s. 156; G. S. 1866 c. 66 s. 139; G. S. 1878 c. 66 s. 156; G. S. 1894 s. 5298; R. L. 1905 s. 4307; G. S. 1913 s. 7941; G. S. 1923 s. 9436; M. S. 1927 s. 9436.

550.22 CERTIFICATE OF SALE OF REALTY.

HISTORY. R. S. 1851 c. 71 s. 112; P. S. 1858 c. 61 s. 113; 1862 c. 19 ss. 3, 4; G. S. 1866 c. 66 ss. 289, 290; 1876 c. 45 s. 1; 1877 c. 31 s. 1; 1877 c. 32 s. 1; G. S. 1878

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c. 66 ss. 321, 322; G. S. 1894 ss. 5470, 5471; R. L. 1905 s. 4308; G. S. 1913 s. 7942; G. S. 1923 s. 9437; M. S. 1927 s. 9437.

1. The certificate
2. Rights of purchaser

1. The certificate

When a sale is regularly made its validity is not affected by omission of sheriff to make a certificate. *Barnes v Kerlinger*, 7 M 82 (55).

The statutory certificate satisfies the statute of frauds. *Armstrong v Vroman*, 11 M 220 (142).

A certificate executed by the sheriff as such is good although it does not state that he made the sale as sheriff. *Merrill v Nelson*, 18 M 366 (335).

The provision requiring certificate to state that the property is subject to redemption is directory. A recital that "the above described premises are subject to redemption within the time and according to the statute in such case made and provided" is sufficient. *Wells v Atkinson*, 24 M 161.

A sale on execution of an estate in fee in real property, where the judgment debtor has only an equitable interest therein, and such interest only is authorized to be sold by the process, is void as against the vendor of the contract or his grantee. *Smith v Lytle*, 27 M 184, 6 NW 625; *Reynolds v Fleming*, 43 M 513, 45 NW 1099.

A description which fairly identifies the execution is sufficient. A false particular may be disregarded as in case of deeds and other instruments. *Bartleson v Thompson*, 30 M 161, 14 NW 795.

Various descriptions of property sold. *Lowry v Tilleny*, 31 M 500, 18 NW 452; *Herrick v Ammerman*, 32 M 544, 21 NW 836; *Smith v Buse*, 35 M 234, 28 NW 220; *Herrick v Morrill*, 37 M 250, 33 NW 849.

The certificate is essential to the passage of legal title. *Smith v Buse*, 35 M 234, 28 NW 220.

Where a sale is made by a deputy sheriff, the certificate should be executed and acknowledged by him rather than by the sheriff. *Herrick v Morrill*, 37 M 250, 33 NW 849.

If there is any discrepancy between the return and the certificate, the latter controls, at least as to the purchaser. *Spencer v Haug*, 45 M 231, 47 NW 794.

The sheriff may be compelled to execute a certificate. *Hokanson v Gunderson*, 54 M 499, 56 NW 172.

A certificate issued without payment in cash is valid, remedy being by action against the sheriff. *Carlson v Headline*, 100 M 327, 111 NW 259.

2. Rights of purchaser

The purchaser stands in the shoes of the judgment debtor and acquires his title as it stood at the time the execution creditor's lien was acquired. *Steele v Taylor*, 1 M 274 (210); *Banning v Edes*, 6 M 402 (270).

Pending an action for specific performance to convey real estate, a judgment was obtained and the land owner's land sold on execution. The purchaser at the execution sale did not receive his title by operation of law, and the plaintiff in the action for specific performance may or may not at his election bring in the purchasers as parties defendant. *Steele v Taylor*, 1 M 274 (210); *Whitney v Huntington*, 34 M 464, 26 NW 631.

Under an early statute, since modified, all the interest of the execution debtor passed to the purchaser at once on the sale subject to the right of redemption. *Dickinson v Kinney*, 5 M 409 (332); *Messerschmidt v Baker*, 22 M 81; *James v Wilder*, 25 M 305; *Curriden v St. P & N*, 50 M 454, 52 NW 966; *Morgan v Joslyn*, 91 M 60, 97 NW 449.

The purchaser acquires an interest which is conveyable even before the expiration of the exemption period. *Messerschmidt v Baker*, 22 M 81; *James v Wilder*,

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25 M 305; Lindley v Crombie, 31 M 232, 17 NW 372; Cooper v Finke, 38 M 2, 35 NW 469; Buchanan v Reid, 43 M 172, 45 NW 11; Holmes v State Bank, 53 M 350, 55 NW 555.

When the period of redemption has expired without redemption, the execution debtor is a mere stranger to the property and cannot raise objection to subsequent proceedings. *Messerchmidt v Baker*, 22 M 81.

Under our present statute (see *Dickinson v Kinney*, 5 M 409 (332)), the title of the debtor does not pass until the time to redeem expires. *Parke v Hust*, 29 M 434, 13 NW 668; *Lindley v Crombie*, 31 M 232, 17 NW 372; *Whitney v Huntington*, 34 M 458, 26 NW 631; *Morgan v Joslyn*, 91 M 60, 97 NW 449.

Where a sale and transfer of property is void as to a creditor, it is also void as to the purchaser on an execution sale based on a judgment recovered by such creditor. *Millis v Lombard*, 32 M 259, 20 NW 187.

