

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



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**§8363-2. Seller to give notice.**—Whenever the seller shall have the right to retake possession of the property under a conditional sale contract because of default in payment only, the seller may serve upon the buyer personally or by registered mail directed to the last known address of the buyer, at least ten days prior to the retaking, a written notice of intention to retake the property on account of the buyer's default. The notice shall state the default and the period at the end of which the property will be retaken and the amount which the buyer will be required to pay within said time to avoid such retaking. If the notice is so served and the buyer does not pay the delinquent installment, or installments, or at the election of the then owner of the contract, pay the entire balance of the purchase price if the contract so provides, together with the actual costs and expenses of preparing and serving said notice before the day set for retaking, the seller may retake the property and the buyer shall have no right of redemption. (Act Apr. 25, 1931, c. 339, §2.)

As respects motor vehicles, the seven-day redemption clause for failing to report transfer begins to run from the time the seller retakes the vehicle. Op. Atty. Gen., June 20, 1931.

**§8363-3. Period to redeem.**—If the seller does not give the notice of intention to retake prescribed in Section 2 hereof, he shall retain the property for ten days after the retaking, during which period the buyer, upon payment or tender by him of the amount due under the contract at the time of retaking, together with all costs and expenses of the retaking, may redeem the property and become entitled to the possession thereof, and to continue in the performance of the contract as if no default had occurred. Provided however, that if the then owner of the contract so elects and the contract so provides, the buyer may be required to pay the entire balance of the purchase price, together with the costs and expenses of retaking the same. If the buyer pays such entire balance together with the costs and expenses he shall then have possession of and title to said property. Provided further, that if the property is perishable so that retention for ten days, as herein prescribed, would result in its destruction or substantial injury, the provisions of this section shall not apply and the buyer shall have no right of redemption. (Act Apr. 25, 1931, c. 339, §3.)

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

**§8363-4. Provisions may not be waived.**—

No act or agreement of the buyer before or at the time of the making of the contract, or any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of this act, but the buyer, by an agreement in writing executed subsequent to his default in payment, may waive the right of redemption hereby given. (Act Apr. 25, 1931, c. 339, §4.)

**§8363-5. Application.**—This act shall not apply in any case where the conditional sale contract and the rights of the buyer thereunder shall be foreclosed by action in any court of this state. (Act Apr. 25, 1931, c. 339, §5.)

#### FILING CHATTEL MORTGAGES, BILLS OF SALE OF CHATTELS, AND CONDITIONAL SALE CONTRACTS EXCEPT IN CITIES OF FIRST CLASS

**§8364. Filed with register of deeds.**

See §8346, 8370.

The reference "205NW481" in 1927 Statutes should be "202NW481."

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

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

Extension note agreement signed by purchaser is entitled to record, but assignment from original seller to finance corporation need not be recorded. Op. Atty. Gen., Feb. 18, 1930.

**§8365. Fees.**

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

**§8370. Application.**

Except as provided in §8370, conditional sales contracts should be filed in the county wherein the property is given a fixed situs. 175M354, 221NW239.

**§8373. Seed grain contracts to be filed, etc.**

Chattel mortgage on crops held subordinate to seed grain notes and subsequent chattel mortgage to lessor of land for rent. 176M90, 222NW571.

Findings failed to show that defendants converted wheat or received proceeds from sale of wheat grown from seed furnished by plaintiff under a seed grain note given by tenant. McCarthy v. T., 234NW591. See Dun. Dig. 247(51).

**§8375. Chattel mortgage provision, how applicable.**

This section does not make conditional sales chattel mortgages, nor give a right of redemption after forfeiture thereof, nor prevent the vendor from retaking and forfeiting of property. 176M493, 223NW911.

## CHAPTER 67A

### Sale of Goods

#### PART I

##### FORMATION OF THE CONTRACT

**§8376. Contracts to sell and sales.**

There is no reason why the Uniform Sales Act does not apply to a conditional sale contract,

except that the contract itself is to control as to those elements which it covers. 176M483, 223NW908.

Vendor in conditional sale contract may upon default retake the property and hold it as his own. 176M493, 223NW911.

Section 8375 does not make conditional sales chattel mortgages, nor give a right of redemp-

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

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

#### CONDITIONS AND WARRANTIES

##### §8387. Definition of express warranty.

A statement in advertisement that 95 per cent of a tested portion of seed corn germinated constituted an express warranty. 171M289, 214 NW27.

An implied warranty of fitness of corn for seed was not excluded by reason of an express warranty. 171M289, 214NW27.

