

CHAPTER 241.

CHattel MORTGAGES AND FRAUDULENT CONTRACTS.

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241.01 Conveyances, when void. All deeds of gift, all conveyances and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

241.02 Agreements, what must be written. In the following case every agreement shall be void unless such agreement or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith:

(1) Every agreement that by its terms is not to be performed within one year from the making thereof.

(2) Every special promise to answer for the debt, default or miscarriage of another person.

(3) Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

Note: A subscription contract signed by the original stockholder constituted a sufficient memorandum of agreement which gave an option for the purchase of the stock, as regards a donee of the stock. And a letter from the donee requesting his receipt for a new certificate of stock constituted a sufficient memorandum to bind the donee under the provisions of the original certificate giving an option to purchase. *Wisconsin Club v. John*, 202 W 476, 233 NW 79.

An oral agreement by an employer that a loan previously made to his employe shall stand as a loan to the employer is invalid being in substance a promise to answer for the debt of another. *Breuer v. Arenz*, 202 W 453, 233 NW 76.

The promise of the owners and principal contractor to pay the employes of a subcontractor the amount the subcontractor owed them is construed as an agreement to answer for the debt of another, and void, because not in writing. *Limbach v. Schmalz*, 208 W 396, 243 NW 480.

In action by seller for breach of contract for sale of safety deposit boxes, letters between parties which referred one to another and related to same subject-matter sufficiently indicated their relationship to same transaction to satisfy statute of frauds. *Zimmerman Bros. & Co. v. First Nat. Bank*, 219 W 427, 263 NW 361.

An oral agreement modifying a land contract by providing for the procuring of a loan from a third party and for payments on the loan in lieu of the payments stipulated in the land contract is void because not to be performed within one year, where not based on an executed consideration, which would take it out of the statute. *Vaudreuil Lumber Co. v. Culbert*, 220 W 267, 263 NW 637.

The statute of frauds is satisfied where

preliminary negotiations for the decedent's employment of the claimant as a housekeeper for \$3 weekly always suggested additional substantial compensation for faithful and continuous service and culminated in a purported will signed by the decedent which, though ineffective as a will, evidenced a unilateral contract containing a promise, accepted by performance, to give all the decedent's property to the claimant provided she took care of him until his death. *Estate of Lube*, 225 W 365, 274 NW 276.

Where an employe orally contracted for one year's employment, which was to begin as soon as the employe could sever his connections with his then employer, but which could not possibly begin on the day the oral contract was made, and the employe reported for work five days later, the contract was void under the statute of frauds. Section 370.01 (24) was inapplicable. The making of a contract is an event, within the meaning of the rule that on an issue of limitation, where time is to be computed from a certain event, the date of that event must be included. Where the employe continued employment after the expiration of the one year period, such continuation did not operate to renew the employment for a further period of one year, but operated only as a hiring for an indefinite period, terminable at any time at the will of either party. *Brown v. Oneida Knitting Mills*, 226 W 662, 277 NW 653.

H contracted with M to drill a well on M's farm and began operations but on learning that the farm was heavily mortgaged H prepared to quit the job. To induce him to continue the well W, who owned the mortgage, then promised orally to pay H in full if he would complete the well. H relying on W's promise finished the job. W's promise was not within the statute of frauds; the debt was his debt; he was liable to H for

the entire cost of the well. In re Williams' Estate, 230 W 344, 283 NW 805.

A contract whereby a stockholder and a broker agreed that on the disposition of stock held by a syndicate, the stockholder should receive the same price for his stock as the syndicate received was a contract which might be "performed within one year." Backus v. Taplin, 81 F (2d) 444.

An employee who has rendered services under an oral contract which is unenforceable because of the statute of frauds may recover for his services on a quantum meruit basis. Laurson v. O'Brien, 90 F (2d) 792.

An agreement between the mortgagor and mortgagee of chattels that the chattels shall be sold by the mortgagor at an auction at which an agent of the mortgagee is to act as clerk, and that the proceeds shall go first to pay the expenses of the sale and then the mortgage debt, need not be in writing. Kramer v. Burlage, 234 W 538, 291 NW 766.

The minutes kept and signed by the secretary, of a meeting of a city school board, showing the adoption of a resolution that the present contract of the superin-

tendent of schools be renewed and that the secretary be instructed to draw up the contract and have the same signed by the proper officers, was only a memorandum evincing a purpose of the board to make a contract. It did not constitute a signed written contract, and it was not a memorandum of a contract "signed by the party to be charged," (in this case the school board) as required by the statute. (McCaffrey v. Lake, 234 W 251, applied.) Prodoehl v. Cudahy, 237 W 224, 296 NW 606.

An agreement between real estate brokers to divide a commission need not be in writing and signed by the party to be charged. Niemann v. Severson, 246 W 636, 18 NW (2d) 338.

Where an indebtedness for building materials, purchased from the plaintiff by the administrator's tenant on the farm subsequently acquired by the decedent's son from the estate, had never become a debt of the son, any oral promise by the son for the payment thereof was void and unenforceable as an agreement to answer for the debt of another. Bowler Lumber Co. v. Raasch, 246 W 639, 18 NW (2d) 366.

