89

THE GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY

HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY

FRANCIS B. TIFFANY and Others

AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787, THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

ST. PAUL, MINN.

WEST PUBLISHING CO.

1894

CHAPTER 39.

CHATTEL MORTGAGES.

[CONDITIONAL SALES AND LIENS UPON CROPS.]

[TITLE 1.]

[CHATTEL MORTGAGES.]

§ 4129. Chattel mortgage void, unless filed.

Every mortgage on personal property which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession, of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless it appears that such mortgage was executed in good faith, and not for the purpose of defrauding any creditor, and unless the mortgage, or a true copy thereof, is filed as hereinafter provided.

(G. S. 1866, c. 39, § 1; G. S. 1878, c. 39, § 1.)

4129
62-NW . 441
61-NW . 138
61-NW 1131
60-NW . 343

4129-4147
95 . 215

A chattel mortgage upon exempt personal property, executed by a married man, a housekeeper, to secure the purchase money, given pursuant to the agreement upon which the property was purchased, is valid without the wife's signature. Barker v. Kelderhouse, 8 Minn. 207, (Gil. 178.)

4129
65-NW 123
66-NW 971
68-NW 26
69-NW 922

As to the validity of a chattel mortgage upon crops, see Lamson v. Moffat, (Wis.) 21 N. W. Rep. 62; Wheeler v. Becker, (Iowa,) 28 N. W. Rep. 40; Barr v. Cannon, (Iowa,) Id. 413; Miller v. McCormick Harvesting-Machine Co., 35 Minn. 399, 29 N. W. Rep. 52.

This section is not applicable to the vendee of a mortgagee in possession, and therefore it is not incumbent upon such vendee to show in the first instance, in defense of his title, that the mortgage was made in good faith, and not for the purpose of defrauding creditors. Marsh v. Armstrong, 20 Minn. 81, (Gil. 66.)

4129-4147
97 - 292

If a mortgage, which permits the goods to remain with the mortgagor for purposes of sales by him, requires the proceeds of the sales to be paid directly to the mortgagee, in payment of the mortgage debt, the mortgage is not necessarily fraudulent as against creditors of the mortgagor. Bannon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237. Where possession is retained by the mortgagor, the burden of proof rests on the mortgagee to show that the chattel mortgage was executed in good faith; but in the absence of proceedings under the insolvent act a mortgage is not to be deemed fraudulent or void simply because it was intended to prefer the mortgagee to other creditors. Id. What facts will render a mortgage void as to creditors, and particularly the effect of an agreement permitting the mortgagor to retain possession, and sell and dispose of the mortgaged property; when the intent to defraud must exist; and the rights of *bona fide* purchasers from the mortgagor of an unfiled mortgage,—see Horton v. Williams, 21 Minn. 187; Chophard v. Bayard, 4 Minn. 533, (Gil. 418.)

4129-4159
69-NW 223
69-NW 809

4129
64-M - 254
67-M - 290
68-M - 88
69-M - 72
70-NW 869
71-NW 391

Evidence to show fraud on creditors by reason of power of disposition retained by mortgagor. Filebeck v. Bean, 45 Minn. 307, 47 N. W. Rep. 969.

4129
65-M - 274

A mortgage of stock and fixtures which authorizes the mortgagor to retain possession and sell the goods, requiring him to keep up the stock, is void as to all the property as against existing or subsequent creditors and an assignee or receiver in insolvency. Gallagher v. Rosenfield, 47 Minn. 507, 50 N. W. Rep. 696.

4129-4159
99 - 18

When a mortgage is fraudulent as to creditors, the mortgagee is not protected by taking possession in proceedings to foreclose. Id.

4129-4147
01 - 146
01 - 320
01 - 355

When a party claims under a chattel mortgage, the burden is upon him to show any delivery or change of possession of the things mortgaged which may be necessary to make the mortgage valid. McCarthy v. Grace, 23 Minn. 182. The fact that the sheriff who makes the levy is the mortgagee in a chattel mortgage upon the things levied upon, is not notice to the levying creditor of the existence of the mortgage. Id.

4129-4159
79-NW 604

As against an attachment creditor of a mortgagor of a stock of goods destroyed by

4129
74-M - 130
77-M - 126
79-M - 153
79-NW 604
81-NW 880

fire, who seeks to garnishee the insurance money, made payable to the mortgagee by the policy, "as his interest may appear," such mortgage, if valid on its face, and given in good faith, is sufficient to uphold the right of the claimant to the insurance money, to the amount actually due thereon, though the mortgage was never filed for record. Coykendall v. Ladd, 32 Minn. 529, 21 N. W. Rep. 733.

The provision requiring the filing of chattel mortgages, where the mortgagor retains possession of the mortgaged property, does not make the filing of the mortgage legally equivalent to actual delivery and continued change of possession. Horton v. Williams, 21 Minn. 187.

Where a chattel mortgage, or a copy, is duly filed, the leaving of possession of the property with the mortgagor only makes the mortgage *prima facie* fraudulent. Braley v. Byrnes, 25 Minn. 297.

Where the possession is not delivered, a prior mortgage will be postponed to a subsequent *bona fide* mortgage, if not duly filed when the latter is executed, although the former may be subsequently filed prior to the filing of the second mortgage. Bank of Farmington v. Ellis, 30 Minn. 270, 15 N. W. Rep. 243. Followed in Mullen v. Noonan, 44 Minn. 541, 47 N. W. Rep. 164.