A retailer who has sold a washing machine with a warranty or representations of quality is entitled to the benefit of anything thereafter done by the manufacturer in the way of repairs to make the machine comply with the representations or warranty. 176M232, 222NW920.

##### §8390. Implied warranties of quality.

There was an implied warranty that corn sold for seed was fit for that purpose. 171M289, 214NW27.

Implied warranty attached by this section is not excluded by provision in a written contract excluding warranties "made" by the seller. 173M87, 216NW790.

A sale consisting of four units, only one of which is sold under a trade-mark, is not free from an implied warranty. 173M87, 216NW790.

When the seller of personal property knows the purpose for which it is to be used when the buyer relies upon the seller's judgment that it is suitable therefore, there is an implied warranty that it is reasonably fit for such purposes. 173M87, 216NW790.

Plaintiff did not waive breach of warranty. 173M87, 216NW790.

In a suit to recover damages for breach of warranty in the sale of an automobile, the evidence supports the verdict for the plaintiff. 181 M603, 233NW313. See *Dun. Dig.* 8627.

When the buyer, ignorant of his own requirements, informs the seller of his particular needs and the seller undertakes to select and supply an article suitable to the purpose involved, subd. 1, and not subd. 4, applies even though the article may be described in the contract of sale by its trade name. *Iron Fireman Coal Stoker Co. v. B.*, 234NW685. See *Dun. Dig.* 8572.

The intent is that the seller is not held to an implied warranty because the buyer gets the exact article selected by him and for which he bargains. *Iron Fireman Coal Stoker Co. v. B.*, 234NW685. See *Dun. Dig.* 8572.

##### Subd. 1.

180M19, 230NW114.

A breeder of registered Guernsey cows, who sells them to a purchaser with the knowledge that they are to be used for breeding purposes and that his herd from which they are sold is infected with contagious abortion, is liable upon an implied warranty that the cows sold are fit for the purposes intended and are not infected with the disease. *Alford v. K.*, 235NW903. See *Dun. Dig.* 8576(11).

#### SALE BY SAMPLE

##### §8391. Implied warranties in sale by sample.

Fordson tractor, a two wheeled truck used as trailer, a connecting hitch and hydraulic hoist for unloading held not sold by "sample." 173 M87, 216NW790.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

## PART II

### TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

#### §8393. Property in specific goods passes when.

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

Passing of title is a question of intention of the parties. 177M441, 225NW389.

#### §8394. Rules for ascertaining intention.

Where order for goods contemplated that they should be delivered to buyer and that title did not pass until goods were delivered to carrier, buyer relieved itself from liability for the purchase price by countermanding the order before the goods were delivered to the carrier, notwithstanding that the goods were set aside for the buyer in seller's warehouse. 172M4, 214NW 475.

### TRANSFER OF TITLE

#### §8398. Sale by a person not the owner.

One purchasing personal property from a seller who has converted the goods is liable to the true owner as for conversion. 180M447, 231NW408.

Stolen Liberty bonds mailed by appellant to a Federal Reserve Bank with request to remit, bonds having been called by the government for redemption, were, before remittance, subject to replevin by true owners. The action was not against the United States. *Commercial Union Ins. Co. v. C.*, 235NW634. See *Dun. Dig.* 961a (21), 8594a (89).

## PART III

### PERFORMANCE OF THE CONTRACT

#### §8415. Seller must deliver and buyer accept goods.

In action to recover purchase price of tractor after purchasing retailer had ordered it reshipped as not salable, whether block man to whom reshipment order was given was a representative with whom defendant was entitled to deal, held for jury. *Northwestern Rock Island Plow Co. v. T.*, 235NW378. See *Dun. Dig.* 152, 8534, 8644.

#### §8418. Delivery of wrong quantity.

Estimate as to quantity made by buyer's representative should be considered as final unless attacked by pleading and proof of fraud or gross mistake, where seller's representative refused to participate. 176M315, 223NW614.

#### §8422. What constitutes acceptance.

Shoes sold from samples carry implied warranty that they are free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample, and purchaser may rescind or may accept by conduct. 173M535, 217NW941.

#### §8423. Acceptance does not bar action for damages.

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.

## PART IV

### RIGHTS OF UNPAID SELLER AGAINST THE GOODS

#### §8427. Remedies of an unpaid seller.

176M267, 223NW258.

Replevin to recover property conditionally sold, plaintiff dismissing the case, was not an election to proceed against the property and to rescind the contract, and plaintiff could sue for the debt. 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.

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.

#### 8. 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.*, 235NW878. 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.

#### S. 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.