

CHAPTER 559

ACTIONS TO DETERMINE ADVERSE CLAIMS TO REAL ESTATE

559.01 ACTION TO DETERMINE ADVERSE CLAIMS.

A promise relating to the intended abandonment of an existing right which influences the promisee to act to his prejudice may be the basis of an estoppel, where substantial injustice will result unless the promise is enforced, although there is no consideration for the promise. 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. *Thom v Thom*, 208 M 461, 294 NW 461.

The return to the grantor of an unrecorded deed which was executed and delivered unconditionally to the grantee does not operate to revest the title in the grantor, and unless by words or conduct the grantee has estopped himself from asserting title, he will prevail in an action to determine adverse claims against a subsequent grantee who first recorded but who had knowledge of the facts at the time she accepted her deed. *Froslee v Sonju*, 209 M 522, 297 NW 1.

In an action to remove clouds from the title, where a mortgage was being attacked as a fraudulent conveyance because allegedly given by mortgagor when insolvent for less than a fair consideration, it was prejudicial error for the trial judge to reject proof that the notes secured by the mortgage were executed for a fair consideration particularly where his own remarks had induced the mortgagees to believe that such proof was unnecessary until the notes were attacked. *McIntyre v Peterson*, 210 M 419, 298 NW 713.

In a suit to have a deed of general warranty declared to be a mortgage and for an accounting by the grantee as mortgagee in possession, the true test is to determine the intention of the parties to the transaction, that is, whether they intended security or a sale. In applying the test, it is necessary to consider all relevant facts surrounding the transaction, the situation of the parties, as well as written memorials. *Hewitt v Baker*, 222 M 292, 24 NW(2d) 47.

Record in case at bar justifies trial court's findings that an oral contract to convey land to plaintiff, made with his brother, who was an epileptic, for the expressed consideration that plaintiff would take care of the brother as long as he should live, was abandoned by the parties and not performed by plaintiff. Specific performance of the contract after the death of the brother was properly denied. *DeWenter v DeWenter*, 222 M 356, 24 NW(2d) 495.

Actions of grantor subsequent to the deposit of the deed with her attorney evidences that grantor did not unconditionally divest herself of the title to the homestead, and hence the land passed by inheritance and not by deed. *Troseth v Troseth*, 224 M 35, 28 NW(2d) 65.

Title to a town road, even though not used, may not, subsequent to the enactment of L. 1899, c. 65, be lost by the adverse possession of an adverse party. OAG Oct. 15, 1946 (50-B).

Right to bring a possessory action before entry. 2 MLR 373.

Rights of persons disappearing. 9 MLR 89.

What constitutes cloud on title. 12 MLR 80.

Jurisdiction of equity to quiet title to personalty. 16 MLR 596.

Meaning of possession. 16 MLR 611.

Whether an instrument void on its face constitutes a cloud that equity will remove. 16 MLR 710.

Suit by a landlord against tenant. 20 MLR 93.

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Adverse possession, effect of claims for lesser estates than estate held against.
31 MLR 90.

Property rights in the air column; eminent domain. 31 MLR 384.

559.02 UNKNOWN DEFENDANTS.

Rights of persons disappearing. 9 MLR 89.

What constitutes a cloud on title. 12 MLR 80.

559.05 ACTION AGAINST COTENANT; DENIAL OF RIGHT.

Source of fiduciary relationship in cotenancy; purchase by cotenant of tax certificate issued prior to cotenancy. 6 MLR 530.

559.07 EJECTMENT; TRIAL, HOW CONDUCTED; NO SECOND TRIAL.

A plaintiff in ejectment must rely upon the strength of his own title and not upon the weakness of the title of the defendant; but one in actual possession of a parcel of land under a claim of right may maintain ejectment against a naked trespasser who has ousted him from such possession. *Post v Sumner*, 137 M 201, 163 NW 161.

The description of land sought to be recovered in ejectment must be legally sufficient to identify it, or the description must be such that, by reference to monuments or known or described on designated objects, the land sought to be recovered can be identified and located. A description of a strip of land commencing at a quarter corner, following the quarter line south to a road, thence going along the road southwesterly to the south line of a forty, and thence to a designated road, without showing the definite location on either side of the quarter line, or road, or forty line, and indefinite as to width in all except the first course, is insufficient. *Engmark v Peterson*, 145 M 365, 177 NW 125.