A subsequent mortgagee, with notice (by a recital in his mortgage) of a prior voidable mortgage, cannot have the benefit of the requirement as to good faith in this section. Tolbert v. Horton, 31 Minn. 518, 18 N. W. Rep. 647. See, also, Ward v. Anderberg, 31 Minn. 304, 17 N. W. Rep. 630.

A sale was made subject to a chattel mortgage, which had been filed, and the buyer mortgaged the property. Held, that neither the buyer nor his mortgagee could attack the first mortgage on the ground of fraud. Ludlum v. Rothschild, 41 Minn. 218, 43 N. W. Rep. 137.

One not a subsequent creditor or mortgagee, or a creditor who has laid hold of mortgaged property, cannot object that the mortgage was not executed in good faith. Ellingboe v. Brakken, 36 Minn. 156, 30 N. W. Rep. 659; Howe v. Cochran, 47 Minn. 403, 50 N. W. Rep. 368.

One claiming, as a purchaser, adversely to the mortgagee in an unrecorded mortgage, must show that he is a *bona fide* purchaser. McNeil v. Finnegan, 33 Minn. 375, 23 N. W. Rep. 540.

Where a second mortgagee claims adversely to the mortgagee in an unrecorded mortgage, want of notice may be inferred from taking for a valuable consideration in the ordinary course of business. Wright v. Larson, 51 Minn. 321, 53 N. W. Rep. 712.

An unfiled mortgage of goods remaining in the possession of the mortgagor is presumptively fraudulent as to subsequent creditors without notice. A receiver may dispute its validity without proof of actual fraud. Baker v. Pottle, 48 Minn. 479, 51 N. W. Rep. 388.

Withholding from record, to create credit, is fraudulent as against a subsequent creditor relying on the false appearance. Id.

The record of a bill of sale, intended merely as security for a debt, and filed as a chattel mortgage, but not duly acknowledged, is not constructive notice to creditors; but creditors having actual notice will be subordinated to the mortgagee. St. Paul Title Ins. & Trust Co. v. Berkey, 52 Minn. 497, 55 N. W. Rep. 60.

For a clause in a lease held to be in effect a chattel mortgage, under the provision requiring chattel mortgages to be filed, see Merrill v. Ressler, 37 Minn. 82, 33 N. W. Rep. 117.

As to the sufficiency of the filing, under the previous statute, (Comp St. c. 22, § 3,) see Eddy v. Caldwell, 7 Minn. 225, (Gil. 166;) Lienau v. Moran, 5 Minn. 482, (Gil. 386.)

See Farmers' Loan & Trust Co. v. Minneapolis E. & M. Works, 35 Minn. 543, 29 N. W. Rep. 349; Ferguson v. Hogan, 25 Minn. 135; Gorham v. Summers, 25 Minn. 81; King v. Lacrosse, 42 Minn. 488, 44 N. W. Rep. 517; Fish v. McDonnell, 42 Minn. 519, 44 N. W. Rep. 535.

§ 4130. Place of filing—Entries in record.

4130
62-NW . 383

4130
68-NW 26

4130
65-M - 274
69-M - 72
71-NW 922
75-NW 710

4130
71-M - 235
72-M - 497

Every such instrument shall be filed in the town, city, or village where the property mortgaged is at the time of the execution of such mortgage, and a copy thereof filed in the town, city, or village where the mortgagor, if a resident of this state, resides at the time of the execution thereof. In each town such instrument shall be filed in the office of the town clerk thereof, and in the several cities and villages, in the office of the recorder, clerk, or other officer in whose custody the records of the city or village are kept; and each of the officers hereinbefore named shall file all such instruments when presented for that purpose, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book to be provided by him at the expense of the town, city, or village, with an alphabetical index thereto, under the head of mortgagors and mortgagees, respectively, the names of each party to such instrument, and in separate columns opposite such names the number of the

instrument, the date, the amount secured thereby, when due, and the date of filing the same. Such instrument or copy shall remain on file for the inspection of all persons interested.

(G. S. 1866, c. 39, § 2; G. S. 1878, c. 39, § 2; as amended 1883, c. 38, § 1.)

The mortgagor resided, and the property mortgaged was situated, in an incorporated village. Held, that the proper place for filing such mortgage, or a copy thereof, under this section, prior to the amendment, was at the office of the town clerk of the township in which the village was situated, and not the office of the recorder or clerk of the village. Moriarty v. Gullickson, 22 Minn. 39.

The mortgaged property was situated in the borough of Belle Plaine, where the parties also resided. By the act creating such borough (Sp. Laws 1868, c. 36) it remained, for all purposes not designated in such act, a part of the town of Belle Plaine. Held, that the chattel mortgage in question was properly filed in the office of the clerk of the town of Belle Plaine, and that the provisions of this chapter do not include such boroughs. Bannon v. Bowler, 34 Minn. 416, 26 N. W. Rep. 237.

Where the mortgagor resides in one town, and the property is in another, the mortgage must, as to subsequent bona fide purchasers, be filed in both towns. Lundberg v. Northwestern Elevator Co., 42 Minn. 37, 43 N. W. Rep. 685.

As to filing a mortgage upon crops, see Miller v. McCormick Harvesting-Machine Co., 35 Minn. 399, 29 N. W. Rep. 52.