241.03, 241.04 [Repealed by 1931 c. 470 s. 8]

241.05 Presumption if possession not changed. Every sale made by a vendor, of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery and followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or the creditors of the person making such assignment or subsequent purchasers in good faith; and shall be conclusive evidence of fraud unless it shall be made to appear on the part of the persons claiming under such sale or assignment that the same was made in good faith and without any intent to defraud such creditors or purchasers.

Note: An alleged conditional sale of an automobile, not accompanied by delivery or change of possession, is presumptively void as against a bona fide assignee of a subsequent conditional sales contract therefor and a buyer thereunder. Burnett County A. Co. v. Eau Claire C. L. & I. Co., 216 W 35, 255 NW 890.

An assignment of a trust certificate by a gratuitous assignor who after signing the certificate notified the obligor of the assignment, but did not deliver the certificate to the assignee, and himself retained possession of the certificate, constituted at most a revocable assignment and not a completed gift, so that on the death of the assignor, the assignee had no enforceable right to the trust certificate. [Northwestern Mut. Life Ins. Co. v. Wright, 153 W 252, distinguished.] Madison Trust Co. v. Skogstrom, 222 W 585, 269 NW 249.

In a replevin action against a sheriff and his sureties for the value of milk cows and other personal property, located on a farm owned by the plaintiff's husband, and taken and sold in execution of a judgment against the husband, testimony of both husband and wife that a bill of sale transferring the property from the husband to the wife was intended only as security for a debt due the wife required that the bill of sale be treated as a chattel mortgage, which was not valid against third persons under 241.03, since it was not filed or recorded and there was no visible relinquishment of the husband's ownership or change of possession of the property, and in such circumstances the plaintiff failed to prove her title or right to possession against the sheriff or a wrongful taking and detention by the sheriff. Rheingans v. Hepfler, 243 W 126, 9 NW (2d) 585.

241.06 "Creditors" defined. The term "creditors," as used in section 241.05, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession or under his control.

241.07 Excepted cases. Nothing contained in sections 241.05 and 241.06 shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state; provided, the assignee or mortgagee shall take possession of such ship, vessels or goods as soon as may be after the arrival thereof within this state.

241.08 Chattel mortgages to be filed or property delivered; when wife must join in executing. No mortgage of personal property shall be valid against any other person than the parties thereto unless the possession of the mortgaged property be delivered to and retained by the mortgagee or unless the mortgage or a copy thereof be filed as provided in section 241.10, except when otherwise directed in these statutes. Nor shall a chattel mortgage of personal property which is by law exempt from seizure and sale upon execution, except a purchase money chattel mortgage, be valid unless the same be signed by the wife of the person making such chattel mortgage, if he be a married man and his wife at the time be a member of his family, and unless such signature of such wife be witnessed by two witnesses. In this section "purchase money chattel mortgage" means a mortgage given to the vendor as a part of a transaction of sale to secure all or part of the purchase money, or a mortgage given to a third person who advances all or part of the money with which to make the purchase. [1939 c. 406]

Note: The change of possession under an unrecorded chattel mortgage to be effective must be open, visible and exclusive. Underwood v. Co. v. Lucia, 202 W 507, 232 NW 353.

Assignments of machinery and equipment by a contractor to sureties on bonds securing the performance of contracts for sewer construction, which were in effect unrecorded chattel mortgages securing the sureties against loss upon default of the contractor, were void as against a bank which in good faith extended credit to the contractor on the basis of financial statements of assets which showed such property to be unincumbered. National Bank of Commerce v. Brogan, 214 W 378, 253 NW 385.

Where an exemption of personal property from execution relates merely to property of like kind to that mortgaged and the exemption is to a specified amount in value, the exemption must be claimed, under 272.19, in order to affect the title under a chattel mortgage. Mielke v. National Reserve Ins. Co., 216 W 148, 256 NW 776.

In the absence of an agreement to the contrary, the purchase of a note or debt secured by a mortgage carries with it the lien of the mortgage, and, in the absence of any formal assignment of the mortgage to the purchaser, he is considered the equitable owner thereof and of the security afforded thereby. Muldowney v. McCoy Hotel Co., 223 W 62, 269 NW 655.

Although the chattel mortgagee holds the legal title to the property mortgaged yet for all practical purposes the chattel mortgage is a lien. Where the mortgage is properly filed the purchaser of the chattel takes it

subject to the mortgage. Midland Nat. Bank & Trust Co. v. Peterson, 229 W 19, 281 NW 683.

Delivery merely of the certificate of title, indorsed in blank, by the owner of an automobile to an automobile dealer, did not constitute a delivery of possession of the car, within this section, so as to validate a subsequent unrecorded chattel mortgage executed by the dealer-holder of such certificate, as against a bona fide purchaser of the car. Where there is no delivery of possession of the mortgaged property to the mortgagee, an unrecorded chattel mortgage is good only between the parties thereto, and it has no validity as against a subsequent purchaser or mortgagee even though he has actual notice of the mortgage. C. I. T. Corp. v. Wallerman, 242 W 287, 7 NW (2d) 884.

Mortgage on exempt automobile without signature of mortgagor's wife is valid only for value in excess of \$400. 26 Atty Gen. 105.

Where a subsequent chattel mortgage is given, whether the second mortgagee has notice or not, the second mortgage if filed, or if possession is taken thereunder, precedes the prior unrecorded mortgage. A mortgage which permits the mortgagor to retain possession of the mortgaged property and to sell it and apply the proceeds partially or wholly to his private use is void as to creditors. Where property is mortgaged to one creditor to secure his demand good faith to other creditors requires that if such property be sold the proceeds shall be applied to the payment of the mortgage debt. In re Baumgartner, 55 F (2d) 1041.

