

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



Edited by
WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR., Assistant Editor

CITER-DIGEST CO.
ST. PAUL, MINNESOTA
1931

and judgment was not sufficiently definite or certain, the trial court indicated that on application a survey and plat would be ordered to make it so. *Deacon v. H.*, 235NW23. See Dun. Dig. 2905.

§9569. May remove crops.

176M37, 222NW292.

§9572. Mortgagee not entitled to possession.

An assignment of rents, contained in a real estate mortgage, for the purpose of paying taxes and insurance on the property in case of the failure of the mortgagor or his grantees to pay the same, is held valid, following *Cullen v. Minnesota L. & T. Co.*, 60M6, 61NW818. 178M150, 226NW406.

The assignee of the rents was entitled to recover same from a tenant of one who acquired title to the property subject to the assignment. 178M150, 226NW406.

Mortgagor is entitled to rents and profits prior to foreclosure, and until the period of redemption has expired after foreclosure, and on the foreclosure of a second mortgage any right of the second mortgagee to have rents applied on the prior liens terminated, and the mortgagor was entitled to the rents and profits during the period of redemption. 179M571, 229NW874.

§9573. Conveyance by mortgagor to mortgagee.

Notwithstanding this section equity may scan a conveyance by mortgagor to mortgagee, and if the transaction is fair it will be given effect as a conveyance. 179M73, 228NW340.

§9576. Notice to terminate contract of sale—Etc.

Laws 1931, c. 173, legalizes proceedings under this section where mortgage registration tax has not been paid.

1. In general.

Where contract terminated, unpaid installments cannot be recovered. 176M601, 224NW157.

Having procured judgment for cancellation of contract, vendor could not proceed for specific performance. 177M79, 224NW464.

One borrowing money and giving deed and taking back a contract of sale enters into a "mortgage" which cannot be canceled. *Sanderson v. E.*, 234NW450. See Dun. Dig. 6154, 10091.

After a cancellation, nothing remains of the contract upon which the remedy of rescission can operate. *Olive v. T.*, 234NW466. See Dun. Dig. 10091.

Certain timber permits construed as being conditioned upon the payment for the timber on the date therein specified for payment, and not to give the grantee the right thereafter to enter upon the land and remove the timber without making payment therefor. *Northern Lumber Co. v. L.*, 233NW593. See Dun. Dig. 10091(18).

2. Notice to terminate.

A vendee of real estate who acquiesces in a statutory cancellation by notice of his contract, and surrenders possession accordingly, is estopped from thereafter questioning the validity of the notice on technical grounds. *Olive v. T.*, 234NW466. See Dun. Dig. 10091.

An executory contract of sale of real prop-

erty gives the vendee the equitable title in fee. The proceeding for forfeiture is in the nature of a strict foreclosure of the vendee's interest, and no right of redemption survives the 30 days' notice. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 10091.

A contract in the form of an executory contract of sale, if made to secure a loan, is a mortgage. If a mortgage, the vendee's title can be extinguished only by foreclosure and the lapse of the statutory period of redemption. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 6152, 10091.

A building and loan association organized under §7748, et seq., including the amendments of 1919 and 1925, cannot make a loan in the form of an executory contract of sale and have a forfeiture or strict foreclosure on 30 days' notice pursuant to Gen. Stat. 1923, §9576. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 10091.

4. Action for damages.

Cancellation of contract under this section precludes subsequent suit for damages for false representations inducing contract. 181M169, 231NW826.

MISCELLANEOUS ACTIONS

§9580. Nuisance defined—Action.

Village ordinance prohibiting the keeping of dog kennels without reference to whether such kennels created a nuisance held invalid. 173M61, 216NW535.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

The findings do not show that the obstruction of the water was of such character as to constitute a nuisance. *Pahl v. L.*, 233NW836. See Dun. Dig. 7240(52).

Finding that stove factory was a nuisance sustained. *Heller v. A.*, 234NW316. See Dun. Dig. 7255.

