

CHANGES

-IN THE-

General Statutes of 1878,

EFFECTED BY THE

GENERAL LAWS OF 1879 AND 1881,

Arranged with reference to the Chapter and Section Amended.

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

CHAPTER XXXIX.
CHATTEL MORTGAGES.

Strike out second provision of § 3, c. 39, pp. 529, 530. (*As amended 1870, c. 59, § 1, and 1875, c. 50, § 1, and 1879, c. 65, § 5.*)

*§ 3a. **Manner of sale.** 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.)

*§ 3b. **No arbitrary forfeiture.** 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. (*Id.* § 2.)

*§ 3c. **Limitation.** Every chattel mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of two years from the time of filing the same, or a copy thereof, unless before the expiration of the two years the mortgagee, his agent, or attorney shall make and annex to the instrument or copy on file as aforesaid, an affidavit setting forth the interest which the mortgagee has, by virtue of such mortgage, in the property therein mentioned, upon which affidavit the clerk shall indorse the time when the same was filed. (*Id.* § 3.)

*§ 3d. **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. (*Id.* § 4.)

See page 530.

CHAPTER XLI.

FRAUDS.

INSOLVENT LAW.*

*§ 34. **Assignment for benefit of creditors made within ten days after attachment or garnishment.** Whenever the property of any debtor is attached or levied upon by any officer, by virtue of any writ or process issued out of a court of record of this state, in favor of any creditor or garnishment made against any debtor, such debtor may, within ten days after the levying of such attachment, process, or garnishment shall have been made, make an assignment of all his property and estate, not exempt by law, for the equal benefit of all his creditors, in proportion to their respective valid claims, who shall file releases of their debts and claims against such creditors, [debtor,] as hereinafter provided, which assignment shall be made in accordance with and be governed by the laws of the state of Minnesota relating to assignments made by

(*An act to prevent debtors from giving preference to creditors, and to secure the equal distribution of the property of the debtors among their creditors, and for the release of debts against debtors. Approved March 1, 1881.)

debtors, except as herein provided; and upon the making of such assignment all attachments, levy, or garnishment so made shall be dissolved, upon the appointment and qualification of an assignee or receiver, and thereupon the officers shall deliver the property attached or levied upon to such assignee or receiver, unless the assignee shall, within five days after such assignment, file in the office of the clerk of the court, where such attachment was issued or judgment was rendered, a notice of his intention to retain such attachment, levy, or garnishment, in which case any such attachment, levy, or garnishment shall enure to the benefit of all the said creditors, and may be enforced by the assignee by his substitution in the action as such in the same manner as the plaintiff might have enforced the same had such assignment not been made: *provided, however*, that this section shall not apply to cases where an execution has been issued upon a judgment in an action where the complaint has been filed in the office of the clerk of the court twenty days prior to the entry of the judgment. (1881, c. 148, § 1.)

*§ 35. **Preference given by insolvent—application for receiver.** When any debtor, being insolvent, shall confess judgment, or do any act or make any conveyance whereby any one of his creditors shall obtain a preference over any other of his creditors, or shall omit to do any act which he might lawfully do to prevent any one of his creditors from obtaining preference over his other creditors, contrary to the intent of this act, or if he shall not, within ten days after any levy by attachment, execution, or garnishment made against him, make an assignment of all his property as provided in section one of this act, or within such time in good faith institute proceedings to vacate the attachment and execution or garnishment, or secure a release of such levy and defend against the said garnishment at the first opportunity, then, or within sixty days thereafter, any two or more of his creditors holding and owing debts or claims of not less than two hundred dollars in the aggregate amount, may make a petition to the district court, or a judge thereof, setting forth therein such matters and facts as may be pertinent, which petition may be heard in any county, in the discretion of the judge; and after notice given in pursuance of the order of the court, and in such manner as the court may direct, to the debtor and creditors sought to be preferred, of the time and place of hearing, the court, in term time, or a judge, in vacation, shall proceed summarily upon such petition to hear the parties and receive such evidence as may be proper; and if it shall appear to the court or judge that the debtor is insolvent, or has been giving or is about to give a preference to any of his creditors over other of his creditors, or any of them, or has refused or neglected to make an assignment of his property, as herein provided, the court or judge shall appoint a receiver, who shall take possession of all the debtor's property, evidences of property or indebtedness, books, papers, debts, choses in action, and estates of every kind of the debtor, including property attached or levied upon or garnished, in the manner and subject to the limitations herein provided, and of all property conveyed in violation of the provisions of this act, and have charge and control of the same, and of all debts or property garnished, except property exempt by law, and shall, within four months of the time of his appointment, unless the court or judge otherwise directs and allows further time, convert the same to money, and shall marshal and distribute the same among the several creditors in proportion to their several claims, who shall file releases of all claims against the insolvent debtor in consideration of the benefit of the provisions of this act, as hereinafter provided, whether their claims are due or to become due, and who shall come in and prove their respective claims within such time and in such manner as the court or judge shall direct; and the court or judge shall order the debtor to file a schedule of his debts, and to whom they are due or payable, and of his property, including all notes, accounts, and bills payable to him, and the proof thereof; and the payment of dividends in all proceedings shall be had under the provisions of the laws of this state relating to receivers, and the court or judge may order and direct such debtor to do whatever is necessary and proper to carry this act into effect. (*Id.* § 2.)

