

1934 Supplement

To

**Mason's Minnesota Statutes**

**1927**

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR. }  
R. O. MASON } Assistant Editors  
J. S. O'BRIEN }

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## CHAPTER 67

## Chattel Mortgages and Conditional Sales

## CHATTEL MORTGAGES

**8345. Mortgages, when void.****½. In general.**

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may be removed by the seller on default in payments. 173 M121, 216NW795.

Evidence held not to require finding that plaintiff authorized or acquiesced or ratified giving of mortgage. 173M166, 216NW801.

In replevin for lunch counter outfit under chattel mortgage given for balance of purchase price, defense of fraudulent misrepresentation held sustained by evidence. 173M443, 217NW505.

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

Findings in civil suit, held inadmissible in criminal prosecution. 180M378, 230NW818.

A conditional sale of 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.

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

Tenant permitting third party under authority from landlord to cut wood and pile it on railroad right of way had no title which he could mortgage. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 1427(85).

Transaction evidenced by a trust receipt, and acceptance of a time draft held a chattel mortgage upon automobiles named in trust receipt. *McLeod Nash Motors v. C.*, 246NW17. See Dun. Dig. 1425.

Junior chattel mortgagee held not entitled to recover in conversion by reason of private sale of chattels for purpose of paying debts. *Carity Motors v. E.*, 249NW190.

**1. What must be filed.**

This section is applicable, though the chattel mortgage takes the form of a bill of sale. 175M47, 220NW400.

**3. Effect of filing.**

A duly filed chattel mortgage constitutes constructive notice though the property is thereafter removed to another state. 172M458, 215NW844.

Filing of chattel mortgage given by lessor held not notice to bona fide purchaser of note of lessee containing mortgage clause on crops. 180M81, 230NW266.

**4. Priority among mortgages.**

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

Senior mortgages providing for future advances were valid as against junior chattel mortgagee having knowledge of what was taking place. *Carity Motors v. E.*, 249NW190. See Dun. Dig. 1448.

**8. Burden of proving good faith.**

Chattel mortgagee held to have burden of proving that she took her mortgage in good faith and not for the purpose of injuring creditors, as against an attachment levied on such property. 172M355, 215NW517.

This section is not repealed by implication by the uniform fraudulent conveyance act (§8475 et seq.) and is to be held identical to a similar statute existing and construed prior to the revision of 1905. 172M355, 215NW517.

The attaching creditor held to have sufficiently proved the validity of attachment and the cause of action for recovery of money stated therein, and hence was a creditor within the meaning of this section. 172M355, 216NW517.

No reversible error could be predicated upon the submission to the jury of the question whether the attachment creditor was a creditor in fact, for the testimony was undisputed that it was such to the extent of at least \$4,000. 172M355, 215NW517.

The finding of the jury that plaintiff did not sustain the burden of proof that the mortgage was taken in good faith and not for the purpose of hindering attaching creditor, has ample support. 172M355, 215NW517.

Evidence held properly admitted that at the same time plaintiff took this mortgage she also took another form of mortgage covering all the balance of its property within this state. 172M355, 215NW517.

There was no error in admitting evidence of prior mortgages to other parties for the purpose of proving the falsity of the representations of plaintiff's husband, the president of the mortgagor. 172M355, 215NW517.

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 creditor of the vendor. 175M157, 220NW560.

**10. What is good faith.**

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

**12. Stocks of goods.**

Chattel mortgage on stock of merchandise without limitation as to the right of the mortgagor to dispose of the property and apply the proceeds to his own use is void as to creditors under Minnesota law. *Essen, (DC-Minn.)*, 2FSupp646.

**13. Crops.**

A chattel mortgage on a crop not yet planted or sown attaches only to such interest as the mortgagor has in the crop when it comes into being. 174M531, 219NW871.

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

**18. Discharge of indebtedness.**

Where indemnity company took title to tractor from contractor held that there arose question of merger or extinguishment of mortgage foreclosed by such indemnitor. *Hector v. R.*, 182M413, 234NW643. See Dun. Dig. 1428.

**19. Pledges.**

Contract whereby decedent in his lifetime deposited collateral with bank as security held a pledge of his deposit account as security which did not terminate upon his death. *Browning v. E.*, 249NW573. See Dun. Dig. 7736.

**8345-1. Mortgagee to deliver copy, etc.**

Does not apply to conditional sale contracts or notes. *Op. Atty. Gen.*, Feb. 18, 1930.

**8347. Duties of recording officer—Fee.**

Where a chattel mortgage is withdrawn by mistake from register of deeds office it does not constitute a satisfaction in absence of countervailing equities in party to gain by it. *Carity Motors v. E.*, 249NW190. See Dun. Dig. 6264.