241.09 Assignment of wages. No assignment of the salary or wages of any married man shall be valid for any purpose unless such assignment shall be in writing signed by the wife, if she at the time be a member of his family, and unless her signature be witnessed by two disinterested witnesses; nor shall any assignment of the salary or wages of any person be valid as to any such salary or wages to accrue more than two months after the date of the making of such assignment, except that assignments of salary or wages made directly to licensees under sections 115.07, 115.09, 214.15 or to state or national banks, savings banks, trust company banks, building and loan associations or credit unions, may include salary or wages to accrue more than 2 months after the date of making such assignment. Nothing in this section shall apply to assignments made under sections 101.10 (14) or 128.21 nor to any authorization from an employe to his employer directing him to make deductions from wages to accrue in the future for union or employe club dues, insurance or annuities, war bond purchases, contributions to the American Red Cross, a community fund or other similar charity, or any indebtedness to his employer. [1945 c. 416]

Note: Secretary of state should not honor assignments of salaries of members of legislature and other state officers unless assignments conform to this section. 23 Atty. Gen. 136.

This section does not apply to request from employe to his employer to furnish group insurance for such employe and take amount of premium for insurance company from employe's salary. 29 Atty. Gen. 1.

241.10 Filing chattel mortgages. (1) Every mortgage of personal property and any assignment thereof shall be filed with the register of deeds of the county in which such personal property is situated. Provided, in such cities or villages which are located in more than one county and the place where the personal property is to be kept cannot be definitely located as being within one of such counties, then and in that event duplicate originals or copies may be filed in the recorder's office of each county in which such city or village is situated. To entitle the chattel mortgage to be filed it shall not be necessary that it be acknowledged or attested, except as provided in section 241.08.

(2) Every register of deeds shall keep the same in his office for the inspection of all persons, and file and index the same as provided for in subsection (12) of section 59.51.

(3) Mortgages so filed shall be as valid and binding upon all persons as if the property thereby mortgaged had been, immediately upon the execution of such mortgages, delivered to, and the possession thereof retained by, the mortgagees. Copies of a single mortgage of personal property situated in different counties, may be filed with the register of deeds in all counties in which any of the property described in the mortgage is situated. Filing such a chattel mortgage or copy in any county shall be valid only with respect to the property situated in such county.

(4) Each town, village and city clerk shall on or before the first day of January, 1930, deliver all chattel mortgages and conditional sales contracts, and all instruments filed and intended as such mortgages or contracts, then on file with him, and all records of the same

in his custody, to the register of deeds of his county, and said register of deeds shall thereafter be the custodian of the same, and of the records thereof, and no new filing, indexing, or record thereof need be made by said register of deeds. For such delivery each such clerk shall be paid out of the treasury of his county, the sum of ten cents per mile in traveling to and returning from his place of business to the county seat. The register of deeds of each county shall receive all such instruments and records and safely keep and preserve them in his office for the inspection of all persons, and indorse upon each instrument and record book the date of the receipt of the same by him. Such instruments shall thereupon continue to be notice to all persons of the existence and terms thereof. For receiving, keeping and preserving, and indorsing all of said instruments and records transferred to him as aforesaid, there shall be paid to the register of deeds of any county whose compensation is not on a straight salary basis, out of the county treasury, a fee of twenty-five dollars.

(5) Where none of the documents, files or indices pertaining to chattels, in the town, city or village clerks' offices have been delivered to the register of deeds as provided in subsection (4) of section 241.10, the same shall remain as the records and files of such town, city or village clerks' offices, when this law becomes effective. All assignments, releases, affidavits of renewals or extensions, foreclosure affidavits and other documents appertaining or referring to any chattel instruments filed under any former law shall be filed in the office of the register of deeds who would have been the proper filing officer if the present law had been in effect at the time of such former filing. The town or village board of any town or village, or the common council of any city in such counties may by resolution, authorize the town, city or village clerk to destroy all chattel instruments antedating by seven years, excepting final books of entry. [1931 c. 291 s. 2, 3]

Note: A chattel mortgagee who authorized the mortgagor to sell lumber and have the proceeds paid to the mortgagee retained its lien on the proceeds except for the amount of the sale price retained for the mortgagor's use, and that even as against the purchaser of the lumber who had advanced the purchase price. *Caroline State Bank v. Andrews*, 204 W 393, 235 NW 794.

Permitting the mortgagor to sell motor vehicles on which it holds a chattel mortgage and collect the proceeds, the mortgagee waives its lien on the cars as far as the purchasers are concerned. Purchasers having knowledge of and relying on such authority of the mortgagor are entitled to presume that it continues, notwithstanding the mortgagee's revocation of the authority, in the absence of knowledge or notice on their part that it has been revoked. *Bernhagen v. Marathon P. Corp.*, 212 W 495, 250 NW 410.

An automobile dealer's assignment of an ostensible conditional sales contract, to secure the repayment of money advanced to the dealer, was in legal effect a "chattel mortgage" which, as against third persons, was required to be filed in the county in which the automobile was situated, in the absence of delivery or change of possession of the automobile. *Burnett County A. Co. v. Eau Claire C. L. & I. Co.*, 216 W 35, 255 NW 890.

