

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 Sessions 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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Doubt as to whether a homestead exemption exists has been held to make a title unmarketable when there is a judgment on record against vendor, and a vendee is entitled to recover amount of such outstanding judgment following execution of contract. *Service & Security v. St. Paul Federal Sav. & Loan Ass'n*, 211M199, 300NW 811. See Dun. Dig. 10024.

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

Homesteads—application of Minnesota statutes. 25 MinnLawRev66.

#### 7. Liens of mechanics and materialmen.

A judgment by default for recovery of money for a debt for work done and material furnished in construction, repair, or improvement of debtor's homestead may be established by a provision in judgment incorporating a finding made under an amendment of allegations in complaint that work was done and material was furnished in deepening a well on premises constituting her "home" to effect that work was done and material was furnished in deepening a well on premises constituting her "homestead", describing it by its full legal description, or by extrinsic evidence showing that judgment was for such a debt, or by both. *Keys v. Schultz*, 212M 109, 2NW(2d)549. See Dun. Dig. 4209, 4210, 5068.

A duly docketed judgment for a debt for work done or materials furnished in construction, repair, or improvement thereof is a lien upon a homestead. *Id.* See Dun. Dig. 4209, 4210.

#### 13. Bankruptcy.

Lien of a judgment upon a homestead may be enforced by execution unaffected by debtor's discharge in bankruptcy. *Keys v. Schultz*, 212M109, 2NW(2d)549. See Dun. Dig. 749, 4209, 4210, 5068.

#### 14. Alienation.

Old-age assistance lien is enforceable as against an estate in land for life of recipient after recipient va-

cates property, and upon sale of land by such life tenant and remainderman, interest acquired by purchaser is subject to lien for old-age assistance, and proceeds of such sale are not exempt. *Op. Atty. Gen.* (521p-4), Apr. 18, 1942.

#### 8340. No alienation without consent of spouse—Exemptions.

Lien against recipient of old age assistance is valid even without the consent of spouse. *Dimke v. F.*, 209M 29, 295NW75. See Dun. Dig. 4211.

Where parents enter into oral contract with son to devise or convey homestead if son provides for parents throughout their lives, and the son fully performs, and benefits are accepted by both parents with full knowledge of the agreement, this statute cannot be invoked to prevent enforcement of the contract. *Seitz v. Sitze*, 215M452, 10NW(2d)426. See Dun. Dig. 4211, 4254.

If a deceased person were estopped by conduct from invoking homestead statute after performance of an oral contract to convey or devise real property, the heirs are likewise estopped. *Id.* See Dun. Dig. 4219a.

#### 8342. Sale or removal permitted.

##### 1. Sale and removal.

Old-age assistance lien is enforceable as against an estate in land for life of recipient after recipient vacates property, and upon sale of land by such life tenant and remainderman, interest acquired by purchaser is subject to lien for old-age assistance, and proceeds of such sale are not exempt. *Op. Atty. Gen.* (521p-4), Apr. 18, 1942.

##### 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.

*Mason City Production C. Ass'n v. S.*, 205M537, 286NW 713. *Cert. den.* 60SCR130. *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*, 206M85, 287NW790. See Dun. Dig. 1537.

Description in a chattel mortgage of mortgaged property is sufficient if it will enable a third person, aided by inquiries which instrument itself suggests, to identify the property. *Subra v. Harmer*, 212M190, 3NW(2d)101. See Dun. Dig. 1432.

A chattel mortgage describing so much of hay and feed raised on farm as might be necessary to feed mortgaged stock sufficiently described hay and feed stored in barn. *Id.* See Dun. Dig. 1434.

A long list of specified implements and machines on a farm covered items of hay, rope, wheel barrows, forks and fly sprayer under the ejusdem generis rule. *Id.* See Dun. Dig. 1434.

Description in chattel mortgage of livestock and farm equipment "together with all increase and the increase from the increase of the above described livestock, and all additions, betterments and repairs made to or upon the personal property" did not include personal property subsequently acquired by the mortgagor. *American State Bank v. Boyle*, 212M293, 4NW(2d)108. See Dun. Dig. 1432.

