

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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less so directed either by this court or district court. State v. Dist. Court., 250NW7. See Dun. Dig. 8082a.

9504. For sale of real property—Supersedeas.

To effect a stay of proceedings on appeal by defendant from a judgment for restitution in a forcible entry and unlawful detainer case, bond on appeal must conform to provisions of statute. Gruenberg v. S., 248NW38.

Defendant in unlawful detainer may not file a St. Paul city sinking fund certificate in lieu of a bond. Id.

9508. Justification of sureties.

Appeal was not dismissed for failure to furnish bond where appellant had acted in good faith and gone to

considerable expense in preparing his appeal, and he was given ten days in which to file a sufficient bond. 176 M632, 221NW643.

9512. Death of party after submission of appeal.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 182 M492, 234NW675. See Dun. Dig. 15.

CHAPTER 81

Arbitration and Award

9513. What may be submitted—Submission irrevocable.

District court may vacate an award if there is no evidence to sustain it. Borum v. M., 184M126, 238NW4. See Dun. Dig. 509.

Evidence held not to require finding that certain issues were voluntarily submitted for determination before arbitrators. McKay v. M., 187M521, 246NW12. See Dun. Dig. 487a.

9515. Powers and duties of arbitrators—Filing of award.

Agreement to submit to arbitration, account between parties relating to a partnership and all other matters in difference between them, is too indefinite to show that dissolution of partnership, sale of assets thereof to one

or other of partners, leasing by one to other of real property which was not partnership property, and an agreement by one partner not to compete in business with other, were matters within authority of arbitrators to determine. McKay v. M., 187M521, 246NW12. See Dun. Dig. 487a.

9517. Grounds of vacating award.

Where award of referees so links matters submitted to arbitration with matters so submitted that they cannot be separated without prejudice to parties, court should not sustain a part of award and set aside other parts thereof. McKay v. M., 187M521, 246NW12. See Dun. Dig. 507.

(5).

District court may vacate an award if there is no evidence to sustain it. Borum v. M., 184M126, 238NW4. See Dun. Dig. 509.

CHAPTER 82

Actions Relating to Real Property

ACTIONS TO TRY TITLE

9556. Actions to determine adverse claims.

1. Nature and object of action.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 182M492, 234NW675. See Dun. Dig. 15.

7. Answer.

Answer, held not sham. 180M480, 231NW224.

8. Reply.

Where in a legal action to determine adverse claims, the defendants assert a legal title, the plaintiffs may, in their reply, plead facts showing an equitable title that ought to prevail over defendants' legal title. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8052.

8½. Evidence.

Parol evidence as to land intended to be included in mortgage. 181M115, 231NW790.

9. Judgment.

Value of land involved as affecting jurisdiction of federal court for purpose of removal from state court. 31F(2d)136.

Former judgment between the parties held not res adjudicata on possession. 173M242, 217NW337.

Equitable title of one who purchased fractional interest under deed mistakenly conveying smaller fractional interest and who improved land, held to prevail over legal title in action to determine adverse claims. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8042.

9563. Ejectment—Damages—Improvements.

Written promise by remaindermen to pay for improvements erected by life tenant, held to create a mere personal obligation and constituted no defense or counterclaim in ejectment. 180M151, 230NW634.

Remaindermen are not liable for improvements made by life tenant, and holding of trial court that there was consideration for the contract is affirmed by equally divided court. 180M151, 230NW634.

9565. Occupying claimant.

One who, through mistake as to the boundary participated in by the adjoining owner, builds a house on the land of such other, remains the owner thereof. 171 M318, 214NW59.

9566. Pleadings—Trial—Verdict.

3. Evidence.

Fraud in obtaining signature of wife to deed. 173M 51, 216NW311.

9. Survey.

If the description in the verdict in ejectment 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., 182M540, 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, 61NW318. 178M 150, 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.

This section does not deprive mortgagee of former recourse to equitable remedy of a receivership to protect security. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6456(38).

