

1934 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

CHAPTER 61

Powers

8107. Powers abolished, except, etc.

An agent owes the utmost fidelity to his principal. *Nat'l. Pole & Treating Co. v. G.*, 182M21, 233NW810. See Dun. Dig. 152.

Actual authority of sales agent to receive payment for merchandise may be implied from circumstances. *Nat'l. Radiator Corp. v. S.*, 182M342, 234NW648. See Dun. Dig. 161(43).

In action by a salesman to recover a commission, evidence held sufficient to sustain verdict for plaintiff.

Sligvertsen v. M., 182M387, 234NW688. See Dun. Dig. 5812.

8115. Particular estate with power of disposition.

Will held to give an absolute beneficial power of alienation, and life estate was changed into a fee absolute as respected the right of a mortgagee or purchaser, but subject to the future estate of children. 172M48, 215NW196.

8119. What powers of disposition absolute.

172M48, 215NW196; note under §8115.

CHAPTER 62

Landlords and Tenants

8186. Distress for rent.**1. The relation in general.**

Under ordinary contract between landowner and cropper they are co-owners of the crop, and cropper may mortgage his share before division, and a provision authorizing landowner to retain possession of the cropper's share as security for his indebtedness is in legal effect a mortgage on the crop. 171M461, 214NW288.

Except as security for rent or the purchase price of the land, the landowner cannot acquire a valid lien on crops to be grown later than the season beginning on May 1st next following the date of the contract. 171M461, 214NW288.

If without the consent of the cropper, the landowner retains more than his share of the crops, he must account therefor and cannot apply the value thereof on the unsecured indebtedness of the cropper. 171M461, 214NW288.

Covenant of lessee "to pay all unpaid taxes and assessments that are now levied or assessed upon said real estate during the term" held to evidence an intention of parties to impose tax obligation upon lessee. 173M247, 217NW135.

Conversion of grain dependent on construction of lease. *Randolph v. T.*, 174M283, 219NW91.

Lessor informing guarantor on lease that tenant was paying the rent, held to estop him from claiming that tenant was in arrears at such or a subsequent time. 176M227, 222NW929.

Return of lease with a change in it was not an acceptance but a counter offer, but acceptance of the counter offer may be implied from circumstances. *M. Samuels & Co. v. Z.*, 182M345, 234NW468. See Dun. Dig. 1740(24).

City held not to have become bound contractually under a lease to it, and was not liable for rent. *Noyes v. C.*, 183M496, 237NW189.

In the absence of a contrary provision in a written lease for an apartment in a modern multiple apartment building, the landlord impliedly covenants that the premises will be habitable. *Delamater v. F.*, 184M428, 239NW148. See Dun. Dig. 5393.

3. Assignments and subleases.

The evidence compels a finding that a thirty-year lease and a subsequent modification thereof, taken by the promoter of a bank to be organized, was not adopted by the bank occupying the premises leased, improving the same, and paying the rent; for the covenants contained in the lease to be performed by the lessee were such that the bank could not lawfully assume them. *Veigel v. O.T.*, 183M407, 236NW710. See Dun. Dig. 2114, 2114a, 2116.

Acceptance of rent from assignees under an assignable lease did not show a surrender by lessors of right to demand rent from lessee. *Wilcox v. H.*, 185M1, 239NW763. See Dun. Dig. 5429.

A lessee's covenant against assignment without written consent of lessor, however stringent, may be waived by lessor. *W. C. Hines Co. v. A.*, 247NW387. See Dun. Dig. 5408.

Covenant against assignment of lease was waived where assignee remained in possession for two years, paying rent directly to lessor. *W. C. Hines Co. v. A.*, 247NW387. See Dun. Dig. 5408.

Assignee of lease is primarily liable for rent, and lessee, being compelled to pay upon his default, is entitled to reimbursement. *W. C. Hines Co. v. A.*, 247NW387. See Dun. Dig. 5430.

3½. Rents and royalties.

Defendant lessee could not apply against royalties accruing in 1928 royalties which had accrued under a sublease terminated in 1925. *Hammel v. H.*, 182M1, 234NW674. See Dun. Dig. 6123.

5. Crops; rights as to.

Possession of crops by lessor under a lease in effect a chattel mortgage. 178M344, 227NW199.

6. Eviction.

Facts admitted held to show there was no ground for claim of constructive eviction for rent. 173M155, 216NW802.

In action for damage to personal property of evicted lessee, evidence held to show that property belonged to such lessee. *Bronson Steel Arch Shoe Co. v. K.*, 183M135, 236NW204. See Dun. Dig. 5366.

Reservation in a lease of right of lessor to enter to make repairs or improvements did not warrant a major improvement which damaged the lessee's personal property and amounted to an eviction. *Bronson Steel Arch Shoe Co. v. K.*, 183M135, 236NW204. See Dun. Dig. 5365.

Bedbugs in apartment may constitute constructive eviction of tenant. *Delamater v. F.*, 184M428, 239NW148.