Chattel mortgages may cover, in addition to the property specifically enumerated, other chattels subsequently acquired by the mortgagor. *Id.* See Dun. Dig. 1427.

Question whether title passed under a chattel mortgage so that there was nothing left upon which a state's lien could attach except mortgagor's equity of redemption, district court did not determine. *State v. Heskin*, 213M368, 7NW(2d)1. See Dun. Dig. 1424.

Where tenant of farm disappeared and left farm in care of his hired man, and in the meantime landlord died leaving the land to children of the tenant, fact that owners were minors and tenant their father did not terminate the tenancy so long as hired man cared for the property, as affecting question whether mortgagee of crops could enter and take possession of them. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 1455.

Where tenant on farm disappeared leaving hired man to care for crops, there was no abandonment of the tenancy or a termination of it until the premises were later abandoned by the hired man, as affecting title to crops and right of mortgagee thereof to take possession. *Id.*

A chattel mortgagor in possession and having unconditional authority to sell can transfer good title, as against mortgagee, to subsequent purchaser for value, even though the mortgage was recorded. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1456(99).

Secret liens against personal property in the hands of a dealer have never been favored in the law and were formerly regarded as fraudulent per se as to creditors and subsequent purchasers. *Id.* See Dun. Dig. 3204, 5577a.

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.

##### 3. Effect of filing.

By complying with the statute, a mortgagee may relinquish possession of the chattel to the mortgagor, and the proper filing or recording of his lien operates as constructive notice of his rights in it. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1445.

The mere device of recording cannot be applied to abrogate all the rules of actual and apparent authority and ostensible ownership. *Id.*

##### ¾. Priority in general.

Lien for gasoline taxes, inspection fees, and penalties, created by Laws 1937, c. 476, §2, on personal property of distributor of gasoline, does not arise until date of inspection of gasoline and is not superior to a chattel mortgage on distributor's personal property executed and recorded prior thereto. *State v. Heskin*, 213M368, 7NW(2d)1. See Dun. Dig. 1449, 9161, 9165, 9576e.

##### 10. What is good faith—Evidence of.

Rule that mortgagor of chattel with power of sale may transfer title to a purchaser applies regardless of whether the purchaser had notice of the mortgage. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1450.

Whether the evidence shows that a mortgagee consented to mortgagor's selling of chattel is ordinarily for the jury, but where it is conclusively established that there was such consent, court will so hold as a matter of law. *Id.* See Dun. Dig. 1456(99).

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.

##### 13. Crops.

A description of real estate in a crop mortgage is sufficient if it is such that a prudent, disinterested person, aided and directed by such inquiries as the mortgage suggests, is able to identify the real estate. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 1432.

Provision in a mortgage "together with sufficient feed and roughage to care for the livestock during the life

of the mortgage", merely naming township and no particular land, is insufficient to create a lien on any particular crop. *Op. Atty. Gen.* (301a-3), July 17, 1942.

**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.*, 208M502, 294NW 650. See *Dun. Dig.* 5579a.

Fact that chattel mortgage was acknowledged in county other than that in which mortgagor maintained a garage and kept mortgaged car on display for sale did not raise a jury question as to good faith of finance company taking mortgage, and which took possession of automobile under process on default of payments, while it was in possession of mortgagor, as against pledgee of automobile who had paid sight draft accompanying bill of lading and received delivery of car and had permitted pledgor to retain for purposes of sale. *Goemmel v. Heesch*, 212M424, 4NW(2d)104. See *Dun. Dig.* 1431, 7740.

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.*, 207M537, 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.*

To constitute a pledge, the pledgee must take possession, and to preserve it, must retain possession of the pledged property. *Goemmel v. Heesch*, 212M424, 4NW(2d) 104. See *Dun. Dig.* 7740.

In action by bank on a note, wherein the defendant sought to recover for plaintiff's failure to sell upon demand storage tickets for grain deposited as security, and evidence showed an undivided interest in grain by a third party named with defendant in storage ticket, in absence of evidence showing an express agreement to the contrary it was the condition of loan agreement that defendant obtain consent of third party to disposition of grain, though bank agreed to sell grain on demand. *State Bank of Madison v. Joyce*, 213M380, 7NW(2d)385. See *Dun. Dig.* 7747.