The word "filed," as applied to a chattel mortgage in §§ 4129–4131, does not include the indorsing and indexing prescribed by § 4130; but a chattel mortgage is filed, within the meaning of the statute relating to chattel mortgages, when it is delivered to, and received and kept by, the proper officer, for the purpose of notice mentioned in the statute. Gorham v. Summers, 25 Minn. 81. A chattel mortgage is filed, within the meaning of this chapter, when it is delivered to, and received and kept by, the proper officer, and his failure to properly indorse and index the same, as required by this section, will not affect such filing as notice. Gorham v. Summers, 25 Minn. 81, followed. Hodge v. Twitchell, 33 Minn. 389, 23 N. W. Rep. 547.

The mortgage is "filed," notwithstanding that the clerk omits to place it with the other chattel mortgages in his office. Appleton Mill Co. v. Warder, 42 Minn. 117, 43 N. W. Rep. 791.

Deposit for filing operates as a delivery to the mortgagee. In re Guyer, (Iowa,) 29 N. W. Rep. 826.

A bill of sale, absolute in form, but intended as security only, is not entitled to be filed as a chattel mortgage. Lathrop v. Clayton, 45 Minn. 124, 47 N. W. Rep. 544.

§ 4131. Effect of filing—Notice.

4131
69-NW 920

4131
71-M - 234

Every mortgage filed in pursuance of this chapter shall be held and considered to be full and sufficient notice, to all parties interested, of the existence and conditions thereof, but shall cease to be notice, as against the creditors of the mortgagor, and subsequent purchasers and mortgagees in good faith, after the expiration of two years from the filing thereof: *provided*, that no mortgage of goods and chattels shall be notice of any fact, as against the creditors of the mortgagor or subsequent purchasers or mortgagees in good faith, unless the same is acknowledged before some officer authorized to take acknowledgment of deeds.

(G. S. 1866, c. 39, § 3, as amended 1870, c. 59, § 1; G. S. 1878, c. 39, § 3. Amendment of 1875, c. 50, § 1, repealed by 1879, c. 65, § 5.)

See, also, §§ 4133, 4146, 4147.

The mere filing of the mortgage when the mortgagor retains possession of the mortgaged property is not legally equivalent to actual delivery and continued change of possession. Horton v. Williams, 21 Minn. 187.

The provision, originally enacted in 1860, requiring chattel mortgages to be filed in the office of the clerk of the town or city, and the filing to be renewed within 30 days preceding the expiration of a year from the filing, did not apply to mortgages executed before its passage. Foster v. Berkey, 8 Minn. 351, (Gil. 310.)

Under this section, as it stood in 1860, the filing of a chattel mortgage was notice of the mortgage to the sheriff levying upon the property under process against the mortgagor, which rendered unnecessary any other notice under § 2, c. 41, Laws 1862. Edson v. Newell, 14 Minn. 228, (Gil. 167.) Where a sheriff, within a year after the filing of a chattel mortgage, levied on and sold the property upon process against the mortgagor, the omission of the mortgagee to file a copy of the mortgage within 30 days preceding the expiration of the year did not affect his cause of action against the sheriff. Id.

As to sufficiency of certificate of acknowledgment, see Brunswick-Balke-Collender Co. v. Brackett, 37 Minn. 58, 33 N. W. Rep. 214. Absence of notarial seal, Thompson v. Scheid, 39 Minn. 102, 38 N. W. Rep. 801.

Notarial seal held sufficient, though on the opposite side of the paper. Evans v. Smith, 43 Minn. 59, 44 N. W. Rep. 850.

Though the notary taking the acknowledgment is disqualified by reason of interest,

if that fact does not appear from the instrument the filing will be notice to subsequent creditors and mortgagees. Bank of Benson v. Hove, 45 Minn. 40, 47 N. W. Rep. 449.

The record of a mortgage on growing crops is constructive notice to the buyer of the grain when harvested. Close v. Hodges, 44 Minn. 204, 46 N. W. Rep. 335.

The description of a white horse as "gray" held sufficient, the mortgage being filed, as to a purchaser not in fact misled. Adamson v. Fagan, 44 Minn. 489, 47 N. W. Rep. 56.

See, also, cases cited supra, §§ 4129, 4130.

4132
95 . 102

§ 4132. Unorganized counties—Filing.

Every chattel mortgage upon property situate, at the time of the execution of such mortgage, in a county not organized into townships, or in any unorganized township, and of which county the mortgagor is then a resident, shall be filed in the office of the register of deeds for such county; and the register of deeds of every such county shall file all such instruments when presented for that purpose, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book, to be provided by him at the expense of the county, with an alphabetical index thereto, under the head of mortgagors and mortgagees respectively, the names of each party to such instrument, and in separate columns, opposite to such names, the number of the instrument, the date, the amount secured thereby, when due, and the date of filing the same. Such instrument shall remain on file for the inspection of all persons interested.

(1876, c. 53, § 1; G. S. 1878, c. 39, § 4; as amended 1889, c. 79, § 1.)

§ 4133. Effect of filing—Two-years limitation—Notice.

Every mortgage filed in pursuance of this act shall be held and considered to be full and sufficient notice, to all parties interested, of the existence and conditions thereof, but shall cease to be notice, as against the creditors of the mortgagor, and subsequent purchasers and mortgagees in good faith, after the expiration of two years from the filing thereof: provided, that no mortgage of goods or chattels shall be notice of any fact, as against the creditors of the mortgagor, or subsequent purchasers or mortgagees in good faith, unless the same is acknowledged before some officer authorized to take acknowledgment of deeds.

