

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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



Edited by
WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR., Assistant Editor

CITER-DIGEST CO.
ST. PAUL, MINNESOTA
1931

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

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

Where a contract is completed, an action will lie on the common counts for the balance due. 178M275, 226NW933.

The issue as to whether defendant's signature to a bill of sale was forged held, on conflicting evidence, one of fact and so settled by the verdict. *Lincoln Furnace Corp. v. D.*, 235NW392. See Dun. Dig. 9707.

UNPAID SELLER'S LIEN

§8430. When lien is lost.

Replevin to recover property conditionally sold did not bar an action for the debt on the theory of a rescission or election, the replevin action being dismissed by plaintiff. 171M483, 214NW284.

The lien mentioned in §8430(2) relates to the possessory lien mentioned in §8427(1)(a), which is a statutory affirmation of the unpaid seller's common-law lien. 176M483, 223NW908.

While the unpaid seller in a conditional sale contract has a right to reduce his debt to judgment without losing the lien, such lien is lost where he does not bring the property into actual possession before making an election of remedies which would terminate the conditional sale contract. 176M483, 223NW908.

PART V

ACTIONS FOR BREACH OF THE CONTRACT

REMEDIES OF THE SELLER

§8437. Action for the price.

Title to goods held still in the seller until they were delivered to carrier, and buyer was not liable for the price where he countermanded the order before delivery to carrier, though seller set aside the goods for buyer in its warehouse. 172M4, 214NW475.

Evidence held to show that defendant was the real purchaser of the goods in controversy and that there was no novation of the indebtedness. 177M560, 225NW725.

REMEDIES OF THE BUYER

§8440. Action for converting or detaining goods.

The vendee's measure of damages, for the conversion by the vendor of the property covered by a conditional sales contract, is the value of

the chattel at the time of the conversion, less the unpaid purchase price. *Novak v. B.*, 236NW221. See Dun. Dig. 8652a.

§8443. Remedies for breach of warranty.

2. Rescission.

In action for price of carbide lighting plant, evidence held sufficient to show breach of warranty and fraud. 171M211, 213NW902.

Whether purchaser exercises his right to rescind within a reasonable time is usually a question of fact. 172M535, 217NW941.

Held there was no rescission by consent of sale of hotel property when it was abandoned by purchaser. 177M208, 225NW19.

Attempted rescission of sale of fur coat seven months after purchase and six months after discovery of breach, held not within reasonable time. 181M347, 232NW522. See Dun. Dig. 8607.

A rescission of a sale of personal property on account of breach of warranty must be sought within a reasonable time after discovery of the facts out of which the right arises. 181M547, 233NW302. See Dun. Dig. 8607.

A request for fulfillment of a warranty nullifies a previous attempt to rescind on account of breach of warranty in the sale of personal property. 181M547, 233NW302. See Dun. Dig. 8607(36).

5. Damages.

180M19, 230NW114.

A vendee of corporation stock, who has rescinded for good cause, may recover of the vendor in action for money had and received the purchase price, with interest from the time of its payment. *Dohs v. K.*, 236NW620. See Dun. Dig. 6128, 6129.

9. Evidence.

Unmerchantable condition of shoes held sufficiently made to appear by testimony of experts, without aid of those who wore the shoes. 173M535, 217NW941.

9. Questions for jury.

Whether cows sold were infected with contagious abortion and whether purchaser's herd thereby became infected, held for jury. *Alford v. K.*, 235NW903. See Dun. Dig. 8627.

§8444. Interest and special damage.

Vendee of corporate stock having rescinded and received the purchase price paid from the vendor cannot recover interest from the broker or agent of the vendor except upon an alleged express agreement. *Dohs v. K.*, 236NW620. See Dun. Dig. 6137.

PART VI

INTERPRETATION

§8445. Variation of implied obligations.

Evidence held to show liability for goods by one taking over a business and continuing the account. *Mammen v. R.*, 235NW378. See Dun. Dig. 8644.

CHAPTER 68

Frauds

STATUTE OF FRAUDS

§8456. No action on agreement, when.

In general.

Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

8. Promises to answer for another.

Contract of guaranty signed by members of a co-operative company was within the statute

as to loans already made to the company and renewals of such loans, though it was valid as to subsequent loans. 174M383, 219NW454.

Construction of guaranty by directors of corporation. 180M27, 230NW121

10.—Contracts held within the statute.