Plaintiff having received the deed in controversy, knowing that her name had been inserted as grantee therein by a real estate broker after the deed had passed out of the hands of the grantor, could not rest upon the presumption created by the statute but was required to show that the broker had actual or apparent authority to insert her name. *Hedding v Schauble*, 146 M 95, 177 NW 1019.

Where in an action to prove title by adverse possession the jury found for the defendant as the description in the verdict and judgment was not sufficiently definite or certain, the trial court indicated that upon application a survey and plat would be ordered to make it so; and assuming that it was improper to enter judgment on the verdict without an order of the court, the matter of correction was with the trial court and the matter will not be disturbed on appeal. *Deacon v Haugen*, 182 M 540, 235 NW 23.

The plaintiffs claim title to a strip of land lying between auditor's lot 30, in Detroit Lakes, Becker county, and the north shore of Detroit Lake. The plat of this lot showed its south line to be approximately 50 feet north of the shore with a public road along the southerly boundary. Plaintiffs' title is based upon tax proceedings, all of which and subsequent deeds described their property as auditor's lot 30 by reference to the plat. Plaintiffs wholly failed to show that lot 30 included the property in dispute or to sustain a reformation of the plat to so include such property. *Rahm v Weiss*, 190 M 508, 252 NW 432.

559.08 EJECTMENT; DAMAGES; IMPROVEMENT.

One is not unjustly enriched by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution or payment. The reasonable value of seed used for sowing a crop upon a farm by occupant who has vacated the same, for which there can be no recovery quasi ex contractu, cannot be allowed in mitigation of damages recovered by the owner against the occupant for a violation of his covenant to surrender possession of the premises in good repair at the expiration of the term. *Mehl v Norton*, 201 M 203, 275 NW 843.

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Not having shown any wrongful entry, or tortious holding by defendants, plaintiff has wholly failed to establish a cause of action either by trespass quare clausum fregit or for recovery of the mesne profits. Mesne profits are "a sum recovered for the value or benefit which a person in wrongful possession has derived from his wrongful occupation of the land between the time when he acquired wrongful possession and the time when possession was taken from him." *Martin v Smith*, 214 M 13, 7 NW(2d) 481.

The defendant, without the knowledge of the owners of a lot, and without license, express or implied, from them, but by mistake, supposing it to be his own, erected a house thereon. Such mistake was the result of his own negligence, and the fault of no one else. The house became a part of the lot, and the defendant is not entitled either to remove the house, or enforce a lien against the lot for the value of the house. *Mitchell v Bridgman*, 71 M 360, 74 NW 142.

559.10 OCCUPYING CLAIMANT; COMPENSATION FOR IMPROVEMENTS.

In a suit to recover for improvements made by plaintiff upon the land of the defendant, under an unenforceable oral contract for its conveyance to plaintiff, the measure of damages is not cost or value of improvements, but enhancement in value of the real estate because thereof. *Lepak v Lepak*, 195 M 24, 261 NW 484.

See, *Mehl v Norton*, 201 M 203, 275 NW 843, noted under section 559.08.

Equitable relief when improvements are made on the land of another. 14 MLR 565.

Constructive trusts. 25 MLR 667, 715.

559.14 MAY REMOVE CROPS.

Measure of vendor's damages where vendee wrongfully remains in possession after cancelation of executory contract. 16 MLR 726.

559.15 OCCUPANT NOT IN ACTUAL POSSESSION; ACTIONS IN OTHER FORM.

See, *Martin v Smith*, 214 M 13, 7 NW(2d) 481, noted under section 559.08.

559.17 MORTGAGEE NOT ENTITLED TO POSSESSION.

A mortgage upon real estate while in form a conveyance of the estate or interest in land is in its purpose and effect a mere lien or security or thing in action. *In re S. R. A.* 213 M 487, 7 NW(2d) 484.

