

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

*Minnesota State Law Library
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

CHAPTER 62

Landlords and Tenants

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

By accepting a regular operator's contract and acquiescing in suspension of rental provisions in order to regain possession of oil station in possession of bankrupt, under agreement with trustee, lessor waived any standing in state court in an action for an accounting to challenge validity of new arrangement because not approved by federal court. *Range Ice & Fuel Co. v. B.*, 296NW407. See Dun. Dig. 5409.

3. Assignments and subleases.

Evidence held not to establish an acceptance of rent by lessor following a sub-letting in violation of lease. *Geo. Benz & Sons v. H.*, 294NW412. See Dun. Dig. 5406.

Evidence held sufficient to sustain finding that there was a sub-letting in violation of a lease. *Id.*

3½. Rents and royalties.

A decision that plaintiff is entitled to recover for unpaid room rent is within issues raised by pleadings where complaint states a cause of action for unpaid room rent and answer alleges payment by conveyance of certain real estate and other defenses relating to performance of lease by plaintiff. *Doyle v. S.*, 288NW152. See Dun. Dig. 5477.

Where owner of two lots constructed two apartment buildings and entered into an agreement with owner of a third lot whereby owner of lots 1 and 2 would supply apartment to janitor free of charge, and owner of third lot agreed to provide space for a central heating plant and to pay one-third of cost of heating plant, its maintenance, one-third of fuel bill, and one-third of janitor's wages, owner of lots 1 and 2 to pay two-thirds of such expense, and owner of lots 1 and 2 constructed an apartment for janitor and his family on lot 1 and janitors lived there many years free of charge, and lots 1 and 2 were sold to separate parties who had full knowledge of the arrangement, the owner of lot 1 was not entitled to recover of owner of lot 2 any part of rental value of janitor's apartment. *Huhn v. R.*, 293NW138. See Dun. Dig. 9957.

7. Improvements.

Absence of probate proceedings in estate of owner of a leasehold interest did not bar sole heir from asserting her rights to such interest, including right to remove building constructed by lessee, she having been accepted as a tenant in place of original lessee. *Justen v. O.*, 296NW169. See Dun. Dig. 5402.

9. Negligence of landlord.

Liability of landlord to tenant who cut his hand on cracked porcelain handle of water faucet, held for jury. *Fontaine v. J.*, 289NW68. See Dun. Dig. 5368.

Where owner is sued in tort for result of negligently constructing a concealed trap on premises, evidence that some wrong of lessee rather than that of owner is cause

of plaintiff's injury is admissible under a general denial, and an allegation that lessee had in lease assumed liability to indemnify lessor for any damage either to person or property due to demised premises, regardless of cause, was properly stricken. *Murphy v. B.*, 289NW667. See Dun. Dig. 7574, 7578.

If negligence charged to lessor and owner of real estate amounts to construction of a concealed trap or pitfall which was known to him and is unknown to lessee, owner is liable for harm resulting to persons rightfully on premises, even though he was under no duty to make repairs. *Id.* See Dun. Dig. 6973.

Landlord is not liable for tenants' injuries from defective premises unless there is warranty or violation of covenant to repair, absent fraud and concealed dangers known to landlord and unknown to tenants. *Mani v. E.*, 295NW506. See Dun. Dig. 5369.

Owner and lessor of hotel premises who reserved no right of possession and control of hotel entrance was not liable for negligence of hotelkeeper in permitting presence of ice on foot mat in lobby entrance. *Green v. E.*, 295NW905. See Dun. Dig. 5369.

10. Repairs.

Oral promise of landlord to keep faucets in repair made at time of leasing apartment and later were supported by a consideration. *Fontaine v. J.*, 289NW68. See Dun. Dig. 5397.

A landlord is under no duty to make repairs under a lease containing provisions that he shall not be liable for repairs, or that tenants take premises as they are. *Geo. Benz & Sons v. H.*, 293NW133. See Dun. Dig. 5397.