Oral promise to pay mechanic's lien, made to person other than owner, by one who intended to purchase the land, held within statute, where no advantage accrued to promisor, and no disadvantage to promisee. 180M441, 231NW16.

Promise to pay debt discharged in bankruptcy.

Promise to pay debt discharged by bankruptcy. 172M390, 215NW784.

§8459. Conveyance, etc., of land.**2. Leases.**

178M330, 227NW46; note under §8640.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. *Hagen v. B.*, 233M822. See Dun. Dig. 5440.

Agent who had exclusive management of property under an agreement to pay all expenses of operation and a fixed monthly income to the owner, and to retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance to him of an equity in a house and lot. 172M40, 214NW759.

§8460. Leases—Contracts for sale of lands.**1. In general.**

Creditor of vendor with notice and knowledge of sale cannot urge that contract of sale was invalid under statute of frauds after payment but before deed is given. 173M225, 217NW136.

Not construed as prescribing a rule of evidence, but rather as precluding the substantive right to sue upon an oral contract. 178M330, 227NW46.

3. Authority of agent.

Agent who had exclusive management of property under an agreement to pay all expenses and a fixed monthly income to the owner, and retain the difference, had authority to lease an apartment for more than a year and take in payment of the rent a conveyance of an equity in a house and lot. 172M40, 214NW759.

5. Contracts not within statute.

Whether plowing was part performance taking lease out of statute, held for jury. 178M460, 227NW656.

7. Pleading.

Defendant, by answer having denied making of contract, properly invoked the statute, although he did not plead it. 178M330, 227NW46.

§8461. Specific performance.

Evidence sustains the finding of the trial court that the plaintiff partially performed an oral contract made in 1921 for the purchase of real property so as to justify a decree of specific performance. 181M458, 233NW20. See Dun. Dig. 8885.

CONVEYANCES FRAUDULENT AS TO CREDITORS**§8467. Of chattels without delivery.**

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

This statute creates only a rebuttable presumption of fraud. 176M433, 223NW683.

A trust deed on land and the equipment of a flour and feed mill, providing that the mortgagor shall operate the business, and recorded as a real estate mortgage, but not as a chattel mortgage, held not invalid as to creditors where there was no expressed agreement that the mortgagor should not account to the mortgagee for the proceeds of the sale of flour, feed, etc. (DC-Minn.) 31F(2d)442.

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

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

§8470. Question of fact—Voluntary conveyances.**1. Question of fact.**

179M7, 228NW177.

Whether a real estate mortgage covering personal property on the premises is invalid as to

creditors because permitting the mortgagor to retain possession of the personal property, is a question of fact. (DC-Minn.) 31F(2d)442.

FRAUDULENT CONVEYANCES**§8475. Definition of terms.**

175M47, 220NW400.

This act does not impliedly repeal §8345. 172M355, 215NW517.

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

§8477. Fair consideration.

174M423, 219NW550; note under §8481.

Transfer to directors of bank to secure payment of a debt of grantor, the managing officer of the bank, to the bank, was given upon a fair consideration and was not void, though it rendered grantor insolvent. 172M149, 214NW787.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

Conveyance, held not to have been given in payment of antecedent debt. 179M7, 228NW177.

In an action by a creditor, who furnished material for improvement of a homestead, to set aside as fraudulent a transfer thereof by the husband to his wife through a third party, evidence sustains findings that the transfer was supported by a fair consideration and was made without any actual intention of defrauding. *Steinke-Seidl Lumber Co. v. N.*, 237NW194. See Dun. Dig. 3859.

Satisfaction of an antecedent debt may constitute a fair consideration. *Steinke-Seidl Lumber Co. v. N.*, 237NW194.

§8478. Conveyance by insolvent.

172M149, 214NW787; note under §8477.

173M576, 218NW108; note under §8475.

174M423, 219NW550; note under §8481.

Evidence held to show conveyance from husband and wife to daughter rendered husband insolvent. 171M284, 213NW911.

Evidence held not to show agreement for repayment of advances made by wife to husband. 171M284, 213NW911.

Payment of an honest debt is not fraudulent although it operates as a preference, in view of the federal bankruptcy act (Mason's Code, Title 11). 171M284, 213NW911.

Evidence held to support finding that conveyances to wife and daughter were made in good faith for adequate consideration and not with intent to defraud creditors. 173M468, 217NW593.

