

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.

A contract for hire for an indefinite term is a valid contract although not in writing. *Kirkpatrick v. Jackson*, 256 W 203, 40 NW (2d) 372.

A tourist cabin project was being financed for the owners by a bank under a loan which contemplated that the loan would provide for plumbing and heating; the installation augmented the value of the mortgage security given by the cabin owners to the bank; oral promises made by the bank to a contractor that he would be paid if he completed the installation were not void as promises to answer for the debt of another. *Elder v. Sage*, 257 W 214, 42 NW (2d) 919.

A note signed by persons who had borrowed money, and by a third person who was an accommodation maker 3 weeks after the money was loaned, did not satisfy the

statute of frauds as an agreement to pay the debt of another. *Estate of Vogel*, 259 W 73, 47 NW (2d) 333.

An oral agreement whereby one party promised to support the decedent and his wife for life and the decedent was to leave all his property to such party, and the promise to support was secured by the latter's note, was void under the statute of frauds, 240.06, 241.02 (1) and 235.01 (2), and specific performance could not be required and no damages could be recovered for its breach by the decedent in willing his property to others, but the party who furnished the support in performance of the void contract was entitled to restitution of the value thereof from the estate of the decedent. *Adams v. Congdon*, 259 W 278, 48 NW (2d) 469.

[241.03, 241.04 Stats. 1929 repealed by 1931 c. 470 s. 8]

241.03 Croppers' contracts to be filed. (1) No landowner-cropper contract shall be valid, except between the parties thereto, unless the contract, subscribed by the parties, describing the premises and containing the entire agreement between the parties, or a copy thereof, be filed with the register of deeds of the county where such premises are located. The register of deeds shall file, indorse, enter and index croppers' contracts filed with him in substantially the same manner as provided for chattel mortgages and he shall permit inspection of such contracts by all persons.

(2) In case such cropper contract is not filed then, except between the parties thereto, the cropper shall be conclusively presumed to have title and possession to an undivided one-half interest in all crops covered by such contract and the relationship between the landowner and cropper to be that of landlord and tenant.

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.

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 or persons having notice thereof, unless the possession of the mortgaged property be delivered to and retained by the mortgagee or unless the mortgage 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 2 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 a purchase.

A bill of sale given to protect the creditor's interest, without any evidence of satisfaction of the debt given by the debtor, was a chattel mortgage. Since it was not filed and the property which it described was not delivered to the mortgagee, it was invalid against creditors garnishing the proceeds of the sale of the property in question. *Aamodt v. Bergren*, 256 W 395, 41 NW (2d) 299.

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, savings 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 section 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.

History: 1947 c. 411 s. 6.

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 the chattel mortgages may be filed in the office of register of deeds 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. 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 in any county shall be valid only with respect to the property situated in such county.

(4) Either the original chattel mortgage or a copy thereof certified by the holder of

the chattel mortgage to be a true and correct copy thereof or a duplicate original thereof may be filed wherever filing of the mortgage is required or provided for. The signatures on the duplicate original may be carbon copies of the signatures of the parties affixed to the original chattel mortgage.

(5) 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.

(6) 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 (5) 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 [Jan. 1, 1932]. 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 7 years, excepting final books of entry.

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.

[241.12 Stats. 1929 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.

32 Atty. Gen. 50 overruled. 39 Atty. Gen. 95.

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 debtors 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.

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

History: 1951 c. 271.

[241.135 Stats. 1939 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.

241.145 Factor's lien. (1) **DEFINITIONS.** (a) "Factor" means any person, firm, bank or corporation, their successors or assigns, engaged in whole or in part in the business of lending or advancing money on the security of merchandise whether or not they are employed to sell such merchandise.

(b) "Merchandise" means any personal property intended for sale, either before or after manufacturing or processing, or in the process thereof, except motor vehicles as defined in section 218.01 (1) but shall not include machinery, equipment or trade fixtures of the borrower which is not intended for sale.

(c) "Borrower" means the owner of the merchandise, or his agent, who creates a lien in favor of a factor.

(2) **CONTINUING LIEN.** If so provided by any written agreement with the borrower, a factor shall have a continuing lien upon all merchandise of the borrower generally described in such agreement, or any separate written statements thereafter signed by the borrower and delivered to the factor, regardless of whether or not such merchandise is in the constructive, actual or exclusive occupancy or possession of the factor, or whether such merchandise shall be in existence at the time of creating the lien or at the time of filing the notice hereinafter referred to, or shall come into existence subsequently thereto or shall be acquired by the borrower thereafter, and upon any accounts receivable or other proceeds resulting from the sale or other disposition of such merchandise, and to the extent provided for in said written agreement or separate written statement such lien shall secure the factor for all his loans and advances to, or for the account of, the borrower made within the time specified in a notice filed pursuant to the provisions of subsections (3) and (4), or of any amendment of notice filed pursuant thereto, together with interest thereon, and all commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower, and for the amounts due or owing upon any notes or other obligations given or received by a factor for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses.

(3) **EXECUTION OF LIEN; CONTENTS; AMENDMENT OF NOTICE.** (a) Notice of the creation of a factor's lien shall be signed by the factor and the borrower, shall be filed as hereinafter provided, and shall contain the following information: The name and address of the factor, and the name under which the factor does business, if an assumed name; the name and address of the borrower; the general character of merchandise subject to the lien, or which may become subject thereto, together with the place or places where such merchandise is or will be situated; and the date of the written agreement between the factor and the borrower and the period of time, not exceeding one year from the date of filing the notice, during which loans or advances may be made against merchandise under the terms of said agreement.

(b) Amendments of the notice signed by the factor and the borrower may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent or amended notices, and to record any extension of the time, not exceeding one year from the date of filing such amendment of notice, during which advances may be made under the terms of said written agreement, or any separate written statements signed by the borrower and delivered to the factor subsequent to the original agreement.