After foreclosure of mortgage on instalment, mortgage and all its covenants, including that to pay taxes, remain in full force and mortgagee is entitled under assignment of rents as part of security to collect rents to apply upon delinquent taxes, even those accrued at time of foreclosure for instalment. Peterson v. M., 248NW667. See Dun. Dig. 6227n. 26.

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. 179 M73, 228NW340.

A building contract, warranty deed, and a contract for deed held a conditional sale, not an equitable mortgage. Westberg v. W., 185M313, 241NW315. See Dun. Dig. 6153.

There is no longer a presumption that a transfer by a mortgagor to his mortgagee is given as further security or as a new form of security, and a mortgagor may eliminate his title by conveying directly to mortgagee. McKinley v. S., 247NW389. See Dun. Dig. 6150, 6166, 6250.

Evidence held to show conveyance to plaintiff and contract by him and wife to reconvey was equitable mortgage. Jeddloh v. A., 247NW512. See Dun. Dig. 6154, 6157.

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 cancelled. *Sanderson v. E.*, 182M256, 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.*, 182M327, 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.*, 182M89, 233NW593. See Dun. Dig. 10091(18).

In an unlawful detainer action, there was no default justifying a notice of cancellation. *Mattson v. G.*, 183M580, 237NW588. See Dun. Dig. 10091.

Vendor upon cancellation of executory land contract recovers the land and can retain payments made, but cannot recover for installments not paid. *Hoyt v. K.*, 184M154, 238NW41. See Dun. Dig. 10091(51).

A vendor and owner of farm land, on cancelling an executory contract for its sale and conveyance, is entitled to possession of the land and growing crops. *Roehrs v. T.*, 185M154, 240NW111. See Dun. Dig. 10091(49).

A vendor, in a contract for deed, whose interest has been sold at sheriff's sale, may, before the expiration of the time for redemption, terminate the contract by serving the statutory 30 days' notice upon the defaulting vendee; it not being necessary to serve the notice upon the purchaser at the sheriff's sale. *W. T. Bailey Lumber Co. v. H.*, 185M251, 240NW666. See Dun. Dig. 3540, 6398, 10091.

A judgment against the vendee for an unpaid installment on a contract for deed will be canceled and discharged of record where contract is canceled for a default in subsequent installment. *Des Moines Joint-Stock Land Bank v. W.*, 185M476, 241NW592. See Dun. Dig. 10091(51).

Evidence held to show that vendors lawfully and by proper procedure cancelled land contract by notice, as against claim of confidential relationship and agreement to execute new contract. *Peterson v. S.*, 247NW6. See Dun. Dig. 10091.

Where mortgagor to state deeded land to it and took contract back and later conveyed property to another, contract was valid and could be terminated on 30 days' notice. *McKinley v. S.*, 247NW389. See Dun. Dig. 6150, 6166, 10091.

Evidence of default in form of testimony in regard to book entries, held sufficient to go to jury as against any objections made by defendant. *Gruenberg v. S.*, 248NW724. See Dun. Dig. 10091.

Acceptance of installment held not waiver of proceeding to terminate contract for default in failing to pay mortgage. *Swanson v. M.*, 248NW727. See Dun. Dig. 10091.

Evidence held to support finding that vendors did not agree to extend time or waive default. *Swanson v. M.*, 248NW727. See Dun. Dig. 10091.

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.*, 182M327, 234NW466. See Dun. Dig. 10091.

An executory contract of sale of real property 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.*, 182M452, 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.*, 182M452, 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.*, 182M452, 234NW872. See Dun. Dig. 10091.

Notice of cancellation of contract served upon vendee one day before discharged as sane by decree of probate court, was valid, there being no guardian and vendee

being on parole. *McKinley v. S.*, 247NW389. See Dun. Dig. 4519, 4531, 10091.

Where executory contract is, in fact, mortgage, building and loan association, except in cases specified in §7757, as amended, has no right to cancel by giving 30 days' notice. *Op. Atty. Gen.*, Mar. 6, 1933.