That bank undertook to foreclose a chattel mortgage held by borrower from bank upon interest of third party in grain pledged with bank as security for note, did not show conclusively that foreclosure was attempted by bank pursuant to an agreement that it would sell the grain on demand, and it did not relieve the defendant from necessity of showing that third party would consent to a sale of the grain or that bank agreed to see to it that third party would consent, as affecting rights of defendant to damages from the bank for failure to sell on demand. *Id.*

Duty imposed on one holding and controlling collateral as security for a debt is to exercise ordinary care for its preservation. *Faunce v. Schueller*, 214M412, 8NW(2d)523. See *Dun. Dig.* 7747.

In the absence of any stipulation requiring such sale, it is entirely optional with surety with collateral to sell it, to hold it, or to abandon it altogether and look to other assets of his principal in payment of the debt secured. *Id.* See *Dun. Dig.* 7747, 7749, 9089.

In the absence of stipulation requiring sale, a surety cannot be held liable for depreciation in the value of property held as collateral occurring after maturity of the debt. *Id.* See *Dun. Dig.* 7747, 7749, 9089.

**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.* (373E-5), March 11, 1940.

**8346. Where filed.**

**1/2. 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.

*United States v. Rogers & Rogers*, (DC-Minn), 36FSupp 79. Appeal docketed and dismissed without costs to either party in circuit court, pursuant to stipulation, (CCA8), 121F(2d)1019. See *Dun. Dig.* 1475, 1532, 1541, 1545, 1926, 1932, 1933, 9631, 10103, 10105.

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

*Mason City Production Co. Ass'n v. S.*, 205M537, 286NW 713. *Cert. den.* 60SCR130. *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.*, 207M146, 290NW230. See *Dun. Dig.* 5624.

Names "House" and "Hause" were idem sonans so that record of conditional sales contract was constructive notice to one levying on automobile. *Fidelity Accept. Corp. v. House*, 210M220, 297NW705. See *Dun. Dig.* 1445, 6922.

Description of an oil furnace in recorded instrument in nature of a conditional sale contract by trade name without mention of factory serial number was not constructive notice to a purchaser from retail stock on display by conditional vendee. *A. Y. McDonald Mfg. Co. v. Read*, 210M232, 297NW739. See *Dun. Dig.* 1445, 8655.

**8350. Satisfaction—Penalty.**

Satisfaction must be by duplicate satisfaction delivered and filed, and satisfaction on margin of record is not authorized by law, though it might operate as an estoppel against mortgagor or seller. *Op. Atty. Gen.* (373b-5), Dec. 22, 1942.

**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.*, 209M399, 296NW569, 134ALR850. See *Dun. Dig.* 3967.

**CONDITIONAL SALES**

**8360. When void unless filed.**

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

**1/2. 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.*, 207M549, 292NW210. See *Dun. Dig.* 8652.

Transaction whereby dealer borrowed money and issued a trust receipt did not constitute a conditional sale and was not governed by statutes relating to conditional sales. *Walton v. Commercial Credit Co.*, 9NW(2d)(SD)266. See *Dun. Dig.* 8648.

**1. Who protected.**

Description of property covered in conditional sales contract held sufficient where it would enable third person, aided by inquiries which the instrument itself reasonably suggested, to identify the property as the refrigerator sold. *Miller v. McCray Refrigerator Co.*, (CCA8)130F(2d)873, 51AmB(NS)33. See *Dun. Dig.* 8655.

Names "House" and "Hause" were idem sonans so that record of conditional sales contract was constructive notice to one levying on automobile. *Fidelity Accept. Corp. v. House*, 210M220, 297NW705. See *Dun. Dig.* 8655, 6922.

Description of an oil furnace in recorded instrument in nature of a conditional sale contract by trade name without mention of factory serial number was not constructive notice to a purchaser from retail stock on display by conditional vendee. *A. Y. McDonald Mfg. Co. v. Read*, 210M232, 297NW739. See *Dun. Dig.* 1445, 8655.