*§ 36. **Preference to creditors prohibited.** No assignment hereafter made for the benefit of such creditor shall give to any one creditor any preference over the claims of another creditor, except in cases expressly provided by law. If any insolvent

debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors shall obtain a preference over any other of his creditors, such insolvent debtor shall be deemed guilty of a misdemeanor and punished by a fine not exceeding five hundred dollars, and in default of payment shall be imprisoned in the county jail for a period not exceeding six months. The court may at any time, upon the filing of affidavits or other evidence satisfactory to the court, grant an order restraining such debtor from collecting any bills, notes, accounts, or other property, or from disposing of, or in any manner interfering with, the property of said estate, or may by writ of *ne exeat* or by order restrain said debtor from leaving the state until the further order of the court, or may require him at any time to appear and make full disclosure as to any disposition of property, or in relation to any other matter pertaining to said estate. (*Id.* § 3.)

*§ 37. **Conveyance in anticipation of insolvency and as preference.** Conveyances and payments made and securities given by any insolvent debtor, or a debtor in contemplation of insolvency, within four months of making an assignment as provided in section one of this act, with a view of giving a preference to any creditor upon a pre-existing debt, or to any persons under liability for such debtor, over another, shall be void as to all creditors or persons receiving the same, who shall have reasonable cause to believe that such debtor was insolvent; and all such conveyances made and securities given at any time, unaccompanied with a delivery or change of possession of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed before the commencement of such sixty days, shall be void as a preference as to any creditor; and the assignee may, by action or other proper proceedings, have all such conveyances, payments, and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and recover the payment so made, and convert all proceeds into money as provided in this act: *provided*, that the provisions of this act shall not apply to any payment or satisfaction in whole or in part of a past-due debt made in the usual course of business, without any intent on the part of the creditor to evade the provisions of this act. (*Id.* § 4.)

*§ 38. **Place of commencement of actions—admitting new parties.** All actions or proceedings, brought under the provisions of this chapter, shall be commenced in the county where the debtor, debtors, or any one of them resides, if a resident of this state, and if not a resident of this state, such action or proceeding may be brought in any county which the plaintiff shall designate in his complaint, or where such debtors, or any one of them, has property subject to attachment or levy. The court or judge may, at any time during the pendency of the petition under the second section of this act, allow new parties to come in and be joined in such petition, and such petition shall not be dismissed until after the expiration of twenty days from the time of notice by mail to each creditor, or by personal service upon each of such creditors. (*Id.* § 5.)

*§ 39. **Costs allowed petitioning creditors' attorney.** Costs in cases upon which attachments or levies are made, which are dissolved under the provisions of this act, and a reasonable fee, not exceeding twenty-five dollars, in the discretion of the court, to an attorney for creditors petitioning under this act, shall be preferred and be paid first by the receiver appointed hereunder. (*Id.* § 6.)