7. Improvements.

Agreement of lessor at termination of lease to credit lessee with the value of improvements held not to include cost of digging well. *Chute v. F.*, 178M524, 227NW856.

Lease to gun club granting right to hunt and fish did not give permission to dam outlet of waters upon the land. *Pahl v. L.*, 182M118, 233NW836. See Dun. Dig. 5388.

9. Negligence of landlord.

Evidence held not to show that lessee included sidewalk and therefore lessor and not lessee was liable for defective manhole cover. 176M156, 222NW913.

An assumed warranty of landlord as to safety of cellar steps held limited to adequacy of two stair steps claimed to be too thin, and without reference to supports thereunder. 181M471, 233NW14. See Dun. Dig. 5369.

Landlord held not charged with notice of defective rotten supports under cellar steps. 181M471, 233NW14. See Dun. Dig. 5369, 7231.

The rule is that a landlord, in the absence of fraud, concealed dangers known to the landlord unknown to the tenant, or a warranty, is not liable for injuries suffered because of defective premises, unless there is a violation of his covenant to repair. 181M471, 233NW14. See Dun. Dig. 5369.

In action by tenant against landlord for injuries received when step gave way, evidence held to sustain verdict in favor of plaintiff on issues of negligence, assumption of risk and contributory negligence. *Klugman v. S.*, 186M139, 242NW625. See Dun. Dig. 5369.

10. Repairs.

Recovery by lessor of expenditures made in restoring premises to proper condition at termination of lease. 178M391, 227NW211.

12½. Termination of lease.

Evidence held to show a waiver by both parties of a provision requiring written notice to prevent the automatic extension of a lease for another term. 175M421, 221NW645.

Evidence held sufficient to go to jury upon question whether lease was surrendered before the rent for a particular month accrued. 178M177, 226NW411.

Evidence held insufficient to show modification of term of lease or a notice to lessor that lessee would vacate at the end of the first year. *Kueffner v. H.*, 184M188, 238NW161. See Dun. Dig. 5409(49), 5412.

A fee owner executing a 100-year lease and after default executing a second long term or concurrent lease and assigning to the lessee therein the right to enforce the payment of rent and taxes as provided in the former lease still had the right to give notice provided in the lease to make operative right of re-entry. *First Minneapolis Trust Co. v. L.*, 185M121, 240NW459. See Dun. Dig. 5440(89).

A right of re-entry in a lease providing for a 60-day notice for default is not complete until the expiration of 60 days after service of notice. *First Minneapolis*

Trust Co. v. T., 185M121, 240NW459. See Dun. Dig. 5440 (89).

Lease could not be rescinded by reason of technical violation by lessor of covenant against leasing other property for soda fountain. United Cigar Stores Co. v. H., 185M534, 242NW3. See Dun. Dig. 5412.

Equity disfavours forfeiture of lessee's interest in farm lease upon which crops are growing, and, when forfeiture will work great injustice and lessor is otherwise protected in his rent, forfeiture will not be enforced; and in proper case it may be held that right of forfeiture is waived. Warren v. D., 186M1, 242NW346. See Dun. Dig. 5437.

Lessor held not entitled to claim absolute right of forfeiture of lease. Warren v. D., 186M1, 242NW346.

Facts held not to show surrender of lease by operation of law. Hamilton v. W., 186M220, 242NW709. See Dun. Dig. 5407.

Upon proving lease, occupancy under it, and that rent had not been paid, burden was on defendant to show some valid excuse for failure to pay. Hamilton v. W., 186M220, 242NW709. See Dun. Dig. 5464.

Evidence held to show tenant, from month to month, did not give proper notice of intention to vacate. Cottrell v. S., 186M292, 243NW62. See Dun. Dig. 5440.

Evidence held to support finding that there was an agreement to modify a lease by surrendering right of cancellation without cause. Oakland Motor Car Co. v. K., 186M455, 243NW673. See Dun. Dig. 5409.

13. Trade fixtures.

Finding that wiring, lights, poles and appliances installed in miniature golf course were removable trade fixtures, held justified. Johnson v. G., 187M104, 244NW409. See Dun. Dig. 3773.

8187. Action by landlord—Re-entry—Tenant, when restored.

Where a tenant is in default in the payment of rent, the landlord's right of action for forcible entry and unlawful detainer is complete notwithstanding the lease contains a right to terminate optional with the landlord and effective upon sixty days' notice. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 5440(88).

8189. Person in possession liable for rent.

Tenant who takes possession under a void lease becomes a tenant at will and liable for the specified rent until the tenancy is terminated. 174NW233, 219NW79.

A conveyance of the fee by the lessor does not terminate a tenancy at will nor convert it into a tenancy at sufferance. 174M233, 219NW79.

Payment by tenant and acceptance by grantee of the monthly installments of rent under a void lease is sufficient to establish a tenancy at will even if it did not previously exist. 174M233, 219NW79.