(1876, c. 53, § 2; G. S. 1878, c. 39, § 5.)

Though a person finds a note and mortgage in the possession of the mortgagor, he has no right to assume from that fact alone, without examination of the records, that the mortgage has been satisfied, and if he does so he takes subject to the equities of the mortgagee. Geib v. Reynolds, 35 Minn. 331, 28 N. W. Rep. 923.

§ 4134. Acknowledgments before town clerks.

That township clerks are authorized and empowered to take and certify acknowledgments of chattel mortgages, and acknowledgments so taken shall be valid and binding in law.

(1871, c. 53, § 1; G. S. 1878, c. 39, § 6.)

§ 4135. Certified copy—Evidence.

A copy of any such mortgage, or copy, filed and indorsed as aforesaid, together with any statement made in pursuance of this chapter, when certified by the clerk or other proper officer to be a true copy of the original on file in his office, shall be received in evidence in like manner and with like effect as the original mortgage or copy filed, and indorsement.

(G. S. 1866, c. 39, § 4; G. S. 1878, c. 39, § 7.)

See Ellingboe v. Brakken, 36 Minn. 156, 30 N. W. Rep. 659; Gorham v. Summers, 25 Minn. 81.

4136
83-NW 52

§ 4136. Redemption.

When the condition of a mortgage of personal property is broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same, at any time before the property is sold in pursuance of the contract between the parties, or the right of redemption is foreclosed as hereinafter provided.

(G. S. 1866, c. 39, § 5; G. S. 1878, c. 39, § 8.)

Formerly, at law, the mortgagee's title became absolute upon a default; but courts of law now accept the equitable rule that the right of redemption continues until it is

barred or foreclosed, in the manner provided by law or in the mortgage. Stromberg v. Lindberg, 25 Minn. 513.

Under this section and § 5327 the mortgagor's right of redemption is subject to the claim of the mortgagor's creditors, and may be reached by garnishment. Whether it can properly be reached by a levy upon the mortgaged goods in the rightful possession of the mortgagee, *quære*. Becker v. Dunham, 27 Minn. 32, 6 N. W. Rep. 406.

Where the maker of a note executes a chattel mortgage to secure it, he is, in the absence of a demand, entitled to the whole of the business hours of the last day of grace to pay the note, and is not in default until such time expires. Daly v. Proetz, 20 Minn. 411, (Gil. 363.)

§ 4137. Same—Action by mortgagor, when.

4137
79-M - 279
82-NW 588
83-NW 52

The person entitled to redeem shall pay or tender to the mortgagee, or person holding under him, the sum due on the mortgage, or offer performance of the thing to be done, and shall pay all reasonable and lawful charges and expenses incurred in the care and custody of the property, or otherwise arising from the mortgage; and if, upon such payment or performance, or tender thereof, the property is not forthwith restored, the person entitled to redeem may recover it in a civil action, with such damages as he may have sustained by the withholding thereof.

(G. S. 1866, c. 39, § 6; G. S. 1878, c. 39, § 9.)

The mortgagee held entitled to a lien for the expenses of an unsuccessful attempt to obtain the property. Reisan v. Mott, 42 Minn. 49, 43 N. W. Rep. 691.

Tender of the debt after maturity, though not kept good, discharges the lien. Requisites of proof of tender. Moore v. Norman, 43 Minn. 428, 45 N. W. Rep. 857.

To establish discharge by tender, the evidence must clearly prove an unconditional tender sufficient in amount. Bank of Benson v. Hove, 45 Minn. 40, 47 N. W. Rep. 449.

See Stromberg v. Lindberg, 25 Minn. 513.

§ 4138. Foreclosure—Notice and service.

4138
62-NW . 265

The mortgagee or his assigns, after condition broken, may give to the mortgagor, or the person in possession of the property claiming the same, written notice of his intention to foreclose the mortgage for breach of the condition thereof; which notice shall be served by leaving a copy with the mortgagor, or a person in possession of the property claiming the same, or by publishing it, at least once a week for three successive weeks, in a newspaper printed and published in the county or city where the mortgage is properly recorded, or where the property is situated, or if there is no such paper, in a newspaper printed and published at the capital of the state: provided, that nothing in this chapter contained shall deprive the mortgagee of his remedy by sale, in cases where such sale is authorized by the mortgage.

(G. S. 1866, c. 39, § 7; G. S. 1878, c. 39, § 10.)

When a chattel mortgage provides for the payment of "all expenses for the sale" of the mortgaged property out of the avails of such sale, only such expenses are intended as are incurred in doing such things as form part of the proceedings of sale. Ferguson v. Hogan, 25 Minn. 135.

Mortgagor's acceptance of a part of proceeds of the sale operating as an estoppel, see France v. Haynes, (Iowa,) 25 N. W. Rep. 98.

As to sale under authority in mortgage, see Campbell v. Wheeler, (Iowa,) 29 N. W. Rep. 613.

Foreclosure in case of a mortgage to several to secure separate debts, see Lyon v. Balentine, (Mich.) 29 N. W. Rep. 837.

See Stromberg v. Lindberg, 25 Minn. 513.

