

CHAPTER 566

FORCIBLE ENTRY AND UNLAWFUL DETAINER

566.02 UNLAWFUL DETENTION OF LANDS OR TENEMENTS SUBJECT TO FINE.

In an action to recover damages for defendants' alleged violation of the emergency price control act in charging over-ceiling rents, in effecting an accord and satisfaction of a controversy in its entirety, an expressed general intent to settle the controversy as a unit is sufficient, and it is not necessary for the parties to dissect and divide such controversy into fractional parts and to express a separate and independent intent as to each of such parts. *Kane v Oak Grove*, 221 M 500, 22 NW(2d) 588.

Measure of vendor's damages where vendee wrongfully remains in possession after cancelation of executory contract. 16 MLR 725.

566.03 RECOVERY OF POSSESSION.

Whether landlord proceeded "in good faith" under OPA rent regulations to recover possession of premises from tenant for use as a personal dwelling was, upon the record, a question of fact for the jury, and the court's order directing a verdict for tenant was error. *Sviggum v Phillips*, 217 M 586, 15 NW(2d) 109.

Plea of "not guilty" is equivalent to a general denial. Provision requiring lessor's consent to an assignment of lease may be waived by lessor. Evidence that proceeds from certain securities transferred to plaintiff could at their option be applied on current rent was properly admitted. *Keller v Henvit*, 219 M 580, 18 NW(2d) 544.

Contracts to farm on shares. 2 MLR 46.

Meaning of possession. 16 MLR 611.

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

566.04 LIMITATION.

Under OPA rent regulations permitting landlord in good faith to recover possession of premises for immediate use and occupancy as a dwelling, if landlord has several properties available, the decision as to which one he will occupy is for the landlord to make. *Sviggum v Phillips*, 217 M 586, 15 NW(2d) 109.

566.05 COMPLAINT AND SUMMONS.

The unlawful detainer statute is not designed to try title to real estate, nor serve as a substitute for ejectment. Original jurisdiction is confined to the justice or municipal courts. Counterclaims cannot be litigated. Rent may not be recovered. Judgment in unlawful detainer proceedings is not a bar to an action to have determined the legal title or the equitable rights of the parties. *Keller v Henvit*, 219 M 584, 18 NW(2d) 545.

566.06 SUMMONS; HOW SERVED.

An order denying a motion by a defendant to vacate and set aside service of process upon him is res judicata on the question of jurisdiction and not subject to collateral attack. *Ferch v Hiller*, 210 M 3, 297 NW 102.

566.07 ANSWER; TRIAL.

See, *Sviggum v Phillips*, 217 M 586, 15 NW(2d) 109, noted under sections 566.03 and 566.04.

MINNESOTA STATUTES 1947 ANNOTATIONS

566.09 FORCIBLE ENTRY AND UNLAWFUL DETAINER

1360

Whether there in fact exists an "immediate compelling necessity" for the use of the premises by a landlord as a dwelling is, like the existence of good faith, an issue of fact for determination by the trier of fact. *Eckberg v Belfer*, 222 M 450, 24 NW(2d) 851.

The requirement of OPA regulations that a landlord must have "an immediate compelling necessity to recover possession" of premises "for use and occupancy as a dwelling for himself" before restitution may be decreed does not mean that his actual need for the premises must be so desperate that he is then practically without shelter, and the "compelling necessity" is sufficiently "immediate" if, taking into consideration all the circumstances of the particular case, it has arisen, or will arise, within a reasonable time. *Eckberg v Belfer*, 222 M 450, 24 NW(2d) 851.

566.09 JUDGMENT; FINE; EXECUTION.

Evidence justified judgment for the lessor as there was a sub-letting in violation of the terms of the lease. *Benz v Hassie*, 208 M 396, 294 NW 412.

A judgment in favor of the owner of land that he is the owner in fee and that a contract for deed of the same was duly canceled is res judicata of those questions in favor of his grantee and the latter's administrator against the vendee in the contract for deed. Likewise, a judgment in favor of the grantee for restitution of the premises upon a finding that the contract for deed was duly canceled is conclusive in favor of the administrator against the vendee named in the contract. *Ferch v Hiller*, 210 M 3, 297 NW 102.

In an action under the emergency price control act to recover damages for charging over ceiling rents in effecting an accord and satisfaction of a controversy in its entirety, an expressed general intent to settle the controversy as a unit is sufficient, and it is not necessary for the parties to dissect and divide such controversy into fractional parts and to express a separate and independent intent as to each of such parts. Words admitting more extensive or more restrictive signification must be taken in that sense which will best effectuate what it is reasonable to suppose was the real intention of the parties. Although preliminary negotiations cannot be allowed to contradict or vary the plain terms of a written contract purporting to integrate the entire transaction, nevertheless, where the terms or words used are ambiguous or reasonably susceptible of more than one interpretation, such negotiations may be considered in order to determine the meaning and intent of the parties. *Kane v Oak Grove Co.* 221 M 500, 22 NW(2d) 588.

566.11 WRIT OF RESTITUTION; EFFECT OF APPEAL.

After appeal by defendants from a judgment of restitution in unlawful detainer proceedings based on termination by notice, a writ of prohibition will not be issued by the supreme court to prevent the execution of a writ of restitution therein on the grounds that the trial court erroneously found that the lease involved had been terminated by notice, plaintiffs, after said appeal, having given bond, conditioned to pay all damages in case of reversal. *Heinsch v Kirby*, 222 M 352, 24 NW(2d) 493.

566.12 APPEAL; STAY.

Where the respondent or appellee procures the dismissal of an attempted appeal from a judgment in an unlawful detainer case as premature, because taken before entry of the judgment, the obligors on a supersedeas bond given on appeal under section 605.11 are not liable for rents accruing between the dates of the appeal and the dismissal, because of the invalidity of the appeal and of lack of consideration for the bond. *Hampshire Arms v St. Paul Mercury & Indemnity Co.* 215 M 60, 9 NW(2d) 413.

Contracts to farm on shares. 2 MLR 46.