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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.

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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., 296 NW169. 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., 289NW567. 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.

2¼. 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.

3. Assignment.
Evidence held to sustain finding that assignment by plaintiff-vendor of a contract for deed to real estate was given to defendant's assignor as security for payment of a debt and that debt had been paid to defendant in a settlement made with him and that he was therefore no longer entitled to rights of vendor in property. Bishop v. L., 291NW297. See Dun. Dig. 10013.

Where vendor assigned land contract and notes of vendee to a bank as security for a loan, one purchasing land contract and note from bank receiver long after maturity took them subject to any defense between vendor and bank, and took them subject to pledge. Id. See Dun. Dig. 10013.

4. Rescission.
Purchaser of house and lot ratified any misrepresentations or fraud by long delay in seeking redress, and was not entitled to rescind contract. Beck v. N., 288NW217. See Dun. Dig. 10097.

5. Deeds.
Rights of parties to vest at time of delivery of deed. Longcor v. C., 289NW570. See Dun. Dig. 2662.

Provision in deed making gift of an auditorium to a city on condition that income be used for benefit of auditorium only was valid. Id. See Dun. Dig. 2676.

5½. Merger.
Right of assuming grantee to be subrogated to senior mortgage paid by him as against an unknown recorded junior mortgage. 24MinnLawRev121.

7. Condition subsequent.
Permitting American Legion to construct a building on land of a village and lease of such building to American Legion Post for a reasonable time would constitute a "public purpose" within deed of land to village for public purposes only with right of reversion. Op. Atty. Gen., (469a-9), March 29, 1940.

A conveyance to a town "this town to maintain car tracks and wall gate, said land to revert to the party of the first part when ceased to be used by said town," constituted a condition subsequent, upon breach of which, coupled with re-entry, estate of town will be defeated, unless condition has become merely nominal, but such condition is directed toward a particular public use and not against succession of property to county upon dissolution of town, and there is no reverter resulting from failure to use the property unless there is a re-entry or an equivalent act before performance of condition as resumed. Op. Atty. Gen. (441B), Jan. 4, 1941.

Where land was conveyed to a town wherein grantee "agreed that the above described property shall be improved and kept improved, and that said grounds shall be used for a public park and picnic grounds only and for no other purpose whatsoever," property went to county upon dissolution of town by operation of law, including appurtenant rights, privileges and duties, and whether county could use property for uses other than as a public park or picnic grounds would depend upon whether there was a condition subsequent or language was intended to be merely directory, a question of fact to be determined from all circumstances. Id.

9. Delivery of goods.
Delivering a deed to a third party is delivery to the grantee only when the grantor evinces an intention presently and unconditionally to part with all control of it, and that it shall take effect according to its terms. Slawik v. L., 290NW228. See Dun. Dig. 2666.

Delivery of a deed is essential to a transfer of title, essential elements of which are surrender of control by grantor, together with an intent to convey title thereby. Id. See Dun. Dig. 2662.

In litigation involving question of sale of land and delivery of deed by mother to daughter, claimed to have been paid for by withdrawal by mother of purchase price from joint bank account standing in name of mother and daughter, court properly gave the parties wide range in receiving testimony touching source and origin of joint bank account, and financial and other dealings between mother and daughter. Cloutier v. C., 294NW457. See Dun. Dig. 2664.

A delivery valid in law does not necessarily mean a manual handing of deed by grantor to grantee, but it may be delivered and received by an agent of either party to the deed without reservation of right to grantor to recall it, or grantor may make the delivery by causing deed to be recorded without it first coming into hands of grantee. Id.

If there had been such delivery of a deed as passed title, title cannot revert to grantor by destruction of the deed by the grantee or by anyone else. Id. See Dun. Dig. 2662.

10. Return without record.
If mother merely handed daughter a deed to read with no present intention to pass title to daughter, there was no legal delivery, nor was there such delivery if daughter refused to accept it, indicating such intention by destroying the deed, but if mother delivered deed with intention to pass title, and daughter accepted it, mother could not by forcibly or otherwise repossessing herself of the deed, reacquire title. Cloutier v. C., 294NW457. See Dun. Dig. 2664.

13. False representations.
Representation as to what property cost is a representation of fact and not opinion. Beck v. N., 288NW217. See Dun. Dig. 10058a.

Value of property such as a house and lot which have no market value like property sold on stock or commodity exchanges, where a market value can be ascertained as of any date or hour, is not the subject of actionable misrepresentation. Id. See Dun. Dig. 10060.

Statement that a farm is a "money maker" is not a statement of fact. Rother v. H., 294NW644. See Dun. Dig. 10058a.

In action for damages for fraud evidence held insufficient to establish falsity of statement in advertisement farm was a "money maker." Id. See Dun. Dig. 10062.