The owner of the debt, being the equitable owner of the mortgage, may foreclose in the name of the mortgagee, and affix the latter's name to the notice of sale. Carpenter v. Artisans' Sav. Bank, 44 Minn. 521, 47 N. W. Rep. 150.

§ 4139. Notice and proof of service to be filed.

The notice, with an affidavit of service, shall be filed wherever the mortgage is filed, and when so filed, the same, or a copy thereof, shall be admitted as evidence of the giving of such notice.

(G. S. 1866, c. 39, § 8; G. S. 1878, c. 39, § 11.)

§ 4140. Foreclosure, when complete.

If the money to be paid, or other thing to be done, is not paid or performed, or tender thereof made, within sixty days after such notice is so filed, the right to redeem shall be foreclosed.

(G. S. 1866, c. 39, § 9; G. S. 1878, c. 39, § 12.)

The holder of a chattel mortgage, foreclosing under the power of sale, if he can, without prejudice or great inconvenience to himself, satisfy his debt by a sale of part of the property, is bound so to sell if the interest of the mortgagor require it; and if he unnecessarily and in bad faith sell the whole, he is liable to the owner of the right of redemption for the damages caused by it. The claim of the owner of the right of redemption for such damages is not the subject of levy upon execution. Stromberg v. Lindberg, 25 Minn. 513.

§ 4141. Mortgage, when satisfied, to be discharged of record.

Whenever any mortgage, filed under the provisions of this chapter, has been paid, or the conditions thereof satisfied, the mortgagee, or his assignee or personal representatives shall give to the mortgagor, his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the mortgage and a description of the property thereby mortgaged, and that the same has been discharged in full; and on delivering said certificate in writing to the officer with whom such mortgage is filed, the said officer shall deliver said mortgage to the person producing said certificate, on payment of the sum of ten cents for filing said certificate, and shall file said certificate in his office, endorsing thereon the name of the county, town (or city or village), and the true date of filing the same, and shall keep and preserve said certificate among the records in his office, and shall write the word "satisfied," with the date, opposite to such mortgage, in the book in which such mortgages are entered.

(1872, c. 62, § 1; G. S. 1878, c. 39, § 13.)

Where a lease contains a chattel-mortgage clause as security for the lessee's performance of the covenants, the lessor's election to terminate the lease for a breach of covenant does not discharge the lien of the mortgage. Ludlum v. Rothschild, 41 Minn. 218, 43 N. W. Rep. 137.

4142
62-M - 338
64-NW 825

§ 4142. Fraudulent sale, etc., by mortgagor—Penalty—Evidence.

That if any person, having conveyed any article of personal property by mortgage, shall, during the existence of the lien or title created by such mortgage, sell, transfer, conceal, take, drive, or carry away, or in any way or manner dispose of, said property, or any part thereof, with intent to defraud, or cause or suffer the same to be done, without the written consent of the mortgagee of said property, he shall be deemed guilty of misdemeanor, and shall be liable to indictment, and, on conviction thereof, shall be punished by a fine not less than twice the value of the property so sold or disposed of, or confined in the county jail not exceeding one year, or both, at the discretion of the court, and until the fine and all costs of such prosecution are paid: *provided*, that the fact of sale, without the written consent of the mortgagee or assignee being established on the trial, shall be *prima facie* evidence of a fraudulent intent on the part of the vendor.

(1866, c. 30, § 1; G. S. 1878, c. 39, § 14; as amended 1883, c. 23, § 1.)

See §§ 6750, 6851.

The intent to defraud, mentioned in this section, is an intent to defraud the mortgagee therein named. Such intent is an essential ingredient of the offense defined by that section, so that an indictment under it, alleging no intent to defraud except one to defraud some person other than the mortgagee, is fatally defective. Such defect is not reached by Gen. St. 1878, c. 96, § 10, nor by c. 108, § 8 (§ 7345). State v. Ruhnke, 27 Minn. 309, 7 N. W. Rep. 264.

In an indictment under this section an allegation that the defendant sold and disposed of the property to one A. B. and divers other persons, whose names are to the grand jury unknown, charges only one offense. State v. Williams, 32 Minn. 537, 21 N. W. Rep. 746. The expression, "having conveyed by mortgage," as used in this statute, simply means, "having executed a mortgage." Id. It is not necessary to allege in the in-

dic ment that the defendant was the owner of the property mortgaged. A growing crop of grain is personal property within the meaning of this statute. Id.

As to the sufficiency of the commitment in criminal proceedings against a mortgagor, under this section, see Collins v Brackett, 34 Minn. 339, 25 N. W. Rep. 708.

See Tootle v. Taylor, (Iowa,) 21 N. W. Rep. 115; Walker v. Camp, (Iowa,) 27 N. W. Rep. 800; State v. Hards, (Neb.) 27 N. W. Rep. 139.

§ 4143. Foreclosure by sale—Notice.

4143 89-M . 231

Whenever the mortgagee in a chattel mortgage has a remedy by sale of the mortgaged property, authorized by the terms of the mortgage in case of default, such mortgaged property shall not be sold at private sale, but only upon previous written notice, given at least ten days before such sale, by serving a copy of such notice upon the mortgagor, or upon the person in possession of the property claiming the same, if such person can be found within the city, village, or town where the mortgage is filed; or, if such mortgagor or person cannot be found within such city, village, or town, then by posting three copies of such notice, as follows: One copy in each of three of the most public places of the city, village, or town where the mortgage is filed, or where the property is seized or taken under the mortgage.