Record sustains a finding that the district in which a funeral home is proposed to be established is not strictly residential, and that such establishment is not a nuisance. *O'Malley v. M.*, 234NW323. See Dun. Dig. 6525, 7255.

§9581. Fence, etc., when nuisance.

174M457, 219NW770.

§9585. Trespass—Trespass damages.

Verdict for \$350 held not excessive for cutting of trees. *Hansen v. M.*, 234NW462. See Dun. Dig. 2597, 9696(33).

§9590. Action to determine boundary lines.

Establishment of center of section of land. 172M338, 215NW426.

§9591. Pleadings—Additional parties.

Title by adverse possession may be proved under a general allegation of ownership. 171M488, 214NW283.

§9592. Judgment—Landmarks.

Action contemplates the settlement of title and a judgment is res adjudicata in a subsequent action in ejectment. 171M488, 214NW283.

CHAPTER 83

Foreclosure of Mortgages

BY ADVERTISEMENT

§9603. Requisites for foreclosure.

½. In general.

Finding that interest had been paid and that

no default had occurred held sustained by the evidence. 171M469, 214NW472.

An agent to collect interest is within his authority in receiving the interest one day before it is due to be applied as of the date it is due. 171M469, 214NW472.

3. Only record owner may foreclose.

Necessity for recording assignment of mortgage given under "Federal Farm Loan Act" (Mason's Code, Title 12, §§641 to 1021), see Laws 1929, c. 325.

§9604. Notice of sale—Service on occupant.

2. Service on occupant.

Foreclosure was invalid where notice was not served on occupant. 172M183, 214NW925.

Where notice of foreclosure and sale was served upon the tenant holding the entire farm under lease from the owner, failure to serve also those who owned and occasionally used a hunter's cabin on the premises did not invalidate the foreclosure. 174M47, 218NW446.

§9606. Attorney to foreclose—Record of power.

So long as no attorney's fees are included as a charge against the mortgagor, it is not necessary to make and file a power of attorney. 176 M609, 224NW264.

Foreclosure sale by advertisement made before power of attorney is recorded, held void; and action to set aside commenced within seven months is not barred by laches, and doctrines of estoppel and unjust enrichment were not applicable. 181M79, 231NW395.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M 254, 232NW318. See Dun. Dig. 6425.

§9607. Sale, how and by whom made.

6. Inverse order of alienation.

Where owner gives mortgage and thereafter conveys away part of land, one who obtains judgment lien upon part retained has no right to require that tract conveyed away be first sold on foreclosure of mortgage. 175M541, 222 NW71.

§9610. Foreclosure for installments, etc.

34F(2)308. Appeal dismissed. 51SCR40.

One having taken an assignment of a mortgage under a foreclosure under the 1925 act amending this section cannot claim that the subsequent installments are not prior to his title, on the ground that the 1925 act was unconstitutional as to mortgages executed prior to its passage. 174M520, 219NW914.

The amendment of 1925, permitted foreclosure for default in one installment due under a mortgage, gave validity to a provision for such foreclosure in a preexisting mortgage, and such construction of the statute does not deny the mortgagor due process of law or impair the obligation of his contract. 34F(2d)308.

§9612. Mortgagee, etc., may purchase.

Fraudulent grantee can purchase and acquire good title against all creditors at foreclosure of a prior and paramount mortgage. 171M197, 213 NW892.

Where mortgagee foreclosed and purchased for the amount due on note, there was no "collection" within the meaning of assignment of half interest in the debt secured, and assignee was only entitled to half interest in the land and not a money judgment. 178M360, 227NW 182.

§9613. Certificate of sale—Record—Effect.

4½. Assignment.

180M552, 231NW234.

§9620. Affidavit of costs.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M 254, 232NW318. See Dun. Dig. 6425.

§9623. Action to set aside for certain defects.

Where administrator forecloses mortgage and buys in his own name as administrator, an action to set aside the foreclosure and sale on ground that no default had occurred is properly brought in the district court and against the

administrator as sole defendant. 171M469, 214 NW472.