The title acquired by the purchaser cannot be defeated or impaired, by the subsequent acts or omissions of the sheriff. *Millis v Lombard*, 32 M 259, 20 NW 187; *Hokanson v Gunderson*, 54 M 499, 56 NW 172.

The title of the purchaser is unaffected by defects or informalities in the return of the sheriff. *Millis v Lombard*, 32 M 259, 20 NW 187.

The right of a purchaser of real property at execution sale, before he has acquired an absolute title by the expiration of the period of redemption, has no common law, for it was unknown at common law, and the statute has given it no name. It is said to be "a species of conditional equitable estate". *Whitney v Huntington*, 34 M 464, 26 NW 631.

Testimony as to value at the time of the sale is held inadmissible in action attacking the validity of the sale. *Duford v Lewis*, 43 M 26, 44 NW 522.

The purchaser succeeds to all the interest of execution debtor although such interest is not described in the notice of sale or certificate. *Reynolds v Fleming*, 43 M 513, 45 NW 1099.

If the execution debtor is a married person, the purchaser acquires the land free from statutory interest of other spouse. *Aretz v Kloos*, 89 M 432, 95 NW 216, 769.

The purchaser's interest held to be the real estate within the meaning of a will. *Morgan v Joslyn*, 91 M 60, 97 NW 449.

Merger of concurrent liens. *Bagley v McCarthy*, 95 M 286, 104 NW 7.

A sale on execution and the resulting satisfaction of the judgment cannot be vacated on the ground of mistake simply because a mortgage, subject to which the property was purchased, was thereafter foreclosed and, in the absence of redemption, the property lost to the purchaser at the execution sale. *Ridgway v Mirkovich*, 194 M 216, 260 NW 303.

Protection afforded as "bona fide purchaser". 24 MLR 813.

Defects in the judgment; sale. 24 MLR 824.

550.23 INTEREST OF PURCHASER SUBJECT TO ATTACHMENT OR JUDGMENT.

HISTORY. 1862 c. 19 s. 7; G. S. 1866 c. 66 s. 295; G. S. 1878 c. 66 s. 327; G. S. 1894 s. 5476; R. L. 1905 s. 4309; G. S. 1913 s. 7943; G. S. 1923 s. 9439; M. S. 1927 s. 9439.

The right, during the time for redemption, acquired by the purchaser at an execution sale, will pass by his deed; and when the time to redeem expires without redemption, the title under the execution sale will vest in the grantee in the deed. *Lindley v Crombie*, 31 M 232, 17 NW 372.

550.24 REDEMPTION OF REALTY.

HISTORY. 1862 c. 19 s. 2; G. S. 1866 c. 66 ss. 288, 291; G. S. 1878 c. 66 ss. 320, 323; G. S. 1894 ss. 5469, 5472; R. L. 1905 s. 4310; G. S. 1913 s. 7944; G. S. 1923 s. 9440; M. S. 1927 s. 9440.

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1. Who may redeem
2. Redemption by creditors
3. Generally

1. Who may redeem

A grantee or successor in interest of the execution debtor redeems on the same terms as the execution debtor himself. *Warren v Fish*, 7 M 432 (347); *Rutherford v Newman*, 8 M 47 (28).

A judgment creditor who has levied on sufficient personal property to satisfy his judgment cannot redeem. *First Nat'l v Rogers*, 13 M 407 (376).

Mortgagees whose liens are subsequent may redeem. *Nopson v Horton*, 20 M 268 (239); *Tinkcom v Lewis*, 21 M 132; *Guileries v Brunelle*, 37 M 71, 33 NW 123; *Bovey v Tucker*, 48 M 223, 50 NW 1038; *Scheibel v Anderson*, 77 M 54, 79 NW 594.

One having a lien on "an undivided interest" in the land may redeem. *Willis v Jelineck*, 27 M 18, 6 NW 373.

To entitle a creditor to redeem he must have something more than the general right common to all creditors to have the general property of the debtor applied to the payment of his debt; he must have a right, either in law or in equity, to have the specific property appropriated to the satisfaction of his claim in exclusion of other claims subsequent in date to his. *Hosper v Sanborn*, 28 M 48, 8 NW 905; *Whitney v Burd*, 29 M 203, 12 NW 530; *Buchanan v Reid*, 43 M 172, 45 NW 11; *Nelson v Rogers*, 65 M 246, 68 NW 18.

Distinction between an assignment of the rights of the purchaser, and a redemption from the sale. *Sprague v Martin*, 29 M 226, 13 NW 34.

A general creditor of a deceased person although his claim has been allowed against the estate, is not entitled to redeem. *Whitney v Burd*, 29 M 203, 12 NW 530; *Nelson v Rogers*, 65 M 246, 68 NW 18.

A subsequent judgment creditor may redeem. *Parke c Hust*, 29 M 434, 13 NW 668.

A person having a lien on a part of the land sold may redeem the whole. *O'Brien v Kreuz*, 36 M 136, 30 NW 458; *Powers v Sherry*, 115 M 290, 132 NW 210.