If there is a misrepresentation, but purchaser, instead of relying upon it, makes an independent examination and acts upon result thereof without regard to misrepresentations, there is no cause of action for damages. Id. See Dun. Dig. 10067.

Where it is reasonably clear that parties are not dealing at arm's length and, because of relations of parties and peculiar circumstances of case, a false representation as to value and a reliance thereon had produced a palpable fraud, strict rule that representations of value are mere expressions of opinion and trade talk yields to justice of case and resolves the representation to one of fact. Gable v. N., 296NW525. See Dun. Dig. 10060.

14. Fraud.
As affecting representation that house was "well built and in good condition", there was no error in excluding testimony offered that old or used lumber entered into construction, matter of being well built or in good condition being readily ascertainable fact for inspection which was thoroughly made. Beck v. N., 288NW217. See Dun. Dig. 10067b.

In action for damages in fraud in sale of farm and stock, trial court should not allow jury to consider whether plaintiff relied upon statement that 15 cows brought in $200 per month, plaintiff being acquainted with cattle and with agricultural conditions. Rother v. H., 294NW644. See Dun. Dig. 10067.

If vendor of land told purchaser that land was sandy, purchaser suing for damages for fraud could not rely on farm advertisement that soil was black. Id.

In action for damages for fraud in sale of land, plaintiff is entitled to inquire on question of ratification whether defendant ever offered to return purchase price after learning agents made misrepresentations, but counsel should so phrase question that it will not convey that there was a legal duty save to avoid a ratification under the rule that a principal ratified by asserting a right to the fruits of the agents' act when the action was brought. Id. See Dun. Dig. 10067b.

Admissibility of tax assessment on question of value of farm in an action for damages for fraud in sale. Id. See Dun. Dig. 10067b.

Findings held to support judgment dismissing action to establish that deceased had obtained title to certain lands by tort or fraud and held such title as trustee ex maleficio. Moe v. O., 296NW512. See Dun. Dig. 2661b.

14½. Forgery.
In action to set aside a deed as forgery, no reversible error was present where counsel failed to request an instruction that evidence must be clear and convincing and expressed satisfaction with a charge that burden of proving forgery may be satisfied by a fair preponderance of evidence. Amland v. G., 296NW170. See Dun. Dig. 2661a.

In action to set aside a deed as forgery it was a question of fact for jury under special interrogatory whether there had been a forgery. Id.

Acknowledgment is only prima facie evidence and can be assaulted by one claiming deed was forged. Id. See Dun. Dig. 78.

16. Assumption.
Where grantees assume and agree to pay an encumbrance, their liability accrues when they fail to pay encumbrance as it falls due, and from that time statute of limitations runs. Johnson v. F., 289NW835. See Dun. Dig. 6300.

18. Estoppel.
One owning an interest in land may lose title by equitable estoppel, as where instead of letting land go by foreclosure he consents to taking over of land by another who relies upon his words and conduct and pays taxes and makes improvements and takes care of mortgage. Thom v. T., 294NW461. See Dun. Dig. 3207.

One who by his renunciation or disclaimer of title to property has induced another to believe and act thereon to his prejudice is estopped to assert such title. Id.

24. Covenants and conditions.
Finding of laches was sustained where, with full knowledge of violation of restriction on use of property for purpose other than as a place of residence, plaintiff failed to institute injunction proceedings until almost 2 years after completion of construction of buildings violating restriction. Cantieny v. B., 296NW491. See Dun. Dig. 2393.

Restriction on use of property "for any purpose other than as a place of residence" is violated by erection and operation of ten tourist cabins on a 50-foot lot as a cabin camp for transient guests. Id.

Whenever land is developed under a general plan, reasonably restrictive covenants which appear in deeds to all lots sold are enforcible alike by vendor and by vendee and by their successors in title. Id.

8196. Conveyances by husband and wife, etc.
An instrument in the form of a mortgage in which the owner's spouse does not join can be registered under certain conditions when ordered by district court. Finnegan v. G., 292NW22. See Dun. Dig. 8280.

8204. Warranty and quitclaim deeds—Forms.
Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 2693.

8204-1. Uniform conveyancing blanks commission authorized.
Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 2693.

8204-4. Fees for recording.
Legislature did not intend to impose additional 25 per cent on affidavits and other instruments not prescribed or approved by uniform conveyancing blank commission. Op. Atty. Gen. (373B-10), Oct. 22, 1940.

8225. Record deemed notice—Exception.
Recitals in instruments affecting title to real estate do not constitute notice under certain conditions. Laws 1941, c. 192.