*§ 40. **Actions—in whose name to be prosecuted—General Laws applicable.** All actions and proceedings, to be commenced under the provisions of this act, may be commenced and prosecuted in the name of the assignee or receiver, appointed as herein provided, and all laws of the state of a general nature, applicable to receivers and assignments, and not in conflict with the provisions of this act, shall apply to assignees and receivers appointed hereunder, as the case may require. (*Id.* § 7.)

*§ 41. **Appeal from disallowance of claim—notice of disallowance.** Any creditor whose claim is disallowed in whole or in part by any assignee or receiver appointed or selected under this act, or under the provisions of the assignment laws of this state regarding the assignment of debtors, may appeal from such disallowance to the district court, and there have such claims tried as other civil actions. The assignee shall, within ten days after his disallowance of any claim, in whole or in part, give written notice to such creditor of such disallowance, which notice may be served

personally or by mail, as in other cases, on such creditor, his agent, or attorney, and thereupon such creditor may appeal from such disallowance within ten days after the service upon him of such notice of disallowance made by the assignee, and which notice may be served on such assignee personally or by mail, as aforesaid, and in case such service is by mail, the time within which such notice of appeal is to be given shall be within twenty days from the time of such notice of disallowance. (*Id.* § 8.)

*§ 42. **Death of assignee or receiver—filling vacancy.** In case of the death of any assignee or receiver, the court may appoint another to fill the vacancy, and the court may, for any proper cause, remove such assignee or receiver, and appoint another in his stead, and the court shall order such removal upon the vote of two-thirds in number and amount of the creditors. (*Id.* § 9.)

*§ 43. **When debtor is to be released from further claim.** No creditor of any insolvent debtor shall receive any benefit under the provisions of this act, or any payment of any share of the proceeds of the debtor's estate, unless he shall have first filed with the clerk of the district court, in consideration of the benefits of the provisions of this act, a release to the debtor of all claims other than such as may be paid under the provisions of this act for the benefit of such debtor, and thereupon the court or judge may direct that judgment be entered discharging such debtor from all claims or debts held by creditors who shall have filed such releases: *provided, however*, that when any creditor of such insolvent debtor who has made such assignment of his property, or of whose property a receiver has been appointed as provided in this act, alleges by complaint made to the judge before the time for the distribution of the insolvent's assets among his creditors, as herein provided, that such insolvent debtor has fraudulently concealed or fraudulently incumbered or disposed of any of his property with the intent to cheat and defraud his creditors, such judge may allow the insolvent debtor to appear before him, at a time and place to be designated by such judge, and after giving such complaining creditor notice of the time and place of hearing, in such manner as the judge may direct, the judge may proceed upon such complaint summarily, without the allegations therein being controverted or denied, and may hear such legal evidence as he may deem pertinent, relating to such fraudulent concealment, incumbrance, or disposal of said debtor's property as alleged in said creditor's complaint; and, after said hearing, said judge may, in his discretion, order or direct that all of said debtor's property and assets, not exempt by law, be distributed among his creditors, as hereinbefore provided, upon their filing such releases, or without their filing releases as aforesaid, and creditors may be examined in like manner in respect to the validity of their debts. (*Id.* § 10.)

*§ 44. **Notice of assignee's appointment.** Such assignee or receiver shall, within ten days after his appointment, publish a notice in a daily newspaper published at the capital of this state, and also in a daily or weekly newspaper in the county where the debtor, debtors, or any of them reside, if any is there published, and by sending notices through the mail to such creditors whose residences are known to the assignee or receiver of his appointment, and all creditors claiming to obtain the benefits of this act shall file with such assignee or receiver their claims, within twenty days after such publication. (*Id.* § 11.)

*§ 45. **Debts to have preference.** After the payment of costs, as herein provided, debts due the United States, the state of Minnesota, all taxes or assessments levied and unpaid, expenses of the assignment and of executing the trust, the assignee or receiver shall pay in full, if sufficient then remains for that purpose, the claims duly proven of all servants, clerks, or laborers, for personal services or wages owing from said debtor, for services performed for the three months preceding said assignment, not exceeding fifty dollars in each case, and the balance of said estate shall then be equally distributed among the general creditors thereof, under the direction of the court. (*Id.* § 12.)

See page 547.