(1879, c. 65, § 1; G. S. 1878, v. 2, c. 39, § 3a.)

A bona fide reasonable effort to find the mortgagor must be made. Powell v. Gagnon, 52 Minn. 232, 53 N. W. Rep. 1148.

§ 4144. Purchase by mortgagee or pledgee.

4144 62-NW . 265

4144 60-M - 207

Whenever a mortgagee or pledgee of personal property has a remedy to enforce his lien upon such property by sale thereof in case of default, by virtue of the contract creating such lien, any such mortgagee or pledgee, their legal representatives or assigns, may, fairly and in good faith, purchase such property, or any part thereof, at any sale so made: *provided*, that such sale, if such mortgagee or pledgee shall wish to bid thereat, shall be at public auction, and upon like notice as is required in case of execution sales in this state, and shall be conducted by the sheriff or his deputy of the county, or by a constable of the town in which such mortgaged or pledged property, or some part thereof, is situated at the time of giving such notice.

(1885, c. 171; G. S. 1878, v. 2, c. 39, § 12a.)

This section (Laws 1885, c. 171) does not dispense with the personal service of notice, when it can be made, required by § 4143. Powell v. Gagnon, 52 Minn. 232, 53 N. W. Rep. 1148.

The notice may be signed by the party. Id.

A void attempt to foreclose, in which the mortgagee bids in and retains the property, is not a conversion. Id.

A policeman "serving writs" in Minneapolis has authority, under this section, to conduct a mortgage sale. Oswald v. O'Brien, 48 Minn. 333, 51 N. W. Rep. 220.

§ 4145. Declaring forfeiture.

4145 63-NW 1114

4145 61-M - 529

4145 64-M - 214

No mortgagee, nor any one claiming under him, shall have any right, arbitrary, or without just cause, based upon the actual existence of facts, to declare any of the conditions or stipulations of a mortgage broken prior to the time of default in the payment of such mortgage, or prior to the time when the conditions of such mortgage should be performed.

(1879, c. 65, § 2; G. S. 1878, v. 2, c. 39, § 3b.)

The mortgage securing possession to the mortgagor until default or the mortgagee deemed himself insecure, the latter cannot recover the property without showing the condition broken, or that he deemed himself insecure. Kellogg v. Anderson, 40 Minn. 207, 41 N. W. Rep. 1045. Under a clause authorizing the mortgagee to take possession "whenever he deems himself insecure" he can only take it for just cause, based upon the existence of facts constituting a reasonable ground for belief. Deal v. D. M. Osborne & Co., 42 Minn. 102, 43 N. W. Rep. 845.

§ 4146. Limitation as against creditors, etc.

Every chattel mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers, or mortgages in good faith, after the expiration of two years from the time the same becomes due,

unless, before the expiration of the two years, the mortgagee, his agent or attorney, shall make and file as aforesaid an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property mentioned therein, which affidavit he shall annex to the instrument or copy on file, and shall indorse on said affidavit the time that it was filed.

(1879, c. 65, § 3; G. S. 1878, v. 2, c. 39, § 3c; as amended 1887, c. 58.)

See, also, §§ 4131, 4133.

See Game v. Whaley, 43 Minn. 234, 45 N. W. Rep. 228.

§ 4147. Affidavit of renewal.

The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against subsequent purchasers in good faith; but before the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with like effect. (1879, c. 65, § 4; G. S. 1878, v. 2, c. 39, § 3d.)

[TITLE 2.]

[CONDITIONAL SALES.]

See §§ 2730, 2731, as to conditional sales of railroad equipment.

4148
56-M . 244
56-M . 405
61-NW 1131

4148
63-M - 242
65-NW 455

4148-4153
97 - 292

4148
68-M 287
69-M - 69
71-NW 391
71-NW 921

4148–4150
75-M - 149

4148
71-M - 294

§ 4148. Conditional sales—Notes, etc., void, when.

Every note of hand, or other evidence of indebtedness, or contract, the conditions of which are that the title or ownership to the property for which said note or other evidence of indebtedness, or contract is given, remains in the vendor, shall be absolutely void as against the creditors of the vendee, and as against subsequent purchasers and mortgagees in good faith, unless the note, or other evidence of indebtedness or contract, or true copies thereof, or, if said contract be oral, then a memorandum expressing the terms and conditions thereof, be filed as hereinafter provided.

(1873, c. 65, § 1;[1] G. S. 1878, c. 39, § 15.)

See § 4219.

Such contracts, though not filed, are not void as to creditors having actual notice at the time of levy. Dyer v. Thorstad, 35 Minn. 534, 29 N. W. Rep. 345.

This section held to apply to an exchange of horses where one party had the right to rescind and retake his own should the other horse have a certain disease. Kinney v. Cay, 39 Minn. 210, 39 N. W. Rep. 140.

Where an instrument of the character mentioned in this section is not filed, notice to an assignee or receiver of the buyer is not notice to his creditors. Thomas Manuf'g Co. v. Foote, 46 Minn. 240, 48 N. W. Rep. 1019.

This section does not affect the right of a common carrier to rely on the presumption that, upon delivery of goods to him, their title vests in the consignee. Dyer v. Great Northern Ry Co., 51 Minn. 345, 53 N. W. Rep. 714.