A creditor obtaining a judgment after the property of the debtor has passed into the hands of a receiver cannot redeem from a sale made by the receiver under direction of the court. *Watkins v Minn. Thresher*, 41 M 150, 42 NW 862.

An attaching creditor in an action on a contract may redeem. *Atwater v Manchester*, 45 M 341, 48 NW 187.

Owner of a separate part or interest therein may redeem whole tract as owner. Such redemption annuls the sale, but he is entitled to a lien on part not owned for amount necessarily paid to redeem, if whole of original lien was as to him equitably chargeable on that part; otherwise, for equitable pro rata share of amount. *Powers v Sherry*, 115 M 290, 132 NW 210.

2. Redemption by creditors

Plan of redemption by creditors. *Pamperin v Scanlan*, 28 M 345, 9 NW 868; *Sprague v Martin*, 29 M 226, 13 NW 34.

The right of a creditor to redeem does not begin until right of debtor to redeem has expired. *Pamperin v Scanlan*, 28 M 345, 9 NW 868; *Guileries v Brunelle*, 37 M 71, 33 NW 123.

3. Generally

A county has no capacity to become a purchaser of real estate, sold on execution in its favor, where the purchase is not made for the public use of the county. *Williams v Lash*, 8 M 496 (441).

When, upon foreclosure by advertisement of a mortgage embracing two parcels of land, such parcels have been separately sold to the mortgagee, at a sep-

arate price for each, a junior mortgagee of one of the parcels can redeem from the sale that parcel only embraced in his mortgage. *Tinkcom v Lewis*, 21 M 132.

After a foreclosure sale for more than was actually due, the court may, upon a proper showing, allow the mortgagor to redeem by paying what was justly due upon the mortgage; but the mortgagor must show an excuse for not applying to the court before the foreclosure to prevent a sale for more than was due. *Dickerson v Hayes*, 26 M 100, 1 NW 834.

The right of redemption given to a senior creditor by statute, when once vested, becomes a property right, which cannot be divested against the consent of the creditor without due process of law. *Willis v Jelineck*, 27 M 18, 6 NW 373; *O'Brien v Krenz*, 36 M 136, 30 NW 458.

Where a paid-up mortgage, containing a power of sale duly recorded therewith, is allowed to remain undischarged of record, and to be regularly foreclosed by advertisement under the statute without objection, a purchaser at the sale, without notice and for value, upon duly recording his certificate of purchase, will acquire a valid title to the property upon the expiration of the year for redemption, as against the mortgagor and his assigns. *Merchant v Woods*, 27 M 396, 7 NW 826.

A first mortgage on real estate having been foreclosed and the premises sold, the holder of a second mortgage on the same property, within the year allowed the mortgagor to redeem, purchased the certificate of sale on the first mortgage. This was not a redemption and did not relieve him from the necessity to comply with the statute regulating redemption by creditors so that a holder of a third lien may redeem by paying the amount due under the first mortgage redemption, thus cutting out the second mortgage. *Pamperin v Scanlan*, 28 M 345, 9 NW 868.

The right of subrogation will not be enforced to the prejudice of innocent purchasers. One redeeming from an execution or mortgage sale is a purchaser for value. *Ahern v Freeman*, 46 M 156, 48 NW 677.

A district court cannot, in the exercise of the discretionary powers conferred by statute, extend or enlarge the period of time within which real property must be redeemed from a sale made in proceedings to foreclose a mechanic's lien. *State ex rel v Kerr*, 51 M 417, 53 NW 719.

The fact that Porter knew, or was chargeable with notice of, the defect in the notice of sale, and that the amount at which the property was bid off (the amount of the judgment) was greatly less than the value of the land, did not deprive him of the character of a bona fide purchaser. *White v Leeds*, 72 M 352, 75 NW 595, 761.

550.25 ORDER OF REDEMPTION.

HISTORY. G. S. 1866 c. 66 s. 292; G. S. 1878 c. 66 s. 324; G. S. 1894 s. 5473; R. L. 1905 s. 4311; G. S. 1913 s. 7945; G. S. 1923 s. 9441; M. S. 1927 s. 9441.

1. Time to redeem
2. Notice of intention; tacking
3. Payment of prior liens
4. Liens; how affected
5. Waiver of defects

1. Time to redeem

Right of redemption is a strict legal right to be exercised, if at all, in accordance with the terms of the statute unless waived or extended by the party whose interests are to be affected. The court cannot extend the time. *Davidson v Gaston*, 16 M 230 (202); *State ex rel v Kerr*, 51 M 417, 53 NW 719.

If the last day of the year falls on Sunday, the owner may redeem on Monday. *Bovey v Tucker*, 48 M 223, 50 NW 1038.

The five-day limitation is not inflexible. This provision was enacted for the benefit of parties seeking to redeem, and the party holding the rights acquired at foreclosure sale can take no advantage of the fact that a subsequent

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creditor redeems within the time open to a prior lienholder. *Connecticut v King*, 80 M 76, 82 NW 1103.

The time to redeem from a foreclosure sale under a mechanic's lien dates from the confirmation of the sale and not from the day of sale. *Salmon v Central Trust*, 157 M 372, 196 NW 468.

