

**REMEDIES FOR POSSESSION OF PROPERTY****CHAPTER 565****CLAIM AND DELIVERY****565.01 POSSESSION OF PERSONAL PROPERTY, HOW CLAIMED.**

In replevin of a soda fountain because of default in payments, an instruction that if the jury found that the order, promissory note, and chattel mortgage were obtained by fraud the instruments were to be considered as waste paper was erroneous and inapplicable under the evidence; and the instruction that plaintiff, if defendant recovers herein, has other legal remedies was erroneous and prejudicial. *Knight v Dirnberger*, 192 M 387, 256 NW 657.

Parol evidence is admissible to show that a contract not under seal, delivered by the maker to the party in whose favor it runs, was not intended to be operative as a contract from its delivery, but only on the happening of some future contingent event, though that be not expressed by its terms. *Minar v Lysen*, 202 M 149, 277 NW 523.

Meaning of possession. 16 MLR 611.

Rights of assignee of conditional sales contract against subsequent bona fide purchaser from original vendor. 16 MLR 690.

Remedies of conditional seller upon buyer's default. 17 MLR 66.

**565.03 BOND AND SURETIES.**

Replevin; obligation to mitigate damages by posting bond. 31 MLR 378.

**565.05 EXCEPTION TO SURETIES; REBONDING.**

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

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

**565.07 DELIVERY OF PROPERTY; WAIVER OF JUSTIFICATION.**

Where the owner of personal property brings an action in replevin against a party claiming merely a lien thereon, and obtains possession from the officer who executed the writ, by reason of claimant's failure to rebond, the plaintiff thereby acquires the right to sell and dispose of the property pendente lite and give good title. The property is no longer in custody of the law and the bond in replevin becomes the substitute therefor. *Republic State Co. v Brown*, 158 M 396, 197 NW 842.

Replevin; obligation to mitigate damages by posting bond. 31 MLR 378.

**565.10 CLAIM OF PROPERTY BY THIRD PERSON.**

Where the sheriff seized an automobile under the execution upon a judgment against the husband and the wife claimed the car and served proper notice and later proved that the car was registered in her name and purchased by her from her own estate was sufficient to warrant the court in holding as a matter of law that she was the owner. *Guilford v Brown*, 154 M 518, 191 NW 915.

Where plaintiff leased a laundry building to defendant and concurrently sold him personal property under conditional sales contract, and thereafter retook the property by replevin proceedings, the pendency of the replevin action in no way

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abated this action under unlawful detainer proceedings. *Sternberg v Silverman*, 186 M 640, 244 NW 105.

The mere fact that, upon a debtor's examination in supplementary proceedings, property is disclosed which may be subjected to the satisfaction of the creditor's judgment does not necessarily entitle the latter, as a matter of right, to have a receiver appointed. In the instant case, the court did not abuse its discretion in denying the motion for such receiver. *Ginsberg v Davis*, 191 M 12, 252 NW 669.

Where in replevin it appears that a third party is probably entitled to possession, he should be brought in as a party by intervention or interpleader. The court may make a proper order on its own motion. *Braman v Wall*, 210 M 548, 299 NW 243.

Two replevin cases consolidated for trial sought recovery of exempt life insurance policies and assignments thereof, which with nonexempt securities had been seized by the sheriff under a levy of executions against the insured while such policies and securities were held by a bank as collateral to a loan to the insured. The sheriff had paid off the bank's lien under section 571.23, with money furnished him by the judgment creditors' attorney, who now claims that his action was without the knowledge or consent of his clients. All but \$215 of the amount used to lift the bank's lien was recovered from nonexempt securities, and no evidence was offered that either the judgment creditors or any other person now claims an interest in the policies or assignments. The insured is entitled to the possession of the policies and assignments from the sheriff. *Braman v Wall*, 214 M 238, 7 NW(2d) 924.

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

Liability to third parties for wrongful levy. 23 MLR 799.

## 565.11 PLAINTIFF AND SURETIES FIRST LIABLE IN ACTION FOR TAKING.

A defeated plaintiff in a replevin action, who has taken the property under his writ and given bond for its return, cannot escape liability on the bond by procuring an ex parte order permitting him to deliver the property into court. Such procedure is not permitted by the statutory interpleader provided for in section 544.14. *Hansen v Thomas*, 171 M 101, 213 NW 378.

Replevin; damages; bond; destruction of property by act of God. 21 MLR 758.