Rule that crop cannot be mortgaged before it is in existence is not in conflict with statute providing that parties may effect a

present sale of future goods, since neither mortgagee nor buyer of future goods has a right to specific performance, the buyer being confined to an action for breach of contract, while clause in chattel mortgage covering after-acquired property is a mere license, revokable at will of mortgagor. Chattel mortgage executed March 26, 1933, which gave mortgagee a lien on crops to be raised on a farm, entitled him to a lien on the hay crop which was seeded in 1932 and produced in 1933. *Kohler I. Co. v. Preder*, 217 W 641, 259 NW 833.

A chattel mortgage given by a bankrupt for antecedent debts being void in law before it was filed and against all others than parties, no fraudulent intent was required to be shown. *In re Wisconsin R. Corp.*, 63 F. (2d) 159.

The mortgagor's sale of the mortgaged chattels at auction, at which an agent of the mortgagee acts as clerk, with the understanding that the proceeds are to be turned over to the mortgagee, does not result in the substitution of the mortgagor's personal promise for the mortgage security or in the waiver of the mortgage lien, but operates as an equitable assignment of the proceeds, and title thereto to the extent of the amount secured is in the mortgagee, and hence the proceeds to that extent are not subject to garnishment by the mortgagor's creditors who have notice of the lien by the filed chattel mortgage. *Kramer v. Burlage*, 234 W 533, 291 NW 766.

241.11 Affidavit of renewal. Every such 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 3 years from the filing of the same or a copy thereof. The validity of the filing may in each case be extended for successive additional periods of one year from the date of filing the affidavit, by filing with the register of deeds within 30 days next preceding the expiration of each period, an affidavit made by the mortgagee, his agent or attorney, setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned. Such affidavit shall be filed and entered in the same manner as a chattel mortgage filed and entered for the first time, and the register of deeds shall be entitled to a like fee as upon the original filing. [1931 c. 291 s. 2; 1943 c. 209]

Note: One who takes mortgage after expiration of period in which filing of prior mortgage gives constructive notice is not mortgagee in good faith, where he takes with actual notice of prior mortgage. *Pierce v. Westby S. Bank*, 218 W 648, 261 NW 752.

Plaintiff to whom chattel mortgage was executed to secure pre-existing debt was a

subsequent mortgagee in good faith and entitled to mortgaged personalty, or its value, as against defendant claiming under chattel mortgage filed more than two years before, where defendant had filed no affidavit of renewal and plaintiff had no knowledge of defendant's mortgage. *Cremer v. Banking Commission*, 224 W 174, 272 NW 40.

241.12 [Repealed by 1931 c. 291 s. 1]

241.13 Sale on default; damages; redemption. (1) No private or public sale of any personal property taken by virtue of any chattel mortgage, lease or other instrument intended as security, except instruments covered by chapter 122, shall be made unless at least 10 days before such sale the mortgagee or his agent shall serve upon the owner of the equity of redemption in such property so taken, if he resides within the county, a written notice of such proposed sale served either as a circuit court summons is served, or served by mailing to him by registered mail; nor shall any property during such time be removed from the county where it was situated when taken; and during such period such property shall be subject to redemption by payment of the mortgage debt, and the actual and necessary costs and expenses of taking and keeping it incurred at the time of making redemption. If the mortgagee intends to sue for a deficiency judgment in the event that the proceeds from the sale of the property covered by the mortgage are insufficient to satisfy the debt secured thereby, he shall so state in the notice given as specified in this subsection. Failure to so state shall bar the mortgagee from recovering such a judgment.

(2) (a) At any time prior to forty-eight hours in advance of a public sale the mortgagor may serve upon the mortgagee or his agent in charge of the property notice that he elects to have such public sale conducted by an auctioneer or other competent person, not interested in such sale or mortgaged property who shall reside within the city or village where such property is located, to be named in such notice, and thereafter no other person shall conduct such sale; provided, however, that if such auctioneer or other person so named shall not attend and conduct the sale, any other person may sell the mortgaged property at the request of the owner of the mortgage, lease or other instrument intended as security.

(b) Such auctioneer or other person shall be compensated wholly by the mortgagor and shall have no claim against the mortgagee or against the proceeds of the property sold, except that portion of the proceeds which belongs to the mortgagor. The auctioneer or other person named in such last-mentioned notice shall conduct such sale, but shall forthwith turn over to the mortgagee or his agent all the proceeds of such sale to be accounted for and disposed of as provided by law.

(c) No costs or expense for taking and keeping property levied upon and seized before the debt for which such property was pledged as security becomes due, shall be taxed or allowed, unless the mortgagee, his legal representatives or assigns, shall have given at least ten days' written notice to the mortgagor, his assigns, or the person in whose possession the said mortgaged property shall be, of his intention to levy upon and take such property under and by virtue of such chattel mortgage, lease or other instrument intended as security, which said notice shall be served in the same manner as a summons in circuit court is served, or by registered mail.

(3) Any person aggrieved by a violation of any provision of this section may recover of the person who violated same, in addition to his actual damages, twenty-five dollars as liquidated damages. If any such property is sold at private or public sale, without proper notice, or is sold within the period herein limited, the mortgage debt shall be deemed paid and the mortgage securing same be deemed canceled.