Where a bona fide dispute arose between the fee owners and the mortgagee as to the amount necessary to satisfy his mortgage, a tender kept good by the fee owners of the amount actually due would have stopped the running of interest and entitled the fee owners to equitable relief. In such a situation, the agreement by which the fee owners paid the amount demanded by the mortgagee and received a satisfaction of the mortgage amounted to a compromise and settlement of the debt and, in the absence of fraud or mistake, was binding and conclusive on the parties. *Gandrud v Bremer*, 220 M 10, 18 NW(2d) 687.

Right to appointment of receiver of rents and profits. 13 MLR 386.

Right of mortgagor to possession; acquisition of possession as tenant. 24 MLR 436.

Liability of a senior mortgagee to account to a junior mortgagee for rents released to the mortgagor. 26 MLR 882.

559.18 CONVEYANCE BY MORTGAGOR TO MORTGAGEE.

In an action to cancel a contract for a deed the evidence to support the finding of the lower court that a quitclaim deed of mortgaged real estate given by the mortgagor to the mortgagee, was an absolute conveyance and did not constitute the

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giving of further security for the mortgage debt. *Evans v Slagle*, 197 M 310, 267 NW 220.

It being plainly against both interest and express intention of the holder of the two titles that there should be a merger when by quit claim deed the fee was conveyed to a mortgagee, the decision by the trial court that there was no merger was a proper decision. *Long v Mutual Trust*, 197 M 623, 268 NW 195.

The finding that in taking a quitclaim deed from the mortgagors the holder of the mortgage intended to merge the mortgage in the title conveyed by the deed is contrary to the evidence. The presumption is against a merger where it is to the interest of the person in whom the mortgage and the title unite that they be held separately, if no injustice results to another. In the instant case the mortgage held by appellant was a valid lien of record upon the mortgagors' homestead prior to respondent's judgment, which was entered when appellant was in possession, by tenant, and hence respondent could take no action to its prejudice in reliance on the assumption that there had been a merger which satisfied the mortgage. *Losleben v Losleben*, 199 M 227, 271 NW 463.

A mortgagor may not, at the time of nor as a part of the mortgage transaction, bargain away his equity of redemption; and any attempt so to do will not be enforced by a court of equity. A mortgagor may, however, bargain away, sell, or convey to the mortgagee his equity of redemption subsequent to the time that he executed the mortgage, provided that such conveyance is not made pursuant to a collateral agreement contemporaneous with the execution of the mortgage. All such transactions are carefully scrutinized by the court to the end that the mortgagee may not take any undue advantage of the mortgagor's necessities. *Twenty Associates Inc. v First National Bank*, 200 M 211, 273 NW 696.

The intention of the parties at the time of a conveyance determines whether such conveyance is absolute, or whether it is for security, and the determination of such intent is a question of fact. *St. Paul Mercury v Lyell*, 216 M 7, 11 NW (2d) 491.

Constructive trusts. 25 MLR 700.

559.19 ACTION TO DECLARE MORTGAGE; LIMITATION.

See, *St. Paul Mercury v Lyell*, 216 M 7, 11 NW(2d) 491, as noted under section 559.18.

559.21 NOTICE TO TERMINATE CONTRACT OF SALE; SERVICE AND RETURN; REINSTATEMENT OF CONTRACT.

Plaintiff agreed to sell and convey by warranty deed to defendants a vacant lot. In an action brought by the plaintiff to recover the balance due under the contract, the defendants sought to disaffirm and recover back payments made on the ground that the title tendered by plaintiff was not good, merchantable or marketable. The purchasers were not entitled to rescind. *Stacey v Taylor*, 196 M 203, 264 NW 809.

Courts are not at liberty to revise while professing to construe. The secret unexpressed intention of the parties is not sought. When the language used by the parties is plain and unambiguous, there is no room for construction. The law of contract upon which more than anything else the structure of modern business depends, does not permit courts to take liberties with unambiguous contractual language, to reduce liabilities clearly assumed. *Grimes v Toensing*, 201 M 541, 277 NW 236; *McReavy v Zeimes*, 215 M 239, 9 NW(2d) 924.