**8350. Satisfaction—Penalty.**

Giving bill of sale of part of mortgaged chattels, held sufficient consideration for agreement to release mortgage. 180M6, 230NW120.

Cannot be released by marginal notation. *Op. Atty. Gen.*, Nov. 19, 1929.

**8352. Foreclosure, when and where made.****2. Possession for foreclosure.**

Where in an action of replevin under a chattel mortgage given as part of a new contract, constituting an accord and satisfaction, the making of the contract and the default are admitted, a verdict was properly directed for plaintiff. 175M357, 221NW238.

Where plaintiff in replevin for mortgaged chattels declares generally as an owner entitled to possession, the defendant, under general denial, may prove payment of the debts secured by the mortgage. 176M406, 223NW618.

In replevin for mortgaged chattels, plaintiff has the burden of proof that the goods replevined are those mortgaged. 176M406, 223NW618.

**8353. Notice of sale.****2. Mortgagee a trustee.**

Bank, in selling pulp wood under mortgage, was guilty of conversion where mortgagor had no title. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 1463.

**8. Conversion.**

Sale of automobiles by mortgagee without a foreclosure was a conversion. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1459.

Measure of damages was correctly submitted as market value of cars at place where they were converted by mortgagee, less amount due on time draft. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1474, 1955.

**8359. Mortgage of crops.**

176M90, 222NW571; note under §8345.

Under ordinary contract between landowner and cropper, they are co-owners, and cropper may mortgage his interest before crops are divided, and a provision authorizing landowner to retain possession of the cropper's share as security for his indebtedness is in legal effect a chattel mortgage. 171M461, 214NW288.

Except as security for rent or the purchase price of the land, the landowner cannot acquire a valid lien on crops to be grown later than the season beginning on May 1st next following the date of the contract. 171M 461, 214NW288.

Mortgage on a crop not yet planted or sown attaches only to such interest as the mortgagor has in the crop when it comes into being. 174M531, 219NW871.

### PLEDGES

**8359-1. Perpetuating evidence.**—Any party desiring to perpetuate the evidence of any sale made under the terms of any pledge of personal property may, within ten days after such sale, file in the office of the Register of Deeds of the County in which such sale was had, or if had within a city of the first class, then with the City Clerk of such city, a report of the proceedings on such sale, specifying therein the property sold, and that returned, if any, the amount received, the name of the purchaser, an itemized statement of all costs and expenses, the amount applied on the debt secured by the pledge, and the amount, if any, returned to the owner. Such report shall be made by the person conducting the sale and shall be verified or, if he be an officer, certified by him. There may be filed with such report the affidavit or, if he be an officer, the certificate of any person making service of or posting any notice to redeem such pledge or of such sale, and when so filed, said report of sale and of such service or posting, or a certified copy thereof, shall be prima facie evidence of the facts therein stated. (Act Apr. 24, 1931, c. 329, §1.)

### CONDITIONAL SALES

#### 8360. When void unless filed.

##### 1/2. Conditional sales in general.

The seller in a conditional sale contract reserves the absolute title which remains in him or passes from him to the purchaser accordingly as to the conditions of the sale are broken or as they are performed. 176M483, 223 NW908.

Reducing to judgment a past-due installment payment is an election to treat the sale as absolute. 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.

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

Plaintiff could recover as damages the value of an automobile lost by a garage through negligence, though plaintiff purchased it under a conditional sale contract and had not paid all of the purchase price. 177M10, 224 NW271.

In this action of replevin, the plaintiff failed to prove default under the conditional sales contract upon which it based its right to possession. 181M477, 233NW18. See Dun. Dig. 8652.

In conditional seller's suit for conversion of motor truck, evidence held to sustain finding that purchaser had actual notice of contract. International Harvester Co. of America v. N., 184M635, 239NW662. See Dun. Dig. 1951(91).

Where a seller in a conditional sale contract repossesses the property because of default in payments, and sells the same, the contract is functus officio. Stemland v. C., 186M384, 243NW708. See Dun. Dig. 8652.

A contract transferring a gasoline powered shovel to highway subcontractor did not impose liability on principal contractor or his bondsman for rentals provided for, where contract was, in fact, conditional sale. Motor Power Equipment Co. v. P., 247NW244. See Dun. Dig. 1054.

Contract denominated a lease and requiring payment of rentals, held, in law, a conditional sales contract. Motor Power Equipment Co. v. P., 247NW244. See Dun. Dig. 8648.

Plumbing and heating equipment installed under title retaining contract could be removed by seller where property would not be damaged thereby. North Shore Co. v. B., 247NW505. See Dun. Dig. 3770a(78).