(4) No sale of any personal property taken by virtue of any chattel mortgage shall be valid as against the mortgagee of any duly filed subsequent mortgage, who has served written notice on the first mortgagee of the existence of such second mortgage prior to the date of sale under the first mortgage, unless ten days' notice previous to such sale shall be given to said mortgagee or mortgagees, either by personal service or by registered mail to the address of the mortgagee or mortgagees as indicated by the respective documents on file.

(5) No act or agreement of the mortgagor, lessor or obligor before or at the time of the making of the contract, nor any agreement or statement by the mortgagor, lessor or obligor in such contract, shall constitute a valid waiver of the provisions of this section. [1931 c. 20 s. 2; 1931 c. 291 s. 3; 1939 c. 374, 527; 1943 c. 485]

Note: Sale of mortgaged chattels at public auction by the sheriff and purchase by the mortgagee vests title in the mortgagee subject to the privilege of the mortgagor to redeem within five days after the sale. After foreclosure sale, the mortgagor has neither legal nor equitable title to the mortgaged chattels, but a bare personal privilege to redeem as distinguished from property, and it cannot be levied upon or sold on execution. *Whalen v. Finn*, 207 W 254, 240 NW 188.

Where a wife joined her husband in executing a note and also joined with him as a mortgagor in executing a chattel mortgage on his cattle to secure the debt, the rights

given by (1) to (3) to redeem the property after sale, and to receive written notice of the proposed sale and of the mortgagee's intention to take the property, as well as other rights given by 241.15, vested in the wife individually and in her own right, independently of any similar rights or privileges vested in her husband. Where the mortgagee sold the mortgaged property pursuant to an agreement with the husband's trustee in bankruptcy but without notice to the wife, the mortgage debt in which the husband and wife had joined must be deemed paid so far as the wife is concerned. Where the property mortgaged by the husband and

wife was sold by the mortgagee pursuant to an agreement with the husband's trustee in bankruptcy but without notice to the wife of the proposed sale or of the intention to take the property, the wife was a "person aggrieved," within (3). State Banking Commission v. Ray, 214 W 433, 253 NW 556.

Invalidity of penal provisions of statutes prescribing procedure to subject property covered by chattel mortgage to mortgage debt without consent of mortgagor, and providing that for violation of any provision of statutes debt secured by such mortgage should be deemed fully satisfied and mortgage canceled, did not invalidate remainder of statutes, since provisions were separable, and forfeiture provision did not induce enactment of other provisions. Stierle v. Rohmeyer, 218 W 149, 260 NW 647.

In action against mortgagee for damages sustained by invalid sale of machine under chattel mortgage, where sale was not fairly

conducted, but machine was sold for more than its value, mortgagee was entitled to retain from proceeds amount of mortgage debt, plus reasonable costs and charges in making sale, including replevin costs, constable's fees, and other sale costs, but could not deduct \$137.48 out of \$300 realized on sale as commission to agent who procured buyer because amount was excessive and because agent, who acted without mortgagor's consent, was personally liable for mortgage debt. Schwemer v. Citizen's L. & I. Co., 225 W 46, 272 NW 673.

Lenders operating under 115.07 (3a), 115.09 or ch. 214 may, upon taking or sale of property securing loans made thereunder, recover necessary costs of taking and keeping such property as provided by 241.13, either in event of redemption by mortgagor before sale or in event of foreclosure and sale. 32 Atty. Gen. 50.

241.134 Deficiency judgments. (1) No deficiency judgment after foreclosure shall be taken upon an obligation secured by a chattel mortgage, either on cognovit or otherwise, except in an action brought for that purpose with process served in the manner by law provided upon all the persons to be charged with such deficiency judgment. In such action the court shall find the reasonable value of the chattels sold at the time of sale and the sum then due on such obligation, including all proper costs and charges, and upon such findings shall grant the deficiency or deny a deficiency if none appears due.

(2) On a judgment taken upon such an obligation prior to foreclosure, no execution, garnishment or other process shall issue after foreclosure of the chattel mortgage, unless prior to the issue of such process, the holder of the judgment shall apply in that action for and have entered an order of the court determining the reasonable value of the chattels sold at the time of the sale. A 5-day written notice of such application shall be served on all the judgment creditors in the manner provided for serving notice in section 278.105. On such application the court shall order the judgment reduced by the amount it shall determine to have been the reasonable value of the chattels at the time of the foreclosure sale, less the costs and expenses of the sale.

(3) Any execution, garnishment or other process issued in violation of the preceding paragraph hereof shall be void, and in any proceeding to quash such process, the judgment debtor may be awarded an attorney fee not to exceed \$50 in addition to his costs and disbursements.

(4) No waiver of the provisions of this section shall be valid, except by written agreement, for consideration, after default. [1943 c. 378]

Cross Reference: See the last sentence of judgment after foreclosure of a chattel mortgage. 241.13 (1) for the prenotice which is essential to the right to recover a deficiency

241.135 [Repealed by 1941 c. 68]

241.14 Stock in trade; inventories. (1) The mortgagor of any stock of goods or stock in trade of which he is in possession and from which he is permitted to make sales and apply the proceeds thereof upon the indebtedness existing between him and the mortgagee shall from time to time at intervals of not exceeding four months file a statement in writing of the aggregate amount of the sales made therefrom, the amount applied on the mortgage debt and the total valuation of the stock added since the date of such mortgage or of the last statement with the register of deeds in whose office such mortgage is filed. Such register of deeds shall make such entries of such statement as are required for the original filing of such mortgage, and for such filing and entering shall receive the same compensation.