In action by conditional vendor of furniture against landlord of tenant who abandoned property when moving out, an instruction that to find defendant guilty of conversion jury must find that he removed property, but that it need not necessarily be found that he personally took the furniture from the house, was proper and consistent with theory of trial. *Borg & Powers Furniture Co. v. Reiling*, 213M539, 7NW(2d)310. See *Dun. Dig.* 8652.

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.

Innocent purchaser for value of a conditional sales contract on an automobile had good title as against holder of trust receipt taken under a fictitious name. *Bank of America Nat. T. & S. Ass'n v. National Funding Corporation*, 45CalApp(2d)320, 114Pac(2d)49.

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.

**4. Filing.**

An original or duplicate original of a conditional sales contract may be filed, but a mere copy of original must be certified. Op. Atty. Gen. (373b-6), Sept. 29, 1942.  
A carbon copy of the original is a "duplicate original." Id.

**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., 209M428, 296NW496. See Dun. Dig. 8655.

**8363. Satisfaction.**

Satisfaction must be by duplicate satisfaction delivered and filed, and satisfaction on margin of record is not authorized by law, though it might operate as an estoppel against mortgagee or seller. Op. Atty. Gen. (373b-5), Dec. 22, 1942.

**8363-1. Definitions.**

Under Pennsylvania act conditional sales contract and refilled 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 refilled 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., 206M76, 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.

**8363-3. Period to redeem.**

Where resident of Minnesota purchased automobile there under conditional sales contract and it was repossessed by finance company while he was visiting in Wisconsin, Minnesota law governed and it was not necessary that automobile be kept in Wisconsin for ten days. Magoon v. Motors Acceptance Corporation, 238Wis1, 298NW191.

Finance company repossessing automobile owed no absolute duty safely to keep personal effects which were in car at time until purchaser exercised his right of redemption, but was only a bailee of the goods and owed merely a duty of due care. Id.

**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.) [574.36]

Under New Jersey law where there has been a re-taking, and less than 50% has been paid, and seller voluntarily resells, there is no fixed time limit for such resale, and the rule of a reasonable time applies. Stark & Son v. Licastro, 22Atl(2d)(NJ)768. See Dun. Dig. 8652.

## 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.**

Description of an oil furnace in recorded instrument in nature of a conditional sale contract by trade name without mention of factory serial number was not constructive notice to a purchaser from retail stock on display by conditional vendee. A. Y. McDonald Mfg. Co. v. Read, 210M232, 297NW739. See Dun. Dig. 1445, 8655.

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., 105Pa(2d)(Cal)115.

Bills of sale, conditional sale agreements and chattel mortgages must be properly filed before any transfer of registration may be made on vehicles repossessed. Op. Atty. Gen., (632a-21), June 26, 1941.

An original or duplicate original of a conditional sales contract may be filed, but a mere copy of original must be certified. Op. Atty. Gen. (373b-6), Sept. 29, 1942.

A carbon copy of the original is a "duplicate original." Id.

**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.

Register of deeds may collect a fee of 25 cents for certifying as true by rubber stamp and signature a copy of a chattel mortgage filed with him. Op. Atty. Gen., (373b-5), Mar. 31, 1941.

## UNIFORM TRUST RECEIPTS ACT

**8375-1. Definitions.**—Subdivision 1. In this act, unless the context or subject matter otherwise requires, the following words or phrases shall have the meaning hereinafter set forth.

Subd. 2. **Buyer.**—"Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

Subd. 3. **Document.**—"Document" means any document of title to goods.

Subd. 4. **Entruster.**—"Entruster" means the person who has or directly or by agent takes a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

Subd. 5. **Goods.**—"Goods" means any chattels personal other than: money, things in action, or things so affixed to land as to become a part thereof.

Subd. 6. **Instrument.**—"Instrument" means (a) any negotiable instrument as defined in the Uniform Negotiable Instruments Law and amendments thereto, or

(b) any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

Subd. 7. **Lien creditor.**—"Lien creditor" means any creditor who has acquired a specific lien on the goods,

documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

Subd. 8. **New value.**—"New value" includes new advances or loans made, or new obligations incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under Section 10; but "new value" shall not be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.

Subd. 9. **Person.**—"Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust, or other association, and two or more persons having a joint or common interest.