A judgment for the recovery of money, when docketed, becomes a lien upon the non-exempt real estate of the judgment debtor in the county "then or thereafter owned" by him within the statutory lifetime of the judgment, and is on the same footing as a recorded conveyance. *Lowe v Reiersen*, 201 M 280, 276 NW 224.

2. Notice of intention; tacking

Where a mortgagee who has filed notice of intention to redeem assigns the mortgage, the assignee may redeem under the notice so filed. *Bovey v Tucker*, 48 M 223, 50 NW 1038.

A purchaser may waive any irregularity in intermediate steps to affect redemption, such as a defect in the filed notice of intention to redeem. *Todd v Johnson*, 50 M 310, 52 NW 864.

3. Payment of prior liens

Rule in *Pamperin v Scanlan*, 28 M 345, 9 NW 868, that a creditor redeeming need not pay liens held by the purchaser at an execution or mortgage sale subsequent to that on which the sale was had, and prior to that under which he redeems, if such purchaser has not, with respect to such subsequent liens, placed himself in the line of redemption by complying with the statute, followed and applied. *Parke v Hush*, 29 M 434, 13 NW 668; *Abraham v Halloway*, 41 M 156, 163, 42 NW 867, 870.

4. Liens, how affected

The sale on a second lien, whether made before or after that on a first lien, has the effect unless it is itself cut off by the first sale, or unless redeemed from, to cut off all liens and interests subject to it. *Bartleson v Thompson*, 30 M 161, 14 NW 795; *Lowry v Akers*, 50 M 508, 52 NW 922; *Sprandel v Houde*, 54 M 308, 56 NW 34; *Connecticut v King*, 72 M 287, 75 NW 376; *White v Rathbone*, 73 M 236, 75 NW 1046; *Bagley v McCarthy*, 95 M 286, 104 NW 7.

The purchaser at a foreclosure sale is not in a position to question the bona fides of a mortgage subsequently executed by the owner. It does not prejudice him. He still has the right to get his money back in case of redemption, and to hold the land if it is not redeemed. The subsequent mortgage merely increases by one those who have a right to redeem. *Bovy v Tucker*, 48 M 229, 50 NW 1038.

While there are still rights of redemption outstanding, the lien on which a redemption is made is not merged and extinguished in the title of the purchaser at the sale redeemed from, but it passes by subrogation to any subsequent redemptioner. The lien on which a redemption is made is not extinguished by the fact that the value of the property is equal to the amount of the lien with the amount paid for redemption added. *Lowry v Akers*, 50 M 508, 52 NW 922.

The holder of the second judgment not having attempted to redeem, he was not prejudiced by the fact that the third judgment creditor exercised his right of redemption prematurely, and, the person from whom redemption was made having acquiesced, the redemption was valid. *Sprandel v Houde*, 54 M 308, 56 NW 34; *Finnegan v Effertz*, 90 M 114, 95 NW 762.

Where a junior redemptioner, having a lien, seasonably redeems from a senior creditor, who had previously made redemption from the purchaser at a mortgage sale upon a lien valid on its face, and had received a certificate of redemption, and the purchaser had accepted the redemption money, such second redemption must be deemed valid, although such senior creditor had not in fact a valid lien. *Todd v Johnson*, 56 M 60, 57 NW 320.

Where a court has jurisdiction of the subject matter and the parties, and orders a proper judgment in a lien foreclosure proceeding, and judgment was

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entered thereon, and the parties in whose favor such judgment was entered erroneously cause a money judgment to be docketed against the defendant, and the judgment of foreclosure was fully satisfied by a sale of property covered by the lien, it was not error for the court to issue an order confirming the sale. *Wartman v Vossen*, 154 M 368, 191 NW 820.

If the second mortgagee has properly redeemed and has complied with all the provisions of law necessary to make proper redemption and to properly protect his lien against a subsequent lienholder, the third mortgagee in order to make proper redemption within the time provided by law, should have paid or tendered to the sheriff, or the second mortgagee, not only the amount due on account of the first mortgage foreclosure, but also an amount sufficient to cover the lien of the second mortgagee. 1936 OAG 132, June 20, 1935 (390c-14).

5. Waiver of defects

It is competent for a creditor who has purchased the land of his debtor upon execution sale to waive his strict legal rights in respect to the time for redemption; and, if his acts relied on by the debtor to constitute such waiver are equivalent to an estoppel in pais, he is bound by them, and a reasonable time after notice must be allowed debtor in which to redeem. *Steele v Bond*, 28 M 267, 9 NW 772; *Tice v Russell*, 43 M 66, 44 NW 886.

Under a valid statutory foreclosure of a mortgage, the time of redemption cannot be extended to await the determination of a suit by a second mortgagee for an accounting for use or rent of the premises had by the first mortgagee pending redemption. The amount due must be paid or tendered within the time fixed by statute, or the time stipulated, if an extension has been agreed upon. *Hoover v Johnson*, 47 M 434, 50 NW 475.

Though a purchaser cannot, so far as concerns the passing of the legal title by redemption, waive by parol the existence of a lien giving a right to redeem, nor a proper certificate of redemption, he may waive any irregularity in the intermediate steps to effect redemption. *Todd v Johnson*, 50 M 310, 53 NW 864.