Register of deeds is not required to record contract for deed which is not properly witnessed nor acknowledged, though attached by attorney to notice of cancellation of contract and other documents in connection therewith. *Op. Atty. Gen.*, July 17, 1933.

Notice of cancellation served less than 30 days before passage of Laws 1933, c. 422, was ineffective to terminate contract without court order. *Op. Atty. Gen.*, May 15, 1933.

4. Action for damages.

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

If vendee wrongfully remains in possession and harvests crops, the measure of the vendor's damage is the value thereof, plus the value of the use of the land during the period of the vendee's subsequent wrongful possession. *Roehrs v. T.*, 240NW111. See Dun. Dig. 2567, 10091.

9576-1. Cancellation of contracts suspended.—Cancellation of contracts for deed pursuant to Section 9576 of Mason's Minnesota Statutes, 1927, and acts amendatory thereof and supplemental thereto are hereby suspended for the period of two years from and after the passage of this act upon the conditions hereinafter defined. (Act Apr. 21, 1933, c. 422, §1.)

Preamble to act.

Whereas, there exists in the State of Minnesota a public economic emergency of such force and effect as to seriously interfere with the ordinary performance of contracts; and

Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth has created an emergency of such nature that justifies and validates legislation for the extension of the time of performance by vendees of contracts for the conveyance of real property; and

Whereas, the welfare of the people demands that the State, pursuant to its police power, interfere for a limited time with a literal enforcement of the law regarding contracts for deed. Now, Therefore—

Service of notice of cancellation less than 30 days before passage of this act was ineffective to terminate contract without a court order. *Op. Atty. Gen.*, May 15, 1933.

9576-2. Notices not to be effective.—No notice to terminate any contract for the conveyance of real estate or any interest therein for a breach of condition contained in such contract shall be effectual to divest title and/or possession to the vendee or those claiming under him, or to reinvest title and/or possession in the vendor or those claiming under him, during the emergency herein declared except as herein-after provided.

When default is made in the conditions of any contract for the conveyance of real estate, or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that at a time specified, not less than forty days after the service of said notice, he will apply to said court for an order adjudging said contract terminated, unless prior thereto the purchaser, his personal representatives or assigns, shall comply with and perform the conditions then in default and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary and shall be served within the state in the same manner as a summons in the district court, if served without the state, in the manner provided in Section 3234, Mason's Minnesota Statutes, 1927.

Provided, however, that three weeks' published notice, and if the premises described in said contract are actually occupied by anyone other than the vendee, then in addition thereto, the personal service of a copy of said notice within ten days after the first publication of said notice, and in like manner as the service of a summons in a civil action in the district court upon the person in possession of said premises,

shall have the same effect as the personal service of said notice upon said purchaser, his personal representatives or assigns, either within or without the state as herein provided for; and provided further, that in case of such service by publication as herein provided, the said notice shall specify the conditions in which default has been made and stating that at a specified time, not less than ninety days after the first publication of said notice, he will apply to said court for an order adjudging said contract terminated, unless prior thereto the purchaser, his personal representatives or assigns, shall comply with and perform the conditions then in default and pay the costs of service.

If within the time mentioned in said notice within which the vendee, his personal representatives or assigns must perform the conditions in default, the vendee complies with such conditions and pays the costs of service, the contract shall remain in full force and effect; but if the vendee fails or neglects to perform the conditions in default within the time mentioned in said notice for such performance and to pay the costs of service, and fails to serve written objections to the termination of such contract upon the vendor, within fifteen days after service of notice on the vendee, the court shall, upon motion of the vendor, and proof of service of said notice, and in the absence of any appearance upon behalf of the vendee, make its order adjudging such contract terminated and said contract shall, thereupon forthwith, be and become finally terminated.