Where defendant sold farm machinery under conditional sale contract to a dealer and it was in possession of dealer for sale on taxing day, it should not have been taxed to seller. State v. J. I. Case Co., 248NW726. See Dun. Dig. 9199(62).

##### 1. Who protected.

That a conditional sale was not recorded can be asserted only by a creditor who has acquired a superior

lien. Williams, (DC-Minn), 60F(2d)130. See Dun. Dig. 8655.

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may be removed by the seller on default in payments. 173M121, 216NW795.

Only those creditors who seize the property under legal processes are protected. 181M25, 231NW248.

Furnace sold under conditional sale contract remains personal property as between vendors and purchasers, even though annexed to realty. Pennig v. S., 249NW 39. See Dun. Dig. 3770a(78).

##### 4. Filing.

Conditional sale of automobile filed in the county where buyer resided was notice to subsequent claimants through buyer and his creditors, regardless of the place where the contract was made or payments were to be made. 181M477, 233NW18. See Dun. Dig. 8281, 8655.

##### 6. Burden of proof.

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.

#### 8361. Notice—Limit of time.

Rights of an innocent purchaser of a new and unregistered automobile from a retail dealer may be subject to those of the assignee of a prior and duly recorded conditional sales contract. Drew v. F., 185M133, 240NW114. See Dun. Dig. 8655.

#### 8363. Satisfaction.

No release by marginal notation. Op. Atty. Gen., Nov. 19, 1929.

**8363-1. Definitions.**—For the purposes of this act a conditional sale contract shall include all agreements where possession of personal property under either an agreement where title is reserved until the purchase price is paid or where personal property is rented under an agreement that when the entire rental is paid that title thereto shall be transferred. (Act Apr. 25, 1931, c. 339, §1.)

This act did not affect a contract entered into before its passage. Grossman v. L., 184M446, 238NW893. See Dun. Dig. 8648.

It was error to charge that manufacturer of milking machines was liable for electrocution of cows if it reserved title until machines were paid for and dealer had not yet paid for them, the machines being in the possession and control of the dealer. Diddams v. E., 185M270, 240NW895. See Dun. Dig. 6995.

A wrongful demand for and receipt of further payment from conditional purchaser who did not know that property had been reclaimed does not authorize purchaser to sue seller for a conversion of property prior to passage of this act. Stemland v. C., 186M384, 243NW 708. See Dun. Dig. 8652a.

**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.

**Correction.**—Citation 162-261, 205+481 should be 162-261, 202+481.

See notes under §§8346, 8370.

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., 182M409, 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 sales 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 redemption after forfeiture, nor prevent the vendor from retaking and forfeiting the property. 176M493, 223NW911.

Evidence held to sustain finding that mother and not son living in the same house purchased groceries. Buro v. M., 183M518, 237NW186.

The terms "measurement and acceptance" in the contract were ambiguous, and the meaning intended by the parties was likewise properly submitted. Hayday v. H., 184M8, 237NW600. See Dun. Dig. 8629b.

Contract for the sale of 20,000 cords of pulpwood, for "measurement and acceptance" on board cars at buyer's dock, as Erie, Pa., was properly held ambiguous as to being entire or severable in cargoes, and its construction with respect to intent correctly submitted to the jury. Hayday v. H., 184M8, 237NW600. See Dun. Dig. 8629b.

A remainder in personal property cannot be created by parol. Mowry v. T., 250NW52. See Dun. Dig. 3171a, 8870.

Oral remainder in personal property having failed, there was reversion of property to donor by operation of law and subsequent conveyance thereof by donor to remainderman gave him right to recover same from executors of donee. Id.

##### 8377. Capacity—Liabilities for necessities.

When infant, by fraudulent representation that he is of age, induces another to sell property to him, such other person may recoup damage due to depreciation of property when infant rescinds purchase and sues for what he has paid. Steigerwalt v. W., 186M558, 244NW412. See Dun. Dig. 4435(18).

A minor may purchase stock in a credit union. Op. Atty. Gen., Dec. 21, 1931.

#### FORMALITIES OF THE CONTRACT

##### 8379. Statute of frauds.

Evidence sustains finding that the time of performance of a written contract for the sale of merchandise was extended by a parol agreement. Bemis Bros. Bag Co. v. N., 183M577, 237NW586. See Dun. Dig. 8870.

The time of performance of a written contract for the sale of merchandise may be extended by parol without additional consideration and without offending the statute of frauds. Bemis Bros. Bag Co. v. N., 183M577, 237NW586. See Dun. Dig. 8870.

#### 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, 214NW27.

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. 181M603, 233NW313. See Dun. Dig. 8627.