Subd. 10. **Possession.**—"Possession," as used in this act with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

Subd. 11. **Purchase.**—"Purchase" means taking by sale, conditional sale, lease, mortgage, or pledge, legal or equitable.

Subd. 12. **Purchaser.**—"Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, insofar as concerns his specific security, a purchaser and not a creditor.

Subd. 13. **Security interest.**—"Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

Subd. 14. **Transferee in bulk.**—"Transferee in bulk" means a mortgagee or a pledgee or a buyer of the trustee's business substantially as a whole.

Subd. 15. **Trustee.**—"Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "Trustee" herein shall not be interpreted or construed to imply the existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this act.

Subd. 16. **Value.**—"Value" means any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, and whether the transferor or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor. (Act Apr. 13, 1943, c. 433, §1.)  
[515.01]

Adopted in California, Connecticut, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

**8375-2. Trust receipts.**—Subdivision 1. **What are trust receipt transactions.**—A trust receipt transaction within the meaning of this act is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in subdivision 3, whereby

(a) the entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the result thereof is to acquire promptly, a security interest; or

(b) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a se-

curity interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee;

provided that the delivery under paragraph (a) or the giving of new value under paragraph (b) either

(i) be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains in or will remain in, or has passed to or will pass to, the entruster, or

(ii) be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

If the trustee's rights in the goods, documents or instrument are subject to a prior trust receipt transaction, or to a prior equitable pledge, Section 9 and Section 3, respectively, of this act, determine the priorities.

Subd. 2. **Trust receipts.**—A writing such as is described in subdivision 1, paragraph (i), signed by the trustee, and given in or pursuant to such a transaction, is designated in this act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

Subd. 3. **What are trust receipt transactions.**—A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) in the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) in the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transshipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) in the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection, or renewal. (Act Apr. 13, 1943, c. 433, §2.)

[515.02]

**8375-3. When pledge or agreement is valid against creditors.**—Subdivision 1. An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) to the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for ten days from the time the new value is given;

(b) to the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of ten days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in Section 8, only as of the time the pledgee takes possession, and without relation back.

Subd. 2. **Purchasers without notice.**—Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

Subd. 3. **Transfer to person holding beneficial interest.**—Where, under circumstances not constituting a trust receipt transaction, a person, for a temporary and limited purpose, delivers goods, documents, or

instruments, in which he holds a pledgee's or other security interest, to the person holding the beneficial interest therein, the transaction has like effect with a purported pledge for new value under this section. (Act Apr. 13, 1943, c. 433, § 3.)

[515.03]

**8375-4. Contracts for trust receipts.**—Subdivision 1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments, thereafter delivered by the entruster to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

Subd. 2. **Enforceable against trustee.**—Such a contract shall as to such goods, documents, or instruments be specifically enforceable against the trustee; but this subdivision shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this act. (Act Apr. 13, 1943, c. 433, § 4.)

[515.04]

**8375-5. Trust receipts shall be enforceable.**—Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in Subdivision 5 of Section 6. (Act Apr. 13, 1943, c. 433, § 5.)

[515.05]

**8375-6. Possession.**—Subdivision 1. **Entruster entitled to possession.**—The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default, and as may be otherwise specified in the trust receipt.

Subd. 2. **May take possession.**—An entruster entitled to possession under the terms of the trust receipt or of Subdivision 1 may take such possession without legal process, whenever that is possible without breach of the peace.

Subd. 3. **May hold goods.**—(a) After possession taken, the entruster shall, subject to subdivision 3 (b) and subdivision 5 of this section, hold such goods, documents or instruments with the rights and duties of a pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than five days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account, at public or private sale, and may at a public sale himself become a purchaser: The proceeds of any such sale, whether public or private, shall be applied (i) to the payment of the expenses thereof, (ii) to the payment of the expenses of retaking, keeping and storing the goods, documents, or instruments, (iii) to the satisfaction of the trustee's indebtedness. The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either (i) personally served on the trustee, or (ii) sent by post-paid ordinary mail to the trustee's last known business address.