The vendee may, within fifteen days after service of said notice, and if served by publication, within fifteen days after the last publication, serve upon the vendor, or his attorney, written objections to the making of any order adjudging the contract terminated and any legal or equitable defenses claimed by him; and when alleged in said written objections and it shall be made to appear to the court upon the application and hearing for an order adjudging the termination of said contract, that the vendee has, in addition to the payment of taxes, insurance and interest, if any, made and paid for valuable improvements upon the premises, or paid upon the contract price of the premises whether to the vendor or to the owner of any incumbrance subject to which the contract was made, or which the contract provides that the vendee, his successors or assigns shall pay, or to both, a sum or sums aggregating thirty (30) per cent or more of the original contract price and that the vendor's interest is reasonably secure, the court may, on taking into consideration the reasonable value of the income of such property, or, if the property have no income, then the reasonable rental value thereof, the efforts and ability of the vendee to pay, and all the facts and circumstances of the case, by order and upon such terms and conditions as to it appear just and equitable, extend the time in which the vendee may perform the conditions of the contract in default, not to exceed one year from the date of the service of notice of termination on the vendee and in no event beyond May 1, 1935.

If the vendee shall fail to perform the conditions in default, or any of them, as required and directed by the court to be performed, said contract shall forthwith be and become terminated and the vendor may thereupon apply to the court for an order adjudging said contract terminated, on giving at least ten days' written notice of such application to the vendee. If it shall be made to appear to the court, upon a hearing on said application, that the vendee has defaulted in performing such conditions, the court shall make an order declaring said contract terminated and said contract shall thereupon forthwith be and become finally terminated. (Act Apr. 21, 1933, c. 422, §2.)

9576-3. Order to be recorded.—A copy of any order of the court made pursuant to this act may be record-

ed with the register of deeds of the county wherein the real estate is situated. (Act Apr. 21, 1933, c. 422, §3.)

9576-4. Application of act.—The provisions of this act shall not apply to leaseholds. (Act Apr. 21, 1933, c. 422, §4.)

9576-5. Trial or hearing.—The trial of any action, hearing or proceeding mentioned in this act shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during the vacation of the court. (Act Apr. 21, 1933, c. 422, §5.)

9576-6. Termination of emergency.—The emergency herein declared to exist shall be deemed to be terminated whenever the governor of this state shall by proclamation declare that the emergency is at an end or whenever in fact the emergency shall have terminated and this Act shall remain in effect no longer than April 1, 1935. (Act Apr. 21, 1933, c. 422, §6.)

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., 182M118, 233NW336. See Dun. Dig. 7240(52).

Finding that stove factory was a nuisance sustained. Heller v. A., 182M286, 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., 182M294, 234NW323. See Dun. Dig. 6525, 7255.

Odors suffered by farmer from sewage dumped into stream by city and canning company constituted a nuisance. Johnson v. C., 247NW572. See Dun. Dig. 7244.

A nuisance does not rest upon degree of care but rather upon danger, indecency, or offensiveness existing or resulting even with best of care. Id. See Dun. Dig. 7248.

A city has power of eminent domain in requiring necessary rights to empty sewerage into lake outside corporate limits subject to laws respecting nuisances and health regulations. Op. Atty. Gen., June 20, 1933.

9581. Fence, etc., when nuisance.

174M457, 219NW770.

9584. Waste pending year for redemption—Injunction.

It is waste for a mortgagor in possession following foreclosure sale not to use current rents to the extent reasonably needed to keep the property tenable. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6459.

Waste will ordinarily not be enjoined unless of such character that it may so impair the value of the property as to render it insufficient or of doubtful sufficiency as security for the debt. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6459.

9585. Trespass—Trespass damages.

Verdict for \$350 held not excessive for cutting of trees. Hansen v. M., 182M321, 234NW462. See Dun. Dig. 2597, 9696(33).

9590. Action to determine boundary lines.

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

In action to determine boundary line between city lots, evidence held to show that plaintiffs were estopped to deny ownership of land upon which building existed. Lobnitz v. F., 186M292, 243NW62. See Dun. Dig. 1083.

In division of dried-up bed of meandered lake, if parties cannot agree, action in district court to determine boundary lines is only remedy. Op. Atty. Gen., May 16, 1932.

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.