(2) Such mortgage shall cover and be a valid lien upon the property added to such stock after its execution for the amount of the indebtedness remaining unpaid thereon, but only if the mortgage shall recite that it is intended to apply to and cover such additions. Such statement shall be verified by the affidavit of the mortgagor, his agent or attorney as being a true and correct statement of all sales made from the stock of mortgaged goods, the value of the additions made to the original stock since the date of the mortgage or the date of the last verified statement so filed and the amount paid on the mortgage debt since the execution of the mortgage or the filing of such statement. If any mortgagor shall fail to file the statements and copies thereof herein required within the time prescribed, the mortgage, as between the parties thereto, shall be immediately due and payable, and at the expiration of fifteen days from the time fixed for the filing of such statements and copies shall cease to be a lien upon such stock of goods or stock in trade except as between the mortgagor and mortgagee. [1931 c. 291 s. 2]

Note: Where the lien of the mortgage, which also covered fixtures, was enforceable as to the fixtures but not as to the stock of goods, the mortgagee lost its lien as to the fixtures as against other creditors by a seizure and sale "in a lump" of the stock and fixtures in such manner that the proceeds of the stock could not be separated from the proceeds of the fixtures. *Morley-Murphy Co. v. Jodar*, 220 W 302, 264 NW 926.

The statute does not require that the provision permitting sales by the mortgagor

must be incorporated in the mortgage. In the absence of evidence to the contrary, a mortgagee of a stock of goods was entitled to presume, until the statutory period for filing the affidavit showing proper application of the proceeds of sales had expired, that the mortgagor would hold the proceeds of sales of the mortgaged property for payment on the mortgage debt. *Vanden Wymel-enberg v. Badger Furnace Co.*, 220 W 473, 265 NW 718.

241.15 Affidavit of sale to be filed. (1) Whenever any property covered by a chattel mortgage, or instrument intended to have the effect of a chattel mortgage, shall be taken and sold under and by virtue of such mortgage pursuant to the power of sale contained therein, the owner of such mortgage, or the person acting as the agent of such owner and conducting such sale, shall, within ten days after the sale of any property covered by such mortgage, make and file in the office of the register of deeds an affidavit setting forth the date of such sale, a description of the property sold, the sum then claimed to be due on the indebtedness secured by such mortgage, the amount realized on such sale, a statement in detail of the expenses of such sale including the cost of taking and keeping the property pending the sale. A copy of the notice of sale if any shall be attached to said affidavit and be deemed a part thereof.

(2) Such affidavit shall be filed in the office of the register of deeds of the county where the mortgage under which such sale is had was filed, or, if such mortgage be not so filed, then in the office of the register of deeds of the county where such sale was held.

(3) Any person violating the provisions of this section shall be liable to the person personally liable for the indebtedness, in which case such person shall be entitled to recover in addition to his actual damages the sum of twenty-five dollars liquidated damages. [1931 c. 291 s. 2; 1939 c. 374]

Note: Where a mortgagee selling property mortgaged by a husband and wife failed to file within ten days an affidavit giving the details of the sale, as required by (1) and

(2), the mortgage debt must be deemed fully satisfied. *State Banking Commission v. Ray*, 214 W 433, 253 NW 556.

241.16 [Repealed by 1931 c. 20 s. 1]

241.17 Chattel mortgage, how satisfied. Whenever a chattel mortgage, or a mortgage of a stock of goods, wares and merchandise or of the fixtures pertaining thereto, shall have been paid and the other conditions thereof fully performed the mortgagee, his representative or if assigned, then his assignee or such assignee's representative shall execute and deliver a release thereof. The mortgagee, his representative or if assigned, then his assignee or such assignee's representative may from time to time release with or without consideration and without having the indebtedness secured by the mortgage reduced, any part or portion of the mortgaged property from a chattel mortgage or a mortgage of a stock of goods, wares and merchandise or of the fixtures pertaining thereto, by executing and delivering a partial release, specifying the part or portion of the property released from the mortgage. The mortgagor shall within ten days after receiving such release or partial release, cause the same to be filed in the office of the register of deeds, where the mortgage to which the same applies is filed. [1931 c. 291 s. 2; 1939 c. 406]

Note: Certificate of payment of chattel mortgage may be filed and mortgage removed more than ten days after receipt of the certificate; statute is directory. 19 Atty. Gen. 40.