8190. Building destroyed, etc.—Rent.

Tenant cannot avoid payment of rent of premises rendered untenable unless he vacates or surrenders possession. Leifman v. P., 186M427, 243NW446. See Dun. Dig. 5425.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. Siggekow v. A., 187M395, 245NW629. See Dun. Dig. 5412.

Lessor held not estopped to deny termination of lease by lessee after fire. Hoppman v. P., 248NW281. See Dun. Dig. 5424(13).

Notice of tenant to surrender damaged premises does not terminate lease unless tenant vacates within reasonable time after fire. Hoppman v. P., 248NW281. See Dun. Dig. 5424(13).

8191. Estate at will, how determined—Notice.

There was a surrender of property by tenant at will without notice only from date of re-renting. Maze v. M., 184M5, 237NW612. See Dun. Dig. 3161.

1. When no default in rent.

Written notice must be served prior to first day of month to terminate lease from month to month with expiration of that month. Oesterreicher v. R., 187M497, 245NW825. See Dun. Dig. 5443.

3. Mode of service.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. Hagen v. B., 182M136, 233NW822. See Dun. Dig. 5377(83).

8193. Urban real estate—Holding over.

Provision in lease for purchase of fixtures from the lessor by the lessee in the event the lease is "extended," did not intend a statutory extension from month to month but an extension as a result of an agreement between the parties. 174M87, 218NW242.

CHAPTER 63

Conveyances of Real Estate

8195. Terms defined—Mortgages, etc., included.

1. In general.

Evidence held not to require finding that grantor was mentally incompetent, or that deed was induced by undue influence. 174M131, 218NW455.

In view of this section the husband or wife may mortgage the homestead in case of the incompetency of the other spouse. 172M504, 215NW857.

There may be a valid transfer of land by verbal gift where there is an acceptance and a taking of possession. 175M549, 221NW908.

Vendee repudiating contract held not entitled to recover earnest money. 176M50, 222NW288.

Vendor's lien. 176M188, 222NW916.

2. Contracts of sale.

There was a breach of an agreement to furnish a certified Torrens certificate though seller furnished a certificate showing title in another of an undivided one-half interest, and though such other person was ready and willing to join in the contract for a deed. 175M144, 220NW415.

A contract for a deed is a nonnegotiable instrument and an assignee thereof takes it subject to the grantee's rights. 176M267, 223NW288.

Where vendees under contract were to pay all taxes and they assigned contract to defendant which bought in the land at tax sale, vendor who refrained from canceling contract in reliance on representation of defendant that it had paid taxes should have the land free from any lien for such taxes. Klostermann v. F., 176M459, 223NW780.

Cancellation of contract for sale of land discharged liability on note. 177M174, 224NW842.

Evidence unrelated to the land or contract in question, and evidence as to taxes due after the action was commenced should not have been received. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 9998.

A vendor cannot recover the purchase price of land before it is due, on default in payment of interest and taxes, where there is no clause in the contract giving the vendor the right to declare the principal due on default in such payments. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 10084.

Evidence held not to sustain finding that purchasers had repudiated land contract. Pratt v. M., 234NW464. See Dun. Dig. 10043.

The contract in question was properly construed as requiring interest to be paid annually. Pratt v. M., 182M250, 234NW464. See Dun. Dig. 10008.

In action for purchase price of land, claimed defects in title considered and found unimportant and waived by defendant. Kehrer v. S., 182M596, 235NW386. See Dun. Dig. 10022(61).

Vendor under land contract held entitled to proceeds of fire policy above mortgage, though policy had been mistakenly assigned to husband of conditional vendee, and contract was cancelled subsequent to date payment was due from insured. Burman v. C., 186M28, 242NW387. See Dun. Dig. 10046b.

2½. Party wall agreements.

Party wall agreement held to apply only to building being constructed and not to a wall subsequently erected by a remote subsequent grantee. Rany v. L., 185M352, 241NW64. See Dun. Dig. 7416.

3. Assignment.

Where vendee in contract quitclaimed to vendors, the latter were entitled to rely on provision of contract that there could be no assignment by the vendee without the approval of the vendors. 175M502, 221NW871.

When a person contracts in reference to real estate, an assignment of a mortgage thereon is governed by the recording act. 176M18, 222NW509.

In action to determine adverse claims against one who had received deed absolute, findings held supported by evidence. 177M252, 225NW14.

On assignment of vendee's interest in land assignee assumes no personal liability in the absence of an assumption or agreement to pay the unpaid purchase price. Hoyt v. K., 184M154, 238NW41. See Dun. Dig. 10013(15).

An assignment of an executory land contract by the vendor creates a privity of estate between the assignee and original vendor, but not a privity of contract. Hoyt v. K., 184M154, 238NW41. See Dun. Dig. 10013(15).

Where vendor in contract transferred his interest and gave plaintiff quitclaim deed which was not recorded, and later sold the property to an innocent purchaser, plaintiff was entitled to a decree effectuating a transfer to plaintiff of the vendor's interest as vendor in the