A second proceeding to foreclose a real estate mortgage by advertisement will not be set aside simply because of the pendency of an action to determine the validity of a prior attempted foreclosure which was found void. Sheasgreen Holding Co. v. D., 233NW853. See Dun. Dig. 6487.

§9626. Redemption by mortgagor.

4. How lost.

Strict legal rights in respect to the time for redemption from foreclosure sale may be waived. Ellingson v. S., 234NW867. See Dun. Dig. 6400.

The detriment which results to mortgagor from his omission to make redemption in reliance on the mortgagee's promise that redemption may be made at a later date, is sufficient consideration for that promise. Ellingson v. S., 234NW867. See Dun. Dig. 1750(81), 6400.

16. Time in which to redeem—Extension.

In action to enforce agreement to extend time for redemption, evidence held to support finding for defendants. 172M422, 215NW839.

18. Effect of non-redemption.

Crop not harvested until a short time after expiration of year for redemption held, nevertheless, the property of the tenant and the mortgagor. 176M37, 222NW292.

Where an award of damages is made to the owner of a tract of land on establishment of a county road, upon which land a mortgage was in process of foreclosure, the mortgagee who purchased the property was entitled to the award in the absence of a redemption. Op. Atty. Gen., Apr. 2, 1931.

§9627. Redemption by creditor.

1. General plan.

Evidence held to sustain a finding of agreement that third mortgagee would redeem from first and lease land to mortgagor. 174M180, 218NW889.

Holder of second mortgage could sue for breach of condition of bond and recover damages for impairment or loss of his security without redeeming from foreclosure of first mortgage. 176M26, 222NW512.

The purchaser at the sale, having failed to file an affidavit of taxes paid, they did not become a part of the sum to be paid in making redemption. 176M393, 223NW609.

2. Who may redeem.

Divorced wife having right to redeem as creditor of husband in her individual capacity, the fact that she made redemption for herself and also for her child did not render the redemption invalid. 176M393, 223NW609.

Judgment in divorce action making allowance for support of children, a lien upon real estate gave the divorced wife the right to redeem from a sale of the land under a mortgage. 176M393, 223NW609.

§9628. Redemption, how made.

Affidavit of amount due properly stated entire amount covered by affiant's lien. 176M393, 223 NW609.

§9629. Certificate of redemption—Record.

Failure to record redemption certificate within four days, rendered it void as to subsequent good-faith redemption from sheriff. 177M563, 225NW815.

An action for money had and received did not lie to recover money paid to purchaser at foreclosure, but owner could recover from such purchaser, money received by the latter from the sheriff on a subsequent redemption by a creditor who was entitled to the land because the owner failed to file his certificate. 177M 563, 225NW815.

§9630. Effect of redemption.

½. In general.

Redeeming life tenant holds for joint benefit of himself and remainderman. 171M182, 213NW 736.

Amount which remainderman must contribute. 171M182, 213NW736.

Evidence held to sustain a finding of agreement that third mortgagee would redeem from first and lease land to mortgagor. 174M180, 218NW889.

§9632. Holder of junior mortgage may pay.

Plaintiff, mortgagee, by releasing the mortgagors from their personal obligation to pay the mortgage, did not subordinate its mortgage to another mortgage obtained from a subsequent purchaser of the premises. 178M50, 226NW189.

The equities of mortgagees, as to each other, in respect to taxes paid or purchased by them, are not affected by the statute. *Des Moines Sav. Bk & Trust Co. v. E.*, 235NW390.² See Dun. Dig. 6236.

§9633. Mortgages to be reinstated in certain cases.

178M50, 226NW189.

CURATIVE ACTS

Laws 1929, c. 5.
Laws 1929, c. 53.
Laws 1929, c. 325.
Laws 1929, c. 378.
Laws 1931, c. 198.
Laws 1931, c. 199.
Laws 1931, c. 230.
Laws 1931, c. 237.