The consideration must be one which fairly represents the value of the property. 179M7, 228NW177.

§8479. Conveyances by persons in business.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW475, 47SD494.

§8481. Conveyance made with intent to defraud.**½. In general.**

Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. *Grant Co. State Bk. v. S.*, 228NW150.

6. Subsequent creditors.

Creditors could not impress proceeds of life insurance policies with claims based on fraud of insured after issuance of policies. *Cook v. P.*, 235NW9. See Dun. Dig. 4801, 3876a.

31. Chattel mortgages.

Title that passes on foreclosure of prior and paramount mortgage. 171M197, 213NW892.

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

35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the grantor in the original action. *Weber v. A.*, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

38. Burden of proof.

175M157, 220NW560.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

40. Evidence.

Evidence, held to show that conveyance from

father to daughter was not in fraud of creditors. 181M71, 231NW397.

§8483. Rights of creditors with matured claims.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW892.

§8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

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

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

§8490. Mechanics, laborers and materialmen.

½. In general.

Surety on bond to protect mortgagee against mechanics' liens held to have no rights with respect to fund obtained by the mortgage and was not released because fund was applied in payment of other than lienable claims. 176M 281, 223NW139.

Where one on accepting contract includes new conditions there is no contract unless the maker of original offers consents to the new conditions. *Johnson v. O'N.*, 234NW16. See *Dun. Dig.* 1740(24).

2. Nature of lien.

The condition of a bond given to a mortgagee to protect his security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, and an action begun after judgment, but before expiration of period to redeem from mortgage foreclosure, was not premature. 172 M320, 215NW67.

21. Held not entitled to lien.

Where materialman waived lien on materials furnished prior to certain date, and subsequently filed lien, which, through mistake, contained certain items delivered before the waiver date, owner who paid the lien could recover the amount of items delivered prior to waiver, the lien statement constituting a false representation. 171M274, 213NW917.

§8494. When lien attaches—Notice.

Finding that trust deed was recorded before any mechanics' liens attached to the property, held sustained by the evidence. 171M445, 214 NW503.

"Without notice" means without notice of an existing lien. 171M445, 214NW503.

Obligatory advances made under a mortgage securing future advances have priority over mechanics' liens arising after the recording of the mortgage but before the making of the advances. 171M445, 214NW503.

Advances made in reliance on representations that the mortgagor had performed the precedent conditions to be performed by him retain their right of priority although such representations were in fact false. 171M445, 214NW503.

Where parties for whose benefit conditions are imposed waive them, strangers thereto cannot complain. 171M445, 214NW503.

Where a mortgagee has agreed to make future advances, a breach of the contract by the other party does not bring advances thereafter made within the doctrine of optional advances. 171M445, 214NW503.

Bonds which are secured by a trust deed and are sold on the markets as instruments of commerce take priority over all incumbrances arising subsequent to the recording of the trust deed. 171M445, 214NW503.

Priority between recorded mortgage and mechanic's lien where such lien attached from time of "actual and visible beginning of an improvement on the ground." "Without notice" means without notice of an existing lien. 176M1, 225 NW507.

Release of lien rights in favor of mortgage, held to apply to material subsequently furnished. 177M132, 224NW847.

Materialman held to have waived lien as against subsequent mortgage. *Thompson Lumber Co. v. G.*, 224NW349.

§8495. Vendors, consenting owners, etc.

Evidence held to sustain finding that building and loan association agreed to obtain lien waivers and negligently failed to do so. 171 M343, 214NW56.

1. Forfeiture of executory contracts.

Evidence held insufficient to show that vendor effected forfeiture before accrual of mechanic's lien. 179M280, 228NW934.

§8497. Mechanic's lien—Filing—Etc.

2. Time of filing.

Finding as to coverage of an express plumber's contract held not supported by evidence. *Bossenmaier v. B.*, 234NW303. See *Dun. Dig.* 6112a.

§8499. Foreclosure of liens.

Liability to owner under contractor's bond. 178M388, 227NW205.

§8500. Summons, pleadings, etc.

Denial of application to open foreclosure judgment and to permit a defendant to answer on the ground of mistake, inadvertence, and excusable neglect of applicant's attorney, held proper. 172M462, 215NW859.

§8501. Lis pendens, parties, limitation, etc.

172M462, 215NW859; note under §8500.

§8504. Judgment, sale redemption, etc.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and an annulment of the foreclosure. 173M128, 216NW798.