A contract is sufficiently certain to be enforced if it can be made certain by reformation. Although its terms are stated according to the intention of both parties, a reformation may be had if the terms are in error in respect to the thing to which they apply. *Pettyjohn v Bowler*, 219 M 55, 17 NW(2d) 82.

There was sufficient part performance of executory contract to entitle plaintiffs to affirm and complete the contract and sue for damages for the fraud. *Burke v Johnson*, 221 M 274, 21 NW(2d) 805.

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Foreclosure for breach of contract. 5 MLR 328, 350.

Forfeiture; recovery of payments. 5 MLR 468.

Effect of failure to pay tax on validity of statutory notice to terminate interests of vendee. 7 MLR 70.

Forfeiture; rights of heirs of vendee. Analogy of vendee in possession to mortgagee in possession. 7 MLR 170.

Right of purchaser to lien on land for payments made where cancellation for fraud by purchaser. 7 MLR 231, 256.

Termination of contract, effect of breach by defrauded party on remedies for fraudulent misrepresentations. 9 MLR 143, 146, 154.

Time of the issuance in real property contracts. 9 MLR 286.

Conflict of laws in relation to cancellation of land contracts. 10 MLR 500.

Judgment creditor not an "assign" so as to be entitled to notice of cancellation of land contract. 11 MLR 458.

Strict foreclosure of land contracts. 14 MLR 342, 362.

Measure of vendor's damages where vendee wrongfully remains in possession after cancellation. 16 MLR 726.

Escrow, necessity of a collateral contract. 17 MLR 817.

Current legislation. 18 MLR 57.

559.23 ACTION TO DETERMINE BOUNDARY LINES.

Amended by L. 1947 c. 244 s. 1.

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against the world and which supersedes and bars all other titles, claims, and equities. Section 541.02 does not permit a claimant of title to land by adverse possession in a boundary line dispute case to acquire title to the land by adverse possession as against a tax lien or tax title. The action to determine boundaries, authorized by section 559.23 is not merely to establish the boundary lines according to government survey, but also to determine the boundary line according to the respective existing rights of property of the parties. *Hacklander v Parker*, 204 M 260, 283 NW 406.

To constitute title by adverse possession, one must not only be in actual, open, continuous, hostile, and exclusive possession for the necessary length of time, 15 years, but such possession must be accompanied by some claim or assertion of title and an intention on the part of the possessor to claim adversely to the true owner. In an action under section 559.23, to determine and establish the boundary line between adjoining tracts of land, evidence examined which sustains a finding of the trial court that defendant did not occupy the disputed tract of land for the required period with an intention to claim title thereto. *Sullivan v Huber*, 209 M 592, 297 NW 33.

Where the principal issue is whether plaintiffs or defendants are owners of disputed property, as to them a substantial decree may be made even though such decree may not completely settle all questions which may be involved so as to conclude the rights of all persons who have an interest in the subject matter of the litigation. "Necessary parties" does not extend to those who are only consequentially interested in the subject matter. *Flowers v Germann*, 211 M 413, 1 NW(2d) 424.

The plat showed 212.6 feet frontage of lots 3, 4, and 5. The actual measurement was 202.6 feet frontage. The owner of lot five had entered into possession under a metes and bounds description, had mowed the lawn, shoveled the snow, built a sidewalk adjacent to the disputed frontage. Discovering a shortage in the frontage, the owners of lot five from 1886 to 1919 had used a metes and bounds description, and such occupancy is sufficient to constitute adverse possession of the entire tract. *Phillips v Selnes*, 223 M 518, 27 NW(2d) 553.

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Establishment by estoppel, agreement, or acquiescence. 7 MLR 569.

Scientific boundary description. 27 MLR 211.

559.25 JUDGMENT; LANDMARKS.

Where a deed contains an unqualified reference to a monument as a location to a boundary, the line thereof passes through the center of the monument. Previous adjudication of the location of a boundary line, made in an action to recover property unlawfully possessed, operated as an estoppel against the relitigation of that issue in a later action brought to determine location of the same boundary line. *Holtz v Beighley*, 211 M 153, 300 NW 445.