BY ACTION

§9634. By what rules governed.

12. Defenses.

In an action to have a deed declared a mortgage and have it foreclosed, it was immaterial that plaintiff had demanded more cash than was due, where defendant did not refuse to perform for that reason, but defended on other grounds. *Spielman v. A.*, 236NW319. See Dun. Dig. 6435.

16. Notice of election—Treating whole amount due.

Acceleration clause, held operative after extension agreement with mortgagor's grantee. 181M249, 232NW33. See Dun. Dig. 6318.

§9636. Judgment—Transcript to sheriff.

Personal judgment against grantee on mortgagor held properly denied. 172M366, 215NW516.

§9641. Report—Confirmation—Resale.

2. Resale.

180M173, 230NW780.

§9642. Satisfaction of judgment—Execution for deficiency.

Mortgagor conveying property to third person, who assumed the mortgage debt, held liable for deficiency after foreclosure where it requested and consented to extension of mortgage. 181M249, 232NW33. See Dun. Dig. 6294.

§9643. Redemption by mortgagor, creditor, etc.

For rights of a creditor of a decedent debtor, see Laws 1929, c. 195.

Mortgagor is entitled to rents and profits during redemption period even though the foreclosure is of a second mortgage. 179M571, 229NW874.

GENERAL PROVISIONS

§9646. Attorney's fees.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M254, 232NW318. See Dun. Dig. 6425.

§9647. May be collected, when.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M254, 232NW318. See Dun. Dig. 6425.

§9648. Purchaser at foreclosure, etc., may pay taxes, etc.

The purchaser at the sale, having failed to file an affidavit of taxes paid, they did not become a part of the sum to be paid in making redemption. 176M393, 223NW609.

Provision requiring filing of affidavit as to insurance and taxes 10 days before expiration of period of redemption is mandatory. *Op. Atty. Gen.*, Sept. 21, 1929.

§9649. Homestead included in mortgage—Separate sale.

Upon a mortgage foreclosure sale of the West Hotel in Minneapolis, the owner claimed a portion of the building as a homestead and demanded that the remainder of the mortgaged premises be first sold to satisfy the mortgage debt. Held, that the owner having the burden of proof failed to show that the property selected was compact in form and so chosen as not unreasonably to affect the value of the remaining part or that he was prejudiced. 181M392, 232NW740. See Dun. Dig. 4213.

Compliance by the mortgagor requires a separate sale of the homestead upon foreclosure, even though the nonexempt property included in the mortgage brings no bid when first separately offered. *Madson v. N.*, 234NW636. See Dun. Dig. 6344a.

§9650. Court to appoint receiver of rents.

Appointment of receiver and his powers respecting payment of taxes and interest on prior incumbrances before and after foreclosure sale. 172M193, 214NW886.

Mortgagee who purchased at foreclosure sale was not entitled to appointment of receiver to collect and apply rent on unpaid taxes which were taken into consideration in bidding in the property. 171M350, 214NW52.

A receiver should not be appointed to collect rents and profits and apply them on delinquent taxes or interest, if the mortgagor is entitled to such rents, unless there is waste. 173M18, 216NW329.

§9651. Default to be shown.

Without proof of insolvency or inadequacy of security, nonpayment of taxes, not shown to jeopardize title or security during year of redemption, does not warrant appointment of receiver in action to foreclose mortgage. 176M71, 222NW516.

CHAPTER 84

Actions by or against Personal Representatives and Heirs

§9656. What causes of action survive.

1. Held to survive.

Rights under Wisconsin Statutes 1927, §287.01 may be enforced in Minnesota. *Chubbuck v. H.*, 234NW314. See Dun. Dig. 14, 1530.

A right of action accruing to a party under

a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of this state. *Chubbuck v. H.*, 234NW314. See Dun. Dig. 14, 1530.

Action under Wisconsin Survival Statute, *Chubbuck v. M.*, 234NW868.