Measure of damages to a tenant for breach of landlord's covenant to replace an appliance in a leased building is diminished rental value of building by reason of failure to replace. *Id.*

12½. Termination of lease.

Verbal arrangement made two months after expiration of written lease held to be an extension of prior written agreement, including right of lessee to remove any building constructed by him. *Justen v. O.*, 296NW169. See Dun. Dig. 5413.

In action for accounting involving a claim for rentals under a lease of oil station, evidence held to support finding that lease and rental agreement were cancelled and that lessor took operation of station on a commission basis without payment of rental by prior lessee. *Range Ice & Fuel Co. v. B.*, 296NW407. See Dun. Dig. 5407.

14. Use and occupation.

Provision that "lessee is going to erect a building for a vegetable stand on property" in a clause giving lessee right to remove any building constructed by him at end of lease constituted no restriction whatever as to use of premises. *Justen v. O.*, 296NW169. See Dun. Dig. 5391.

CHAPTER 63

Conveyances of Real Estate

8195. Terms defined—Mortgages, etc., included.**1. In general.**

A license is not an estate but a permission giving licensee a personal legal privilege enjoyable on land of another, and it is destroyed by an attempted transfer if licensor so elects, and is revocable at licensor's will, and normally payment of consideration does not render it irrevocable. *Minnesota Valley Gun Club v. N.*, 290NW222. See Dun. Dig. 5576.

Validity and kind of an estate held by life long resident of Wisconsin under a will of a resident of Minnesota may be determined by law of Wisconsin where land which is greater portion of her holdings is situate, devise by its nature being an individual grant of land, and will accomplishing transfer under laws of Wisconsin. *Ruppert's Will*, 290NW(Wis)122.

2. Contracts of sale.

In suit to rescind land contract evidence held insufficient to show mental incompetency of plaintiff's purchaser. *Beck v. N.*, 288NW217. See Dun. Dig. 10001a.

Under executory contract for conveyance of real estate, title remains in vendor as security for purchase price, vendee becoming equitable owner. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 10045.

Where property has been sold on contract for deed, vendee may recover payments made prior to cancellation of contract as for money had and received when such fraud has been practiced upon him in procurement of contract as would have entitled him to rescind. *Gable v. N.*, 296NW525. See Dun. Dig. 10098.

A register of deeds should not accept a contract for deed for record unless usual certificate as to payment of

taxes is attached thereto. *Op. Atty. Gen.*, (373B-9(e)), April 25, 1940.

As affecting purchase by school district of tax title lands, a tax title is not a good marketable title until title has been quieted by action, since a tax title is subject to many errors and mistakes, which might be raised at any time within 15 years by original owner. *Op. Atty. Gen.* (425c-12), Sept. 12, 1940.

2½. Easements in general.

Where owner of two lots constructed two apartment buildings and entered into an agreement with owner of a third lot whereby owner of lots 1 and 2 would supply apartment to janitor free of charge, and owner of third lot agreed to provide space for a central heating plant and to pay one-third of cost of heating plant, its maintenance, one-third of fuel bill, and one-third of janitor's wages, owner of lots 1 and 2 to pay two-thirds of such expense, and owner of lots 1 and 2 constructed an apartment for janitor and his family on lot 1 and janitors lived there many years free of charge, and lots 1 and 2 were sold to separate parties who had full knowledge of the arrangement, the owner of lot 1 was not entitled to recover of owner of lot 2 any part of rental value of janitor's apartment. *Huhn v. R.*, 293NW138. See Dun. Dig. 2853a.

2¾. Options.

Until an option to purchase land is effectively exercised, it is a mere unilateral undertaking, and if time in which it is to be exercised expires before its terms and conditions are met with, it lapses. *Ferch v. H.*, 295NW 504. See Dun. Dig. 10016.

Whether performance by an optionee to purchase land has been made or tendered is a question of fact. *Id.*