A district court cannot, in the exercise of discretionary powers, extend or enlarge the period of time within which real property must be redeemed from a sale made in proceedings to foreclose a lien. *State ex rel v Kerr*, 51 M 417, 53 NW 719.

550.26 REDEMPTION, HOW MADE.

HISTORY. R. S. 1851 c. 71 ss. 116, 117; P. S. 1858 c. 61 ss. 117, 118; 1862 c. 19 s. 5; G. S. 1866 c. 66 s. 293; G. S. 1878 c. 66 s. 325; G. S. 1894 s. 5474; R. L. 1905 s. 4312; G. S. 1913 s. 7946; G. S. 1923 s. 9442; M. S. 1927 s. 9442.

A complaint in an action to redeem from an execution sale, which alleged compliance with Laws 1895, Chapter 326, by setting forth a sufficient deposit and bond, is valid, and extended the time for redemption, although it did not appear therein that the parties seeking to redeem had produced to the clerk or sheriff the deed under which he claims the right to redeem, as required by General Statutes 1894, Section 5474 (section 550.26). *Thompson v Dupont*, 100 M 367, 111 NW 302.

550.27 CERTIFICATE OF REDEMPTION; EFFECT OF REDEMPTION.

HISTORY. 1862 c. 19 s. 6; G. S. 1866 c. 66 s. 294; G. S. 1878 c. 66 s. 326; G. S. 1894 s. 5475; 1901 c. 39; R. L. 1905 s. 4313; G. S. 1913 s. 7947; G. S. 1923 s. 9443; M. S. 1927 s. 9443.

If there was no intent to defraud, the conveyance was void, and the judgment was not a lien on the land and the execution sale void; but as the conveyance was presumptively fraudulent, and the presumption not rebutted, the sale was valid, but may be redeemed from the cash deposit in the hands of the sheriff. *Sovell v Co. of Lincoln*, 129 M 356, 152 NW 727.

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Where land of non-resident was attached, judgment obtained, and land sold on execution, the question of title was properly determinable by judgment in a plenary suit or upon issues framed, and the trial court rightly refused to grant appellant's motion to have the \$500.00 deposited under stipulation paid to them. *Dickson v Florman*, 178 M 161, 226 NW 410.

550.28 SALE IRREGULAR OR JUDGMENT REVERSED.

HISTORY. R. S. 1851 c. 71 s. 119; P. S. 1858 c. 61 s. 120; G. S. 1866 c. 66 s. 297; 1868 c. 82 s. 1; G. S. 1878 c. 66 s. 329; G. S. 1894 s. 5478; R. L. 1905 s. 4314; G. S. 1913 s. 7948; G. S. 1923 s. 9444; M. S. 1927 s. 9444.

Judgment sales; doctrine of caveat emptor. 20 MLR 557.

Duration of the enforceability of the judgment. 24 MLR 663.

Writ of execution. 24 MLR 822.

550.29 REDEMPTION PENDING ACTION TO SET ASIDE EXECUTION SALE.

HISTORY. 1895 c. 326; R. L. 1905 s. 4315; G. S. 1913 s. 7949; G. S. 1923 s. 9445; M. S. 1927 s. 9445.

Laws 1895, Chapter 326, does not impair vested rights, and is constitutional, even as applied to a redemption from a judgment entered and docketed before the passage of that act. *Dunn v Dewey*, 75 M 153, 77 NW 793.

Where plaintiffs complied with Laws 1895, Chapter 326, it was not necessary also to produce to the sheriff or clerk of the deed under which they claimed to redeem, as required by General Statutes 1894, Section 5474 (section 550.26). Whether so under Revised Laws 1905 is not determined. *Thompson v Dupont*, 100 M 367, 111 NW 302.

Where the vendor held the title as security only, and the equitable owner was in possession, and the records failed to show any interest in the equitable owner, and both vendor and equitable owner informed the purchaser that the vendor was the owner and the equitable owner a tenant, the purchaser took title free and clear from the lien of a judgment against the one in possession. *Goswitz v Jefferson*, 123 M 293, 143 NW 720.

The confirmation of the sheriff's report of sale in a real estate foreclosure proceeding has the effect of a judgment and cannot be attacked collaterally. *Singer v Novak*, 167 M 208, 208 NW 654.

550.30 CREDITOR MAY REDEEM IN CERTAIN CASES.

HISTORY. 1929 c. 195 s. 1; M. Supp. s. 9445-1.

550.31 CREDITOR TO FILE ORDER WITH REGISTER OF DEEDS.

HISTORY. 1929 c. 195 s. 2; M. S. 1927 s. 9445-2.

550.32 FILING TO DETERMINE PRIORITY.

HISTORY. 1929 c. 195 s. 3; M. Supp. s. 5445-3.

550.33 CREDITOR MAY REDEEM WHEN.

HISTORY. 1929 c. 195 s. 4; M. Supp. s. 9445-4.

550.34 PROBATE COURT TO DETERMINE AMOUNT.

HISTORY. 1929 c. 195 s. 5; M. Supp. s. 9445-5.

550.35 NOT TO AFFECT PRESENT LAW; EXCEPTION.

HISTORY. 1929 c. 195 s. 6; M. Supp. s. 9445-6.

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550.36 STAY OF EXECUTION ON MONEY JUDGMENT.

HISTORY. 1877 c. 76 ss. 1 to 6; G.S. 1878 c. 66 ss. 331 to 336; G.S. 1894 ss. 5480 to 5485; R.L. 1905 s. 4316; G.S. 1913 s. 7950; G.S. 1923 s. 9446; M.S. 1927 s. 9446.

In an application for relief from a default judgment in a divorce action, the excuse offered by the defendant for his failure to appear at the trial was insufficient to justify vacating the judgment. *Randall v Randall*, 133 M 63, 157 NW 903.

Appeal from judgment; stay of execution. 24 MLR 816.

550.37 PROPERTY EXEMPT.

HISTORY. R.S. 1851 c. 71 ss. 100, 101; P.S. 1858 c. 61 ss. 90, 91; 1862 c. 43; G.S. 1866 c. 66 ss. 279 to 281; 1867 c. 80 s. 1; 1872 c. 71 s. 1; 1873 c. 61 s. 1; 1875 c. 64 s. 1; 1877 c. 30 s. 1; G.S. 1878 c. 66 ss. 310 to 313; 1887 c. 136; G.S. 1878 Vol. 2 (1888 Supp.) c. 66 s. 70b; 1889 c. 204 s. 1; G.S. 1894 ss. 5313, 5314, 5459 to 5462; 1895 cc. 37, 79; 1897 cc. 6, 15, 126, 354; 1899 cc. 24, 267; 1903 cc. 276, 296; R.L. 1905 s. 4317; 1909 c. 12 s. 1; 1913 c. 375 s. 1; G.S. 1913 s. 7951; 1915 c. 202 s. 1; 1923 c. 154 s. 1; 1923 c. 350 s. 1; G.S. 1923 s. 9447; 1927 c. 272; M.S. 1927 s. 9447; 1933 c. 350 s. 1; 1939 c. 263; 1941 c. 351.

Generally

This section operates only as a remedy, and is constitutional. The legislature has full power to control remedies, so long as it does not infringe on existing rights. *Grimes v Byrne*, 2 M 89 (72); *Hartford v Dahl*, 202 M 412, 278 NW 591.

The exemption given by statute is a personal privilege of the debtor, which he alone may assert. An absconding debtor loses this privilege. *Howland v Fuller*, 8 M 50 (30); *Orr v Box*, 22 M 485; *Langevin v Bloom*, 69 M 22, 71 NW 697.

See as to judgments for purchase money. *Harley v Davis*, 16 M 487 (441); *Wylie v Grundysen*, 51 M 360, 53 NW 805.

This section is to be construed liberally. *Rothschild v Boelter*, 18 M 361 (331); *Berg v Baldwin*, 31 M 541, 18 NW 821; *Shadewald v Phillips*, 72 M 520, 75 NW 717; *Boelter v Klassner*, 74 M 272, 77 NW 4.

Voluntary transfer of exempt property vests good title in donee as against creditors of donor. *Furman v Tenney*, 28 M 77, 9 NW 172.

Exemption laws do not apply to partnership property except as expressly stated. *Baker v Sheehan*, 29 M 235; *Prosser v Hartley*, 35 M 340, 29 NW 156; *Security Bank v Beede*, 37 M 527, 35 NW 435.

Where all the property which a debtor has, of a kind which is exempted with a limit as to quality or amount, and not with a limit as to value, does not exceed the quantity or amount which the statute exempts, there is no occasion for the debtor to choose or select the same as exempt. The statute operates to choose and select for him. *Howard v Rugland*, 35 M 388, 29 NW 63.

Where debtor sold all his non-exempt property and started for another state, with the intention of establishing a residence there, and while within this state an attachment was levied on his horse, he was held to be still a resident and entitled to his exemptions. *Grimstad v Lofgren*, 105 M 286, 117 NW 515.

The mortgage is not fraudulent even if it provides that the mortgagor might use the crops in so far as needed for his family and animals. *Berkner v Lewis*, 133 M 375, 158 NW 612; *Neilson v Larson*, 158 M 305, 197 NW 259.

Mrs. Logan paid certain assessments on the life policy of Jones, with the understanding she was to share in the proceeds of the policy. Such contracts are valid unless prohibited by statute or the laws of the society. *Logan v Modern Woodman*, 137 M 226, 163 NW 292.

The statute exempting the proceeds of beneficiary certificates issued by fraternal beneficiary associations from seizure or sale applies to all beneficiaries whether residents or non-residents of the state. *First Nat'l v Schneider*, 179 M 255, 228 NW 919.

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The statute relating to exemptions "is founded upon public policy" and there is a restriction as to "waiver of its provisions". *Hartford v Dahl*, 202 M 412, 278 NW 591.

An automobile is not exempt from levy as a "wagon", nor is a farmer entitled to an exemption as a "mechanic, miner, or other person". *Posnanovic v Maki*, 209 M 382, 296 NW 415.

Crops growing on exempt homestead are not exempt. *Vought v Kanne*, 10 F(2d) 747.

Personal property is not exempt from seizure or sale under a personal property tax judgment. OAG July 19, 1933.

Priority rights under the Frazier-Lemke act. 1934 OAG 746, Oct. 16, 1934 (770e).

