

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR.
R. O. MASON
J. S. O'BRIEN
H. STANLEY HANSON
R. O. MASON, JR. } Assistant Editors

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1938

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

8112. Special power defined.

Termination and release of powers of appointment. 20MinnLawRev448.

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.

Testator's wife not having power to dispose of property at time judgment creditor made levy and execution upon her interest therein nor at time he commenced proceedings in probate court, §§8115-8117, 8119, relating to powers, has no application to convert such power into a fee available to creditors. *Stucky v. E.*, 198M445, 270NW141. See Dun. Dig. 10288.

8116. Power of disposition creates fee—when.
Life estate with absolute power of disposal. 18Minn Law Rev488.

8119. What powers of disposition absolute.

172M48, 215NW196; note under §8115.

8142. When power is irrevocable.

Power to revoke a trust without express provision therefor. 17MinnLawRev231.

8165. Power of sale in mortgage deemed part of security.

A mortgage of land is no longer a conveyance, but creates only a mere lien or security. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 6145.

CHAPTER 61A

Official Trusts

8168. Corporate authorities or judge to convey lands.

Note. The act herein referred to should probably be Act May 23, 1844, instead of Act May 23, 1854.

CHAPTER 62

Landlords and Tenants

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

Contract which contemplated a lease of property which lease was never executed, held properly referred to as a "contract for a lease," by the lessor in a *Torrens* registration suit. *Nitkey v. S.* (USCCA8), 87F(2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

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.

Where lessee of unexpired mining leases, upon which a large sum as advance royalty had been paid, took a

conveyance of fee, it was to interest of lessee that leases should not merge so that a proper reduction on occupation tax for advance royalty paid could be made for ore mined and produced each year for unexpired term of leases. *State v. Wallace*, 196M212, 264NW775. See Dun. Dig. 6117.

One can become a tenant at will only by permission from owner or one acting for him to go onto land. *Johnson v. W.*, 197M280, 266NW852. See Dun. Dig. 5361.

Where plaintiff foreclosed a mortgage upon premises leased to defendants after mortgage was given, and there was no redemption and title went to plaintiff February 14, 1931, and defendants notified plaintiff that premises would be vacated on March 31, 1931, and that they would remain no longer, plaintiff could not, without defendants' consent, convert tenancy at will or at sufferance to a tenancy under lease, and no rent could be recovered for April, May, and June, 1931. *Geo. Benz & Sons v. W.*, 198M311, 269NW840. See Dun. Dig. 5377.

Effect of provision in lease giving lessor sole right to terminate. 16MinnLawRev214.

2. Abandonment.

Evidence supports finding that a tenant surrendered its lease and landlord accepted surrender and terminated relationship. *Sjoberg v. H.*, 199M81, 271NW329. See Dun. Dig. 5407.

3. Assignments and subleases.

Dissolution of corporation that assigned lease to defendant's assignor, held to constitute defendant equitable assignee liable for rent accruing during possession. *Medical Arts Bldg. Co. v. M.* (USCCA8), 78F(2d)937.

Where the taxes on a leasehold were to be paid as additional rent lessee's equitable assignee was obligated to pay taxes, and where he had not paid them lessor could recover therefor whether lessor had paid them or not, and although assignee had taken steps to contest validity of delinquent taxes. *Minnesota L. & T. Co. v. M.* (USDC-Minn), 8FSupp907. See Dun. Dig. 5399, 5430.

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.