8225-3. Certain recitals not to constitute notice of contract for conveyance.—Where any instrument affecting the title to real estate in this state recites the existence of a contract for conveyance affecting such real property, or some part thereof, and the instrument containing such recital was recorded prior to 1910, in the office of the register of deeds of the county wherein said real property or some part thereof is situated, and no action or proceeding has been taken upon such contract for conveyance, and the time for performing the conditions contained in such contract expired prior to 1925, then such recital may be disregarded and shall not constitute notice of said contract for conveyance, either actual or constructive, to any subsequent purchaser or encumberer of said real property or any part thereof. (Act Apr. 10, 1941, c. 192, §1.)

8225-4. Same—Pending actions not affected.—Nothing contained in this act shall affect actions now pending or commenced within six months after the passage of this act in any court of this state. (Act Apr. 10, 1941, c. 192, §2.)

8226. Recording act—Unrecorded conveyance void.
9. Good faith—Notice.
Rights of bona fide purchasers at execution sale. 24 MinnLawRev805.

8229-11. Conveyances legalized.—All conveyances of real property within this State made prior to December 29, 1926, in which a married man conveyed real property direct to his wife, are hereby declared to be legal and valid, and all such conveyances heretofore actually recorded in the office of the proper Register of Deeds are declared legal and valid, and such conveyances and the record thereof shall have the same force and effect in all respects for the purposes of notice, evidence and otherwise as may be provided by law with respect to conveyances in other cases. This act shall not apply to any action or proceeding now pending in any of the courts of this state, or to any action which shall be commenced within six months after the passage of this act. (Act Apr. 21, 1941, c. 343, §1.)

8234. Mortgages, how discharged of record.
Where mortgagee taking possession contracted, in event of foreclosure, either to buy property for full amount of debt or to release any deficiency judgment procured pursuant to foreclosure, and on foreclosure purchased for less than debts, subject to accrued taxes, mortgagor was entitled to rentals collected by mortgagee during period of redemption, and they could not be applied either on accrued taxes or upon indebtedness, though there was no deficiency judgment, contract wiping out entire debt on foreclosure. Wagner v. B., 288NW 1. See Dun. Dig. 6219.
Right of assuming grantee to be subrogated to senior mortgage paid by him as against an unknown recorded junior mortgage. 24MinnLawRev121.

COMMON LAW
DECISIONS RELATING TO REAL ESTATE
BROKERS IN GENERAL

1. Representation of principal in general—misrepresentations and fraud of broker.
A contract appointing one "sole agent to sell" real estate for owners, without more, does not deprive owners of right themselves to sell, without liability for commission, to a purchaser not procured by agent. Keller Corp. v. C., 291NW515. See Dun. Dig. 1141.

CHAPTER 64

Plats

8236. Platting of land—Donations.
A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. Op. Atty. Gen., (377a-3), Oct. 14, 1939.

8238. Dedication—Certification—Approval—Etc.
Intention to create exception from vendor's general undertaking to convey free from incumbrances cannot be presumed from fact that there is a dedication then of record, since, as against vendor, purchaser is entitled to rely upon vendor's general undertaking and is not bound to take notice of the recordation. Miller v. S., (AppDC), 113F(2d)748.
A dedicator cannot attach any conditions or limitations inconsistent with legal character of dedication, or which are against public policy, or which take property designated from control of public authorities, and dedication will take effect regardless of such conditions which will be construed void. Kuehn v. V., 292NW187. See Dun. Dig. 2626.
An individual dedicating a road to a township could not withhold from municipality sovereign power incident to public use of road, and could not reserve exclusive right to maintain a water supply system along the road. Id. See Dun. Dig. 2626.

Fact that county approved plat does not make it liable for maintenance of dedicated highways. Op. Atty. Gen. (377b-10h), July 29, 1940.

8244. Notice by publication and service upon mayor, village president; etc.
Proceedings for vacation of any street or alley in any plat validated when such proceedings are in all respects properly taken and conducted, except that posted notice was not given. Not applicable to pending proceedings. Act Mar. 6, 1941, c. 46.

Where county condemning land entered into settlement agreement under which it paid cash and agreed to vacate another street abutting on property and give landowner 20 feet thereof, and landowner went into possession of strip of land, contention of land owner that he was rightfully in possession under claim of title and that no cause of action accrued against county in his favor for breach of its contract to vacate until his possession was disturbed by township authorities was without merit, since he did not acquire any title from county as it had no title to convey, and county could not even vacate street. Parsons v. T., 295NW907. See Dun. Dig. 8467.

CHAPTER 65

Registration of Title

REGISTRATION

8248. Registered land—Adverse possession.
A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. Armstrong v. L., 296NW405. See Dun. Dig. 6062.

8249. Application—Who may make.—An application for registration may be made by any of the following persons: