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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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A devisee who acquired property by will at a time when no mortgage was registered and who did not have notice of the instrument executed by the devisor acquired a title subject to having the instrument registered as a paramount lien on order of the district court. *Id.* See Dun. Dig. 8302.

An instrument in the form of a mortgage in which the owner's spouse does not join can be registered under certain conditions when ordered by district court. *Id.* See Dun. Dig. 8280.

8295. New certificate—Interest less than fee.

Registrar need not memorialize old age lien certificates upon owner's duplicate. *Op. Atty. Gen.* (521p-4), Jan. 8, 1940.

8300. Mortgage.

Finnegan v. G., 292NW22; note under §8293.

8301. Registration of mortgage.

Finnegan v. G., 292NW22; note under §8293.

8309. Judgments a lien, when; etc.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of registrar of deeds for improvement upon land not registered under *Torrens Act*. *Armstrong v. L.*, 296NW405. See Dun. Dig. 6062.

8328. Registrar's fees.

(4).

In view of §3199-26(6) register of deeds paid only on a fee basis is entitled to a fee of only 25 cents in filing a certificate of lien in respect of old age assistance payments, though such certificate necessitates entry of a memorial on register or a cancellation in connection with registered lands. *Op. Atty. Gen.* (521p-4), Jan. 31, 1940.

CHAPTER 65A

Registration of Certain Trade-Names

COMMON LAW DECISIONS

RELATING TO

TRADE-MARKS AND TRADE NAMES IN GENERAL

2. Unfair competition.

Manufacturer of "Parchesi" held entitled to prelim-

inary injunction restraining use of name "Parchesi" and "Parchisi" pending determination of suit for trade-mark infringement and unfair competition. *Selchow & Righter Co. v. W.*, (CCA7, 112F(2d)430, aff'g (DC-Wis), 29FSupp 569.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

1. Nature.

Homestead exemption is a creature of statute. *Dimke v. F.*, 295NW75. See Dun. Dig. 4195.

United States held not a person within state exemption law. *Troutman v. E.*, 28NE(2d)(Ohio)953.

Homesteads—application of Minnesota statutes. 25 MinnLawRev66.

8340. No alienation without consent of spouse—Exceptions.

Lien against recipient of old age assistance is valid even without the consent of spouse. *Dimke v. F.*, 295NW 75. See Dun. Dig. 4211.

8342. Sale or removal permitted.

2. Notice of claim—Abandonment.

Filing notice under this section has no effect upon homestead rights for taxation purposes. *Op. Atty. Gen.*, (232d), May 13, 1940.

CHAPTER 67

Chattel Mortgages, Pledges and Conditional Sales

CHATTEL MORTGAGES

8345. Mortgages, when void.

½. In general.

Sig Ellingson & Co. v. M., 286NW713. *Cert. den.*, 60SCR 130. *Reh. den.*, 60SCR178.

Future advance provision in chattel mortgage held to cover additional loans by the mortgagee to the mortgagor even though they be secured by additional collateral. *State Finance Co. v. L.*, (CCA9), 113F(2d)59.

Mortgage filed in Minnesota would not be invalid for usury under Minnesota law, if it was valid in state where executed and where it is to be performed. *State v. Rivers*, 287NW790. See Dun. Dig. 1537.

Where there is no writing there is no "trust receipt transactions" and the case is governed by pre-existing law. *Associates Discount Corp. v. C.*, 30NE(2d)(Mass)876.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

10. What is good faith—Evidence of.

A finance corporation which loans money to an automobile dealer in exchange for trust receipts delivered to it before dealer received title to automobile was not a bona fide purchaser within meaning of *Uniform Trust Receipts Act*. *Metropolitan Finance Corp. v. M.*, 109Pac (2d)(Cal)969.

14. Motor vehicles.

Holder of a motor vehicle lien for storage or repairs is not estopped by his mere silence to assert his superior right against a purchaser with notice of foreclosure sale under chattel mortgage, though such purchaser believed lien to be outlawed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

Under Trust Receipts Law purchaser of car from dealer was entitled to ownership of car as against finance company's claim of ownership by reason of trust receipt,

where purchaser acted in good faith and without knowledge, and purchaser was a "buyer in the ordinary course of trade" though car acquired was not the one originally ordered. *Commercial Discount Co. v. M.*, 108Pac(2d)(Cal App)735.

19. Pledges.

Pledgee of a chose in action, under extreme circumstances indicating that loss to all concerned would have resulted if it had not accepted exchange of securities provided for by reorganization in bankruptcy of debtor, held properly to have accepted exchange as a compromise where procedure resulting in exchange was participated in by representatives of pledgor's estate without objection either to procedure or result. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 7744.

Pledgee of chose in action is under no absolute duty to collect full amount of obligation, duty being one of good faith and reasonable diligence in realization of as much as possible for himself and pledgor. *Id.*

8345-2. Mortgage to contain receipt of mortgagor.

A combined farm lease and chattel mortgage may not be filed where it does not contain mortgagor's receipt. *Op. Atty. Gen.* (373B-5), March 11, 1940.

8346. When filed.

½. In general.

The law of Wisconsin is that neither a sale by the mortgagor of property subject to a chattel mortgage, nor a subsequent sale by his vendee constitutes a conversion of the property described in the chattel mortgage. *U. S. v. Rogers & Rogers*, (DC-Minn), 36FSupp79.

8348. Index books—Limit of lien—When notice.

Sig Ellingson & Co. v. M., 286NW713. *Cert. den.*, 60SCR 130. *Reh. den.*, 60SCR178.

Giving of a chattel mortgage in usual form to secure a note after its due date was an acknowledgment and tolled statute of limitations so that it began to run from date of such acknowledgment. *Reconstruction Finance Corp. v. O.*, 290NW230. See Dun. Dig. 5624.

8358. Mortgaged property subject to garnishment, etc.

Where defendant was liable as endorser upon promissory note made by bankrupt third party, payable to garnishee bank, which held as collateral accounts receivable of bankrupt and an "office check" payable to defendant by garnishee, funds represented by office check were payable only upon contingency that pledged receivables would be sufficient to retire principal to garnishee, there was a "contingency" which prevented garnishment. *S. T. McKnight Co. v. T.*, 296NW569. See Dun. Dig. 3967.

CONDITIONAL SALES

8360. When void unless filed.

Conditional sales contracts for motor vehicles. Laws 1941, c. 452.

3. Conditional sales in general.

Right of vendee to recover sums paid under rescinded contract does not rest on the agreement, but is grounded on theory that vendor, having obtained money under a contract made void by rescission, is unjustly enriched at vendee's expense and should be subjected to a legal duty to restore that which has been improperly gained, and in replevin by assignee of vendor's interest in a conditional sales contract, plaintiff may not be subjected to counterclaim for money paid to vendor based on rescission. *Kavli v. L.*, 292NW210. See Dun. Dig. 8652.

1. Who protected.

Where finance company purchased cars from manufacturer and sold them to dealer under conditional sales contracts, finance company was protected as against an attaching creditor by Uniform Trust Receipts Law, even if title passed from manufacturer to dealer rather than to finance company thereby nullifying the conditional sales contracts as such. *Universal Credit Co. v. M.*, 105 Pac(2d)(Cal)1003.

Where conditional sales contract was not filed immediately, but previous to sale of chattels by conditional buyer to third person, filing of contract constituted constructive notice to third person of state of title. *Duro Co. v. W.*, 16Atl(2d)(NJ)64.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

8362. Same.

Rights of a good faith purchaser from registered automobile owner are subject to those of assignee of a prior and duly recorded conditional sale contract. *Slawik v. C.*, 296NW496. See Dun. Dig. 8655.

8363-1. Definitions.

Under Pennsylvania act conditional sales contract and refiled contract covering bottling equipment of a brewery, which was not placed in the brewery itself but attached to its ice plant, held invalid against state court receiver and trustee in bankruptcy where real estate to which bottling equipment was annexed was not properly described in the statement accompanying the filed contract, in the body of the contract, nor in the refiled contract, Pennsylvania having adopted the institutional theory under which normal improvements enhancing the value of the freehold are within the coverage of a mortgage on an industrial plant whose chief value is its

attribute as a business institution. *Brownsville Brewing Co.*, (CCA3)117F(2d)463, 45AmB(NS)402.

8363-2. Seller to give notice.

Whether oral agreement extending time for performance was supported by consideration or not; vendor must still abide by it and cannot retake property conditionally sold during period of extension without being liable for conversion. *Hafiz v. M.*, 287NW677. See Dun. Dig. 8652.

Vendor in conditional sale of automobile waived any right it might have had by virtue of letter giving notice of intention to repossess by subsequently agreeing to an extension of time completely inconsistent with letter. *Id.* See Dun. Dig. 8652.

Evidence sustains conclusion of lower court that plaintiff suffered damage to the extent of \$289 for conversion of automobile by conditional vendor. *Id.* See Dun. Dig. 8652a.

In action to recover damages for conversion of a conditional vendee's interest in automobile, evidence held to sustain finding that there was an oral agreement to extend time for performance of contract. *Id.* See Dun. Dig. 8652a.

Court of equity should not accord a conditional vendor remedy by foreclosure of right of redemption since conditional vendor has a conditional title, not a lien, and his remedy is replevin. *McManus Labs. v. M.*, 21NYS(2d) 826.

8363-6. Motor vehicles—Repossession by seller—Reinstatement of contract.—Whenever any motor vehicle is possessed or repossessed by the seller or assignee of the seller under and by virtue of a default in the terms of any contract of sale conditioned that the title to the property for or on account of which the same was given shall remain in the vendor, the person possessing or repossessing the same, in the event that 50 per cent or more of the original purchase price has been paid, shall hold and retain such motor vehicle in his possession, and shall not sell or dispose of the same or transfer title thereto, for a period of 30 days after the date of such possession or repossession. During such 30 day period the purchaser under such contract may regain possession thereof and reinstate the contract by payment of the amount due on the contract. (Act Apr. 25, 1941, c. 452, 1.)

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

8364. Bill of sale and other instruments; etc.

A trust receipt authorized by the Uniform Trust Receipt Act is not a note or chattel mortgage exempt from taxation under the California Personal Income Tax Act. *Commercial Discount Co. v. L.*, 105Pac(2d)(Cal)115.

8365. Filing—Fees.

Section 8365, as amended by Laws 1935, chapter 168, supersedes §7002(c), and register of deeds should receive 25 cents and no more for furnishing a certified copy of chattel mortgage filed with him. *Op. Atty. Gen.*, (373B-10(e)), Oct. 18, 1939.

CHAPTER 67A

Sale of Goods

PART I

FORMATION OF THE CONTRACT

8376. Contracts to sell and sales.

Interstate character of a sale, made on a contract for purchase of goods which are to be shipped from another state, is not affected by fact that goods are consigned to shipper or his agent to whom order is given and are to be delivered by such agent, nor by employment of another agent or agency for delivery of goods purchased or by fact that goods ordered by several purchasers are shipped in bulk to agent and are delivered by agent to respective purchasers after breaking bulk. *City of Waseca v. B.*, 288NW229. See Dun. Dig. 4894.

In action for breach of contract by one who traded in a car against dealer who agreed to sell new car on conditional sales contract, wherein contract was made on basis of \$200.00 balance owing finance company on old car instead of \$438.00, evidence held to sustain finding of unilateral mistake on part of dealer which was well known to the plaintiff, warranting reformation. *Rigby v. N.*, 292NW751. See Dun. Dig. 8329.

FORMALITIES OF THE CONTRACT

8379. Statute of frauds.

1. In general.

Despite fact that conditional sales contract may have been within statute of frauds and therefore required to be in writing, time for performance could be extended by an oral agreement entered into at a time subsequent to reduction of contract to writing. *Hafiz v. M.*, 287NW677. See Dun. Dig. 8855.

6. Contracts held not within the statute.

Employer wishing to sell stock to employees, transferred a block of stock to an investment banker, and latter made sale to plaintiff employee, verbally agreeing with employee to repurchase the stock in case employment was terminated, held that repurchase agreement was the undertaking of the banker, and not of the employer, and the sale and agreement to repurchase was a single transaction, the partial performance of which took it out of the statute of frauds. *Hassey v. A.*, 28NE (2d)164, 306IllApp37.