(c) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

Subd. 4. **Surrender shall be valid.**—Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

Subd. 5. **Terms of trust receipts may provide for forfeiture.**—As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; provided that in the case of the original maturity of such an indebtedness there must be

cancelled not less than 80 per cent of the purchase price to the trustee, or of the original indebtedness, whichever is greater; or, in the case of a first renewal, not less than 70 per cent, or, in the case of a second or further renewal, not less than 60 per cent. (Act Apr. 13, 1943, c. 433, § 6.)

[515.06]

**8375-7. Filing.**—Subdivision 1. **Filing shall be effective when.**—(a) If the entruster within the period of 30-days specified in subdivision 1 of Section 8 files as in this act provided, such filing shall be effective to preserve his security interest in documents or goods against all persons, save as otherwise provided by Sections 8, 9, 10, 11, 14 and 15 of this act.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in subdivision 2 (b) of Section 9, the entruster's security interest shall be deemed to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

Subd. 2. **Possession to have effect of filing.**—The taking of possession by the entruster shall, so long as such possession is retained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons, in the case of instruments. (Act Apr. 13, 1943, c. 433, § 7.)

[515.07]

**8375-8. To be valid against creditors of trustee—Limitations.**—Subdivision 1. The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for 30 days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this act otherwise provided.

But where the trustee at the time of the trust receipt transaction has and retains instruments or documents, the 30 days shall be reckoned from the time such instruments or documents are actually shown to the entruster, or from the time that the entruster gives new value under the transaction, whichever is prior.

Subd. 2. **Exceptions.**—Save as provided in Subdivision 1, the entruster's security interest shall be void as against lien creditors who become such after such 30 day period and without notice of such interest and before filing.

Subd. 3. **Lien creditors.**—(a) Where a creditor secures the issuance of process which within a reasonable time after such issuance results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process.

(b) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (i) an assignee for the benefit of creditors, from the time of assignment, or (ii) a receiver in equity from the time of his appointment, or (iii) a trustee in bankruptcy or judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee, shall on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest. (Act Apr. 13, 1943, c. 433, § 8.)

[515.08]

**8375-9. Purchasers of negotiable documents or instruments.**—Subdivision 1. (a) Nothing in this act shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner instruments in such form as are by common practice purchased and sold as if negotiable, shall hold such instruments free of

the entruster's interest; and filing under this act shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within Section 3 of this act, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

Subd. 2. Rules in certain cases.—Where a buyer from the trustee is not protected under Subdivision 1 hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade. (i) Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the 30 day period specified in Subdivision 1 of Section 8 of this act, and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer. (ii) No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) Purchasers other than buyers in the ordinary course of trade. In the absence of filing the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this Section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either (i) gives new value before the expiration of the 30 day period specified in Subdivision 1 of Section 8, or (ii) gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under (ii) of this subdivision 2 (b).

(c) Liberty of Sale.—If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sales or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have life effect as granting the trustee liberty of sale.

Subd. 3. Purchase for new value.—As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such purchase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest. (Act Apr. 13, 1943, c. 433, §9.) [515.09]

8375-10. Rights of trustee.—Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

- (a) to the debts described in Section 9 (3); and also
(b) to any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of

the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also

(c) to any other proceeds of the goods, documents or instruments which are identifiable, unless the provision for accounting has been waived by the entruster by words or conduct; and knowledge by the entruster of the existence of proceeds, without demand for accounting made within ten days from such knowledge, shall be deemed such a waiver. (Act Apr. 13, 1943, c. 433, §10.) [515.10]

8375-11. Specific liens.—Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under this act; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord. (Act Apr. 13, 1943, c. 433, §11.) [515.11]

8375-12. Entrusters not liable.—An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee. (Act Apr. 13, 1943, c. 433, §12.) [515.12]

8375-13. May file statement with Secretary of State.—Subdivision 1. Any entruster undertaking or contemplating trust receipts transactions with reference to documents or goods is entitled to file with the Secretary of State a statement, signed by the entruster and the trustee, containing:

- (a) a designation of the entruster and the trustee, and of the chief place of business of each within this state, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; and
(b) a statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and
(c) a description of the kind or kinds of goods covered or to be covered by such financing.

Subd. 2. Form of statement.—The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this act.