A contract held to be one of consignment, and hence not within this section. Cortland Wagon Co. v. Sharvy, 52 Minn. 216, 53 N. W Rep. 1147.

See National Bank of Commerce v. Chicago, B. & N. R. Co., 44 Minn. 224, 231, 46 N. W. Rep. 342, 560; Bjork v. Bean (Minn.) 57 N. W. Rep. 657.

4149
56-M . 244
56-M . 405

4149
65-NW 455
63-M - 242

4149
69-M - 69
71-NW 921

4149
71-M - 294

§ 4149. Notes, etc.—Where filed—Index.

Every such note or other evidence of indebtedness or contract, or a copy thereof, shall be filed in the town, city, or village where the vendee resides at the time of the making thereof. In each town such instruments shall be filed in the office of the town-clerk thereof; and in the several cities and villages, in the office of the recorder, clerk, or other officer in whose custody the records are kept; and each of the officers hereinbefore named shall file all such instruments when presented for that purpose, indorse thereon the time of reception, the number thereof, and shall enter in a suitable book, to be provided by him at the expense of the town, city, or village, with an alphabetical in-

[1] An act to provide for filing certain notes, or other evidences of indebtedness, or contracts, in the office of town clerks. Approved March 10, 1873 (Laws 1873, c. 65).

dex thereto, under the head of vendor and vendee respectively, the names of each party to such instrument, and in separate columns opposite such names the number of the instrument, the date, the amount thereof, when due, and the date of filing the same. Such instrument or copy thereof shall remain on file for the inspection of all persons interested.

(1873, c. 65, § 2; G. S. 1878, c. 39, § 16; as amended 1883, c. 38, § 2; 1885, c. 76.)

See Dyer v. Thorstad, 35 Minn. 534, 29 N. W. Rep. 345; Thomas Manuf'g Co. v. Fo te, 46 Minn. 240, 241, 48 N. W. Rep. 1019.

§ 4150. Effect of filing as notice—Limitation.

4150
56-M . 244

Every note, or other evidence of indebtedness, or contract, filed in pursuance of this chapter, shall be held and considered to be full and sufficient notice, to all parties interested, of the existence and conditions thereof, but shall cease to be notice, as against the creditors of the vendee, and subsequent purchasers and mortgagees in good faith, after the expiration of one year from the day on which such note, or other evidence of indebtedness, or contract, became due.

(1873, c. 65, § 3; G. S. 1878, c. 39, § 17.)

§ 4151. Certified copies—Evidence.

A copy of any such note, or other evidence of indebtedness, or contract, or copy, filed and endorsed as aforesaid, together with any statement made in pursuance of this act, when certified by the clerk or other proper officer to be a true copy of the original on file in his office, shall be received in evidence in like manner and with like effect as the original instrument or copy filed or endorsed.

(1873, c. 65, § 4; G. S. 1878, c. 39, § 18.)

§ 4152. When paid to be satisfied of record.

Whenever any note, or other evidence of indebtedness, or contract, filed under the provisions of this act, has been paid, or the conditions thereof satisfied, the vendor, or his assignee or personal representatives, shall give to the vendee, or his assignee or personal representatives, a certificate in writing, under his hand, stating the date of the instrument, and that the same has been paid and discharged in full; and on delivering said certificate in writing to the officer with whom such instrument is filed, the said officer shall deliver said instrument to the person producing said certificate, and shall file said certificate in his office, endorsing thereon the name of the county, town, (or city or village,) and the true date of filing the same, and shall write the word "satisfied," with the date, opposite to such instrument, in the book in which such instruments are entered.

(1873, c. 65, § 5; G. S. 1878, c. 39, § 19.)

§ 4153. Fees.

The town clerk, and the recorder, clerk or other officer of any city or village, in whose custody the records of such village or city are kept, shall receive the sum of ten cents for filing every note, contract or other evidence of indebtedness, to be paid by the party presenting the same for filing, and the sum of ten cents for filing every certificate of discharge, to be paid by the party presenting the same for filing, which fee must be paid before such instruments or certificates shall be entitled to record.

(1873, c. 65, § 6; G. S. 1878, c. 39, § 20.)

[TITLE 3.]

[LIENS UPON CROPS.]

§ 4154. Mortgage of crops.

4154
55-M . 195
63-NW 1114

4154
61-M - 529
62-M - 143
64-NW 146

The mortgaging of crops before the seed thereof shall have been sown or planted, for more than one year in advance, is hereby forbidden, and all securities or mortgages hereafter executed on such crops are declared void and of no effect: *provided*, this act shall not apply to mortgages given upon crops to

4154-4159
97 - 200
97 - 292

secure part or all of the purchase price of lands upon which said crops may be sown or planted.

(1887, c. 176; G. S. 1878, v. 2, c. 39, § 14d.)

A mortgage on crops to be sown is not a lien upon the land, but only on the mortgagor's interest in the crops when they come into being. Simmons v. Anderson, 44 Minn. 487, 47 N. W. Rep. 52.

The crop mortgaged must be capable of identification. Walter A. Wood M. & R. M. Co. v. Minneapolis & N. E. Co., 48 Minn. 404, 51 N. W. Rep. 378.

See Ludlum v. Rothschild, 41 Minn. 218, 222, 43 N. W. Rep. 137.

See notes to §§ 4129, 4130.