(4) **NOTICE, FILING OF.** Such notice of the creation of a factor's lien shall be filed, as hereafter provided, within 15 days after the execution of the written agreement between the factor and the borrower providing for the creation of said lien; and no factor's lien

created pursuant to this act [section] shall be valid or enforceable against creditors of the borrower until the notice provided for in subsection (3) has been so filed. Notice of the creation of a factor's lien shall be filed in the office of the register of deeds of the county in which the merchandise subject to or to become subject to the lien is or will be situated in the manner provided in section 241.10 for chattel mortgages.

(5) PURCHASES AND LIENS FOR VALUE. (a) Purchasers for value in the ordinary course of the business of the borrower shall take the merchandise free and clear of the factor's lien provided for herein, whether or not they have knowledge of the existence of such lien.

(b) Any conditional sales contract or chattel mortgage for part of the purchase price, executed in connection with such a sale as last above described, may be sold or assigned for value in the ordinary course of business by the borrower, free and clear of the factor's lien provided for herein, whether or not the purchaser or assignee of such conditional sales contract or chattel mortgage had knowledge of the existence of such factor's lien.

(c) Any chattel mortgage on merchandise acquired by the borrower and executed by the borrower for money or credit extended to the borrower in the usual course of business, in payment in whole or in part of the purchase price of said merchandise, shall, if properly filed within 20 days after the receipt of said merchandise by the borrower, have priority over the factor's lien provided for herein whether or not the mortgagee had knowledge of the existence of such factor's lien, and the factor's lien provided for herein shall not attach to merchandise received under consignment pursuant to section 241.26.

(6) EFFECTIVENESS OF FACTOR'S LIEN; EXCEPTIONS. Any factor's lien created pursuant to this section shall from and after the date of filing of the notice of creation of the factor's lien be effectual upon, and attached to, the merchandise from time to time described in the written agreement or separate written statements as against all claims of unsecured creditors of the borrower, and as against subsequent liens of creditors, except that notwithstanding the prior perfection of the lien of the factor under the provisions of this section specific liens for processing, warehousing, or shipping the merchandise in the usual course of the borrower's business preparatory to sale shall be superior to the lien of the factor on said merchandise, but this section shall not obligate the factor personally for any debts secured by such superior lien.

(7) FORECLOSURE. Any factor's lien created pursuant to this section may be foreclosed, the property sold, and redemption made in the same manner as provided for foreclosure, sales or redemption under chattel mortgages, or in such other manner as may have been agreed in writing between the borrower and factor.

(8) PAYMENT; SATISFACTION; CERTIFICATE; TIME LIMITATION. Upon payment or satisfaction of the indebtedness secured by any factor's lien, the factor, upon the request of the borrower, shall furnish to the borrower a certificate or certificates signed by the factor stating that such indebtedness has been paid or such lien satisfied, or both. When such certificate or certificates are filed with the officer with whom the original notice of lien has been filed, such lien shall be deemed discharged. Failure of the factor to deliver any such certificate or satisfaction within 10 days after any such request shall subject the factor to double damages at the suit of any person injured by such neglect. All liens shall be deemed to have expired 3 years from the date of filing of the notice of creation thereof unless prior to the expiration of such 3-year period the factor files a statement under oath that the indebtedness secured by said factor's lien has not yet been paid in full or otherwise discharged, and upon the filing of such statement the said lien shall be deemed to continue for one year from the date of such filing or until the prior payment of the indebtedness.

(9) ACCOUNTS RECEIVABLE; ASSIGNMENTS. The lien of the factor upon any accounts receivable resulting from the sale or other disposition of the merchandise subject to the lien provided for herein, shall be governed as far as applicable by the provisions of section 241.28 provided however, that unless the factor and the borrower shall agree otherwise, the delivery by the borrower to the factor of a written agreement or separate written statement as hereinbefore provided for designating the merchandise which will be subject to the lien, shall operate as an assignment of the accounts receivable which will result from the sale or other disposition of such merchandise with the same effect as if an assignment thereof by the borrower to the factor had been duly perfected under said section 241.28 immediately after such sale or other disposition.

(10) ACTS THAT DO NOT INVALIDATE. No one or more of the following acts shall impair, invalidate or render void the factor's lien on any such merchandise or any other merchandise remaining subject to such factor's lien nor the factor's right to or lien upon any balance remaining owing on any such account receivable or on any other account receivable resulting from the sale of any other merchandise which is subject to such factor's lien irrespective of whether the factor shall have consented to or acquiesced in any of the following acts:

(a) The return to or recovery by the borrower of merchandise sold and the subsequent dealing with said merchandise by the borrower as his own property; or

(b) The granting of credit allowances or adjustments by the borrower to the person purchasing such merchandise; or

(c) Failure of the factor to require the borrower to account to the factor for the proceeds of merchandise sold, or to account to the factor for moneys received on any account receivable resulting from the sale of merchandise covered by any factor's lien.

(11) **EFFECT OF POSSESSION.** When any factor, or any third party for the account of any such factor, shall have possession of any merchandise, such factor shall have a continuing general lien, as set forth in subsection (2), without filing the notice provided for in this section. Nothing herein shall be construed as affecting or limiting any other existing or future lien or right of the factor, at common law or by statute, or any transaction falling within the provisions of law requiring or permitting filing, recording, consent, publication, notices or formalities of execution of instruments creating chattel mortgages or other liens of any nature.

(12) **CONSTRUCTION.** This section is to be construed liberally to secure the beneficial interests and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same.

History: 1951 c. 486.

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.

[241.16 Stats. 1929 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.

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.

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.

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.

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.

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.