"Statement of Trust Receipt Financing
"The entruster, . . . . . whose chief place of business within this state is at . . . . . (or who has no place of business within this state and whose chief place of business outside this state is at . . . . .) is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, . . . . . whose chief place of business within this state is at . . . . . of goods of the following description: (coffee, silk, automobiles, or the like.)
(Signed) . . . . . Entruster
(Signed) . . . . . Trustee."

Subd. 3. Duty of filing officer, fee.—It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a

suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be one dollar.

**Subd. 4. Filing.**—Presentation for filing of the statement described in subdivision 1, and payment of the filing fee, shall constitute filing under this act, in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within 30 days previous to such filing, the subject-matter of a trust receipt transaction between the entruster and the trustee.

**Subd. 5. May file affidavit.**—At any time before expiration of the validity of the filing, as specified in subdivision 4, a like statement, or an affidavit by the entruster alone, setting out the information required by subdivision 1, may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original. (Act Apr. 13, 1943, c. 433, §13.) [515.13]

**8375-14. Entrusters security interest.**—As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created. (Act Apr. 13, 1943, c. 433, §14.) [515.14]

**8375-15. Application of act.**—This act shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of

possession, or involve constructive delivery, or delivery and redelivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee. (Act Apr. 13, 1943, c. 433, §15.) [515.15]

**8375-16. Entruster not to come under two acts.**—As to any transaction falling within the provisions, both of this act and of any other act requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by the act complied with; except that buyers in the ordinary course of trade as described in subdivision 2 of Section 9, and lienors as described in Section 11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another act. (Act Apr. 13, 1943, c. 433, §16.) [515.16]

**8375-17. Rules of law and equity to apply.**—In any case not provided for in this act the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession. (Act Apr. 13, 1943, c. 433, §17.) [515.17]

**8375-18. Interpretation and construction of act.**—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it. (Act Apr. 13, 1943, c. 433, §18.)

**8375-19. May be cited as Uniform Trust Receipts act.**—This act may be cited as the Uniform Trust Receipts Act. (Act Apr. 13, 1943, c. 433, §19.) [515.18]

## CHAPTER 67A

### Sale of Goods

#### PART I

#### FORMATION OF THE CONTRACT

##### 8376. Contracts to sell and sales.

Adopted by Arkansas and Colorado, 1941.

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.*, 206M154, 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.*, 208M88, 292NW751. See Dun. Dig. 8329.

Where one person takes an order for goods under circumstances creating a present contract to sell according to which payment and delivery are concurrent conditions, right to payment is assignable. *Dworsky v. Unger Furniture Co.*, 212M244, 3NW(2d)393. See Dun. Dig. 569, 8509c.

Where plaintiff entered into contract for a term of three years to purchase from defendant and resell certain petroleum products and after contract had been in force a few months it was modified so that thereafter plaintiff was entitled to certain concessions which would lower price of goods purchased from defendant and such concessions were made and enjoyed by plaintiff but

not in as large an amount as was promised, modification was not enforceable in absence of showing of consideration for new promise on part of defendant, and though so far as concessions were actually made by defendant and enjoyed by plaintiff they are controlling, they do not prove element of consideration necessary to make new and modified agreement enforceable as a contract so far as it remains unexecuted. *Johnson v. Northern Oil Co.*, 212M249, 4NW(2d)82. See Dun. Dig. 8509i.

Common understanding of the word "sale" is that of the contractual relationship between the buyer and seller. There must be a meeting of the minds. There must be an offer and an acceptance expressed or implied. Until an offer is accepted, the negotiations remain open, and there is no obligation upon either party. There must be a clear accession on both sides to one and the same set of terms. *State v. Flach*, 213M353, 6NW(2d)805. See Dun. Dig. 8499.

#### 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.*, 206M76, 287NW677. See Dun. Dig. 8855.

Custom or previous conduct of parties could estop buyer from withdrawing in the absence of acceptance of some of goods, part payment or earnest money, or a written memorandum of the agreement. *Coastwise Petroleum Co. v. Standard Oil Co.*, 179Md337, 19Atl(2d)180. Oral agreements enforced by estoppel. *Albachten v. Bradley*, 212M359, 3NW(2d)783. See Dun. Dig. 8870.