241.18 Fraudulent conveyances. The sale, transfer, or assignment, in bulk, otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller, transferor or assignor, of any part, or the whole, of any stock of goods, wares and merchandise, or of the fixtures pertaining to the same, or of such goods, wares and merchandise and fixtures, including such sales, transfers and assignments made in consideration of an existing indebtedness, shall be conclusively presumed to be fraudulent and void as against the then existing creditors of the seller, transferor, or assignor, unless the seller, transferor, or assignor and the purchaser, transferee or assignee, shall, at least five days before the sale, transfer, or assignment, make a full and detailed inventory, showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost price to the seller, transferor or assignor, of each article to be included in the sale, transfer or assignment; and unless the purchaser, transferee or assignee, demand and receive from the seller, transferor or assignor, and the seller, transferor or assignor make and deliver to the purchaser, transferee or assignee, a written list of the names and addresses of all the creditors of the seller, transferor or assignor, with the amount of the indebtedness, either due or owing to each, and certified by the seller, transferor or assignor, under oath, to be a full, accurate and complete list of his creditors and their respective addresses, and of his indebtedness, or, if there be no creditors, a like sworn statement to that effect; and unless the

purchaser, transferee or assignee, shall at least five days before taking possession of such goods, wares and merchandise, or of such fixtures, or of such merchandise and fixtures, hereinbefore described, or paying therefor, or delivering to such seller, transferor or assignor, or to his use, the consideration therefor, notify personally every creditor whose name and address are stated in said list, or of whom he has knowledge, of the proposed sale, transfer or assignment, and of the price, terms, and conditions thereof; or shall, in lieu of such personal service, deposit such notices in the post office, properly addressed to each creditor, to be sent by registered mail, at least ten days before such property described above is paid for, taken possession of or delivered.

Note: A buyer who has not received title or paid the purchase price is not an innocent purchaser for value. *International S. Co. v. Chaimson*, 205 W 474, 237 NW 77.
The proceeds of the sale of an entire stock of goods deposited in a bank by the seller were not impressed with a constructive trust in favor of existing creditors, even though such sale was in violation of the bulk sales law, where such seller sent a creditor his check and died before the check was paid, no relation of confidence existing between him and the creditor. *Dixon S. Co. v. Moen*, 208 W 389, 243 NW 327.

241.19 Definition of parties. Sellers, transferors and assignors, purchasers, transferees, and assignees under sections 241.18 to 241.21, shall include corporations, associations, copartnerships and individuals. But nothing contained in sections 241.18 to 241.21 shall apply to sales, transfers or assignments by executors, administrators, guardians, receivers, trustees in bankruptcy, public officers under judicial process, assignees under a voluntary assignment for the benefit of creditors; or to sales, transfers, or assignments made by order of a court of competent jurisdiction, or upon a bona fide foreclosure of a chattel mortgage; or to, or by, any person to whom any such property may in good faith be transferred or assigned, in trust for the creditors of such transferor or assignor, for the purpose of liquidating the debts of the latter.

241.20 False representations. Any such seller, transferor or assignor, or anyone acting in his behalf, who shall wilfully or knowingly refuse to make, or shall make, or cause to be made materially false or incomplete answers to the inquiries of the purchaser, assignee or transferee, as provided in section 241.18, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed two hundred and fifty dollars or imprisonment in the county jail not to exceed one year.

241.21 Vendee liable to creditors. Any purchaser, transferee or assignee who shall not conform to the provisions of sections 241.18 to 241.21 shall become, and be held, liable and accountable to the creditors of the seller, transferor or assignor, for all goods, wares and merchandise, and fixtures, coming into his possession or control by virtue of such sale, transfer or assignment; provided, however, that any purchaser, transferee or assignee who shall conform to the provisions of sections 241.18 to 241.21 shall not be held in any way accountable under sections 241.18 to 241.21 to any creditor of the seller, transferor or assignor; or to the seller, transferor or assignor, for any of the goods, wares, merchandise or fixtures that have come in the possession or control of such purchaser, transferee or assignee, by virtue of such sale, transfer or assignment.

241.22 Copy of mortgage as evidence. A copy of such mortgage or other instrument or copy thereof, so filed, including any affidavits annexed thereto in pursuance of this chapter, certified by the register of deeds in whose office the same shall be filed, shall be received in evidence. [1933 c. 252]

241.23 Burden of showing bona fides of mortgage. Whenever it shall appear upon the trial of any action against a sheriff, coroner, constable or other officer for the recovery of the possession of personal property or the value thereof that the defendant obtained the possession of such property by virtue of an execution or writ of attachment against the property of a person not a party to such action, from whom the plaintiff claims to have derived his right by a mortgage, and that such property was taken by the officer from the possession of the defendant in such execution or attachment or from premises occupied or controlled by him and it shall be alleged in the answer of the defendant that such mortgage was fraudulent as to the creditors of the mortgagor, then the burden of proof shall be upon the plaintiff to show that such mortgage was given in good faith and to secure an actual indebtedness and the amount thereof.

241.24 Board of trade contracts. No contract for the future purchase, sale, transfer or delivery of personal property shall be void when either party thereto intends, in good faith, to perform the same; and an intention on the part of either not to perform any such contract shall not invalidate it if the other party shall in good faith intend to perform the same. No such contract shall be void because the vendor was not, at the time it was made, the owner of the property contracted to be sold; and in any action by either party for the enforcement of its terms or to recover damages for a breach thereof it shall be incompetent to show in defense, by any extrinsic evidence, that such contract had any other intent or meaning than it expresses; and it and all collateral contracts, agreements

or securities growing out thereof or of which they may have formed the consideration in whole or in part shall be legal and valid; provided, that nothing herein shall be construed to exclude evidence of fraud in the procuring of any such contract as is first mentioned herein, or of any collateral contract, agreement or security growing out thereof, or that any such contract was not entered into upon sufficient consideration, or is not supported thereby, or that both parties intended to make a wagering contract.