Duty of officer on levy to set aside wage exemption. 1936 OAG 440, April 20, 1935 (843k).

(2) Piano, with plush cover and stool, is exempt. *Thompson v Peterson*, 122 M 234, 142 NW 307.

(5) A debt for purchase money is merged in the judgment obtained by a third party against seller and purchaser and paid by the seller. As to the seller in his action against the purchaser, he cannot claim purchase money rights as to the stove purchased. *Harley v Davis*, 16 M 487 (441).

A silver watch and chain worn by debtor and used by him to keep the time of his workmen is not "wearing apparel", "household furniture" or an "instrument used and kept for the purpose of carrying on" his trade, and is not exempt. *Rothschild v Boelter*, 18 M 361 (331).

The burden is on the defendant debtor to show funds belonging to him in the hands of the garnishee are exempt from seizure for the payment of his debts. In the instant case, defendant failed to show that the money due him on an insurance policy loss covered household goods. *Fletcher v Staples*, 62 M 471, 64 NW 1150.

The statute giving keepers of boarding and lodging houses a lien upon the baggage and other personal effects of boarders and lodgers, is constitutional. *Halsey v Svitok*, 163 M 253, 203 NW 968.

(6) A buggy or carriage is exempt as coming within the term "wagon". *Allen v Coates*, 29 M 46, 11 NW 132; *Kimball v Jones*, 41 M 318, 43 NW 74.

A pair of two-year old steers, not broke but fit for light work, are exempt as "a yoke of oxen". *Berg v Baldwin*, 31 M 541, 18 NW 821.

The question how much food is "necessary" is for the jury. *Howard v Rugland*, 35 M 388, 29 NW 63; *Haugen v Youngren*, 57 M 170, 58 NW 988.

The evidence not showing that a horse was kept and used as a racehorse, it is not decided whether a racehorse is exempt. *Anderson v Ege*, 44 M 216, 46 NW 362.

A horse delivered to the keeper of a livery or boarding stable is subject to a lien for his keep. *Flint v Luhrs*, 66 M 57, 68 NW 514.

A bicycle is not exempt as a wagon under (6), but may be under (10). *Shadewald v Phillips*, 72 M 520, 75 NW 717.

In order to have the benefit of the exemption of food for stock it is not necessary that the debtor should own all of the stock. *Olin v Fox*, 79 M 459, 82 NW 858.

An automobile is not exempt from levy and sale on execution against owner as either "wagon, cart, or dray". *Whitney v Welnitz*, 153 M 162, 190 NW 57; *Posnanovic v Maki*, 209 M 379, 296 NW 415.

Defendant not being a resident of our state is not entitled to the benefit of our exemption laws. *Ingebretson v Montague*, 206 M 339, 288 NW 577.

In construing right to use an easement for travel "by foot or wagon", the word wagon is to be used in the generic sense and is broad enough to cover vehicular transportation at present in common use. *Giles v Luker*, 215 M 256, 9 NW(2d) 716.

Bankrupt is entitled to claim as exempt, food for animals which he does not own. *Elston Estate*, 17 F(2d) 495.

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Exemptions. 11 MLR 641.

Conflict of laws. 20 MLR 219.

(7) Where husband and wife were living together on her farm, cultivating same and supporting a family thereon, the wife could claim the wheat grown thereon as provisions under (7). *Boelter v Klossner*, 74 M 272, 77 NW 4.

As to the exemption of cream checks. *Nielson v Larson*, 158 M 309, 197 NW 259.

(8) The ordinary stock of goods of a merchant is not exempt. *Grimes v Byrne*, 2 M 89 (72); *Hillger v Remore*, 42 M 254, 44 NW 116.

Unfinished burial caskets are exempt. *McAbe v Thompson*, 27 M 134, 6 NW 479.

In order that "stock in trade" may be exempt, the owner must be engaged, or about to engage, in manufacturing or other business in which such stock is, or is to be used. *McAbe v Thompson*, 27 M 134, 6 NW 479; *Prosser v Hartley*, 35 M 340, 29 NW 156.

Stock in trade of partnership is not exempt. *Baker v Sheehan*, 29 M 235, 12 NW 704; *Prosser v Hartley*, 35 M 340, 29 NW 156.

One carrying on the trade of a tailor may be entitled to exemption of two sewing machines, if kept and personally used for the purposes of his trade and if reasonably necessary therefor. *Cronfeldt v Arrol*, 50 M 327, 52 NW 857.

The exemption of tools and instruments is lost by an abandonment of the trade or occupation in connection with which they are exempted. *Cable v Hollis*, 98 M 143, 107 NW 967.

The statute exempting "the library and implements of a professional man" does not exempt the equipment and apparatus of a private hospital owned and operated by a practicing physician. *DeCoster v Nenno*, 171 M 108, 213 NW 538.

A farmer is not a "mechanic, miner, or other person" under (8). *Poznanovic v Maki*, 209 M 384, 296 NW 415.

(11) Whether grain is exempt depends upon circumstances and is ordinarily a question for the jury. *Howard v Rugland*, 35 M 388, 29 NW 63; *Haugen v Younggren*, 57 M 170, 58 NW 988.

Owner of farm may claim exemption of seed grain when renting the farm on shares and furnishing seed. *Matteson v Munro*, 80 M 340, 83 NW 153.