4155
60-NW . 671
4155-4156
58-M - 538
57-M - 86
4155-4159
97 - 29

§ 4155. Note for seed grain—Lien on crop.

Any person who desires to secure a loan or purchase of sowing-seed at any time, may, at the time of receiving such seed, give a note or contract for the same to the party of whom he secures it, stating the amount and kind of seed, the terms of the loan or purchase, and the time and manner of return or payment: and the party furnishing such seed, and receiving such note or contract therefor, may acquire a just and valid lien upon the crop growing or raised from such seed, by filing, as hereinafter provided, said note or contract, or a true copy thereof, or a statement of the amount and kind of seed furnished, and the terms, time and manner of payment.

(1875, c. 93, § 1;[2] G. S. 1878, c. 39, § 21.)

See cases cited in note to §§ 4156, 4157.

4156
60-NW . 671

§ 4156. Notes, etc., where filed—Effect—Fees.

The note, contract, or statement, or copy thereof, mentioned in section twenty-one of said chapter thirty-nine, shall, in order to constitute such lien, be filed in the office of the town clerk of the town, or the clerk or recorder of the city or village, in which the borrower resides, or in which the land on which said seed is to be sown is situated; and said clerk or recorder shall receive, file, indorse, and enter the same in the same manner as is by law required in case of chattel mortgages, and shall receive the same fees therefor; and from the time of filing such note, contract, or statement, or copy thereof, the party loaning the seed, or assigns, shall have a valid first claim and lien upon the growing crops and the crops grown from such seed, to the amount and according to the terms of the contract, against all creditors and purchasers, as well as against the owner; and such lien shall not be affected by any exemption laws; and the filing aforesaid shall constitute a sufficient notice to all persons of the existence of such lien; but such lien shall cease after one year from the date of filing the same.

(1883, c. 38, § 3; G. S. 1878, v. 2, c. 39, § 22.)

The note or contract required to be given by this and the next preceding section, as a foundation for the lien, must be given immediately after, or contemporaneously with, the receiving of the seed. It cannot be given for seed to be furnished at some time after the execution of the note or contract. The note or contract must contain a statement of the quantity of seed actually furnished and received. A note for a quantity of wheat, a part of which was not furnished and was not to be furnished until after the execution of the note, and a part of which never was furnished, does not comply with the substantial requirements of the statute, and the party taking it cannot, through it, acquire the statutory lien for seed actually furnished. Kelly v. Seely, 27 Minn. 385, 7 N. W. Rep. 821.

No lien is created where the terms of the statute are not in fact complied with, and where the crop upon which the lien is claimed is not grown from the seed actually furnished by the party receiving the note. Wallace v. Palmer, 36 Minn. 126, 30 N. W. Rep. 445.

A seed-grain note held to create a lien on so much of the crop as was raised from the seed specified in it, although at the time of the purchase and giving of the note, the seed was not separated from a larger mass, and although the maker failed to sow some of it. Nash v. Brewster, 39 Minn. 530, 41 N. W. Rep. 105.

Evidence held to justify a finding that a seed-grain note had been actually furnished to sow the land. Ambuehl v. Matthews, 41 Minn. 537, 43 N. W. Rep. 477.

As to what furnishing of grain will support a seed-grain note. Warder-Bushnell

[2] An act to protect parties furnishing sowing-seed. Approved March 9, 1875 (Laws 1875, c. 93).

Glessner Co. v. Minnesota & D. Elevator Co., 44 Minn. 390, 46 N. W. Rep. 773; O'Brien v. Findeisen, 48 Minn. 213, 50 N. W. Rep. 1035.

A lien on a crop by virtue of a seed note in accordance with §§ 4155, 4156, has priority over a lien on the same crop acquired by means of a previously executed and filed chattel mortgage. McMahon v. Lundin (Minn.) 58 N. W. Rep. 827. Cf. Simmons v. Anderson, cited in note to § 4154.

See, also, Smith v. Roberts, 43 Minn. 342, 46 N. W. Rep. 336.

§ 4157. Enforcement of lien.

The party owning such note or contract, and having such lien, may, at any time after condition broken, proceed to take possession of the crop raised from the seed for which it was given, or so much thereof as he may be entitled to take or receive, according to the terms of such note or contract, and the necessary expense of taking the same; and upon the receipt of such payment or satisfaction, the lien shall become discharged.

(1883, c. 38, § 3; G. S. 1878, v. 2, c. 39, § 23.)

After condition broken, the lender has an adequate remedy by action of replevin, and cannot, therefore, have an injunction to prevent the borrower from disposing of the crop. Minnesota Linseed Oil Co. v. Maginnis, 32 Minn. 193, 196, 20 N. W. Rep. 85.

The holder of the note may maintain an action for conversion against the holder of a subordinate lien who has taken possession Nash v. Brewster, 39 Minn. 530, 41 N. W. Rep. 105.

§ 4158. Application of statute as to chattel mortgages.

The General Statutes relating to chattel mortgages, so far as not inconsistent with the provisions of this act, shall be applicable thereto.

(1883, c. 38, § 4; G. S. 1878, v. 2, c. 39, § 24.)

§ 4159. When act to take effect.

This act shall take effect and be in force from and after its passage, and shall also be retrospective in its operation, so far as any notes given or contracts executed under the provisions for the year A. D. eighteen hundred and seventy-five.

(1883, c. 38, § 5; G. S. 1878, v. 2, c. 39, § 25.)