241.25 Transfer of bank book to be in writing. No gift, sale, assignment or transfer of any saving fund bank book bearing evidence of bank deposits or of any interest in the deposits represented thereby, shall be valid unless the same shall be in writing and the same or a copy thereof delivered to the bank issuing such bank deposit book.

241.26 Goods delivered on consignment; filing of agreement. (1) Whenever goods, wares or merchandise are consigned and delivered to any person for the purpose of sale or merchandising, and the title thereto remains conditionally or unconditionally in the consignor the consignment agreement shall be in writing and filed in accordance with the provisions of sections 122.06, 122.11 and 122.14.

(2) If a consignment agreement is not so made and filed, the title to any such goods, wares or merchandise shall be deemed to be in the consignee as to purchasers thereof and creditors of such consignee.

(3) Whenever additional goods, wares or merchandise are subsequently consigned and delivered to a consignee under a consignment agreement then legally on file as above provided it shall be sufficient to bring such additional goods, wares or merchandise within the protection of such original filing that an invoice of such additional goods, wares or merchandise, referring to such original filing by date and number, be filed in the same office. The register of deeds shall be entitled to a fee of twenty-five cents for each such invoice filed. [1935 c. 374, 520 s. 8; 1937 c. 81]

241.27 Contracts requiring warning. Every proposed contract for the benefit of any person, firm or corporation furnishing or supplying in any wise whatever, goods, wares or merchandise to hawkers or peddlers and which by its terms upon execution thereof would bind any person to answer for the debt, default or miscarriage of any such hawker or peddler, in lawfully or unlawfully disposing of such goods, wares or merchandise or the proceeds thereof, or which would bind any person to guarantee or answer for any debt or liability incurred by such hawker or peddler in acquiring any title to or interest in the goods, wares or merchandise to be disposed of by such hawker or peddler or in acquiring any title to or interest in any equipment intended to be used in conducting the business of such hawker or peddler, shall have plainly printed upon it, in red ink, in type not smaller than ten point bold face type, at the time of its execution and directly above the place for the signature of the person who would, by signing such contract, become obligated to so answer for the debt, default or miscarriage of any such peddler or hawker, the following statement: "Warning—this may obligate you to pay money". Every such contract not containing such statement shall be unlawful and in any action brought upon any such contract in any court of this state, such contract shall be construed in accordance with the laws of this state. The provisions of this section, however, shall not apply to any such contract where the same contains a provision expressly limiting the amount of the liability of each person obligated to answer for the debt, default or miscarriage of any such peddler or hawker. [1939 c. 161]

241.28 Assignment of accounts receivable. (1) **DEFINITIONS.** As used in this section, unless the context requires otherwise, the term:

(a) "Account receivable" or "account" means and includes any open, running or book account which arises out of or is acquired in connection with a business or occupation of the assignor and which is not represented by a judgment, or by a negotiable instrument or other writing the surrender of which is required by the obligor's contract with the assignor for the enforcement thereof. It includes sums due or to become due and accounts to arise under an existing contract, whether performed or unperformed. It also includes the proceeds and avails of any such account and all rights, powers, remedies, liens, collateral, security and incidents appertaining to such account, and all of the assignor's rights, title and interest in or to, or liens on, the merchandise or other property, if any, the sale or other transfer of which to the obligor gave rise to such account, in case such merchandise or property be not delivered to or accepted by, or be rejected or returned by or repossessed from the obligor.

(b) "Obligor" means a person who owes or will owe the account.

(c) "Assignment" means and includes any sale, pledge, conveyance or transfer of an account, or of any right, title or interest therein.

(d) "Assignor" means the person who, being the owner of an account, makes an assignment thereof, and the term "assignee" means the person to whom such assignment is made.

(2) EFFECT OF ASSIGNMENT; ORDER OF PRIORITY. Every assignment of an account receivable heretofore or hereafter made in writing for valuable consideration shall be valid and shall be deemed and held to have been fully perfected at the time such assignment was or is made, notwithstanding that the obligor be not notified of or does not assent to such assignment; and thereafter no subsequent assignee, pledgee, purchaser or transferee of such account or other person claiming or to claim under, through or against the assignor, and no existing or future attaching, garnishing, judgment, execution, levying or other creditor of the assignor, except a creditor who through judicial proceedings shall have perfected a superior lien on such account prior to the time of such assignment, shall or can have or be entitled to any right, title, lien or interest in or to such account superior to or in diminution of that of such assignee therein or thereto; and in case more than one assignment of the same account or any interest therein is made by the assignor, the one prior in time shall prevail over each subsequent one, notwithstanding that such subsequent assignee shall have notified the obligor of his claim thereto.

(3) PAYMENTS BY OBLIGOR; LIABILITY OF PAYEE. In any case where the obligor, acting in good faith, makes payment of such account in whole or in part to the assignor, or to a subsequent purchaser or transferee of such account who shall have notified the obligor of such purchase or transfer to such subsequent purchaser or transferee, then the obligor shall to the extent of such payment be exonerated of liability to make payment to the first assignee of the account, but the person to whom such payment is made shall be accountable and liable to the assignee for such sums received by him.

(4) APPLICATION. This section shall not be construed to alter or affect any existing law with respect to the negotiation of or the rights of the holders of negotiable instruments, or with respect to the assignment of wages or to require an obligor to recognize a partial assignment. [1945 c. 206, 528]