(13) In this instance where money derived from recovery under a fire policy was garnisheed, the burden is on the defendant debtor to show that the money was recovered from loss of exempt property. *Fletcher v Staples*, 62 M 471, 64 NW 1150.

Proceeds of fire insurance resulting from destruction of homestead are exempt from garnishment. *Remington v Sabin*, 132 M 372, 157 NW 504.

Effect of conversion upon statutory exemption. 23 MLR 535.

(14) Insurance money payable on a policy on the life of the husband to his wife is exempt from attachment by garnishment in an action against the widow, even if the action be for expenses of last sickness or funeral expenses. *Rose v Marchessault*, 146 M 6, 177 NW 658; *Hallborn's Estate*, 179 M 406, 229 NW 344; *Cook v Prudential*, 182 M 500, 235 NW 9.

Statutory exemption of proceeds of life insurance does not extend to property purchased therewith. *Ross v Simser*, 193 M 409, 258 NW 582.

(15) The statute exempting the proceeds of beneficiary certificates issued by fraternal beneficiary associations from seizure or sale applies to all beneficiaries whether residents or non-residents. *Rose v Marchessault*, 146 M 6, 177 NW 658; *First Nat'l v Schneider*, 179 M 257, 228 NW 919; *Ross v Simser*, 193 M 409, 258 NW 582.

(16) Under an early statute the exemption was limited to those engaged in manual labor. *Wildner v Ferguson*, 42 M 112, 43 NW 794.

The present statute, Laws 1889, Chapter 204, is designed to extend exemption to all who work for wages, to servants, employees, clerks, and similar, as well as to laboring men. *Boyle v Vanderhoof*, 45 M 31, 47 NW 396; *Sheehan v Newpick*, 77 M 426, 80 NW 356; *Rustad v Bishop*, 80 M 497, 83 NW 449.

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The 30 days are computed from the date of the levy and not from the issuance of the writ from the clerk's office. *Bean v Germania*, 54 M 366, 56 NW 127.

So much of Laws 1913, Chapter 375, as are contained in the proviso is unconstitutional and void; but the remainder of the act is not thereby invalidated. *Bofferding v Mengelkoch*, 129 M 184, 152 NW 135.

The provisions of Minnesota Constitution, Article 1, Section 12, subjecting homesteads to liability for "any debt incurred to any laborer or servant for labor or service performed" does not include a claim by an automobile salesman for unpaid wages and commission earned while an employee of the homestead owner. *Fletcher v Scott*, 201 M 610, 277 NW 270.

When a court officer levies upon the wages of an employee it is his duty to determine the employee's exemption and pay it over to said employee. 1936 OAG 440, April 20, 1935 (843k).

(18) By statute a judgment for the recovery of money is subject to levy under execution. *Henry v Traynor*, 42 M 234, 44 NW 11.

A building which is exempt from levy and sale as an appurtenant of an exempt homestead does not lose its exempt character by the wrongful severance thereof from the realty by a trespasser; but after a severance the owner may sue for its conversion as personal property. *Wylie v Grundysen*, 51 M 360, 53 NW 805.

•Set-off of judgments; when allowed. 20 MLR 435.

Exemptions; personal property; conversion; effect upon statutory exemption. 23 MLR 533.

550.38 VETERAN'S PENSION, BONUS, OR COMPENSATION.

HISTORY. Ex. 1936 c. 112; M. Supp. s. 9447-1.

550.39 EXEMPTION OF INSURANCE POLICIES.

HISTORY. 1937 c. 191 s. 1; M. Supp. s. 9447-2.

550.40 CERTAIN MONEYS AND CREDITS OF TEACHERS EXEMPT.

HISTORY. 1939 c. 72; M. Supp. s. 1366-2.

550.41 LEVY ON PROPERTY IN EXCESS OF EXEMPTION.

HISTORY. G.S. 1866 c. 66 s. 282; G.S. 1878 c. 66 s. 314; G.S. 1894 s. 5463; R.L. 1905 s. 4318; G.S. 1913 s. 7952; G.S. 1923 s. 9448; M.S. 1927 s. 9448.

Where the statute exempts a specified amount of a designated class or species of property, the sheriff may levy upon the whole property of that class or species, and he cannot be sued in replevin, certainly before an appraisal, a selection by the owner of articles to the specified amount, and a demand for the articles so selected. *Tullis v Orthwein*, 5 M 377 (305).

A mere failure to claim a right of exemption at the time of the levy upon personal property, no prejudice being shown as resulting therefrom, will not preclude a party from asserting the right afterwards, and before the sale. *McAbe v Thompson*, 27 M 134, 6 NW 479.

The statute operates to choose for the debtor where a levy is made on goods of a kind exempt, and the amount levied upon is within the amount of the exemption. *Howard v Rugland*, 35 M 388, 29 NW 63; *Thompson v Peterson*, 122 M 228, 142 NW 307.

A court officer must set aside exemption from wages. 1936 OAG 440, April 20, 1935 (843k).

The owner of a horse levied upon may avail himself of the right to select that horse for exemption, without bringing his other horses from another county. *Anderson v Ege*, 44 M 216, 46 NW 362.