503.11 CONVEYANCES, WHEN TO BE EXECUTED; WHEN NOT

HISTORY. 1855 c 7 s 12; PS 1858 c 33 s 13; GS 1866 c 42 s 11; GS 1878 c 42 s 11; 1885 c 24; 1889 c 152, 159; GS 1894 s 4265; 1907 c 210 s 11; GS 1913 s 6798.

503.12 JUDGE SHALL BE SEIZED OF TITLE TO LANDS, WHEN

HISTORY. 1855 c 7 s 14; PS 1858 c 33 s 15; GS 1866 c 42 s 12; GS 1878 c 42 s 12; GS 1894 s 4266; 1907 c 210 s 12; GS 1913 s 6799.

503.13 TITLE TO LANDS, FROM WHAT TIME HELD

HISTORY. 1855 c 7 s 15; PS 1858 c 33 s 16; GS 1866 c 42 s 13; GS 1878 c 42 s 13; GS 1894 s 4267; 1907 c 210 s 13; GS 1913 s 6800.

503.14 COSTS REGULATED

HISTORY. 1855 c 7 s 16; PS 1858 c 33 s 17; GS 1866 c 42 s 14; GS 1878 c 42 s 14; GS 1894 s 4268; 1907 c 210 s 14; GS 1913 s 6801.

503.15 RECONVEYANCE PURSUANT TO CONTRACTS

HISTORY. 1855 c 7 s 18; PS 1858 c 33 s 19; GS 1866 c 42 s 15; GS 1878 c 42 s 15; GS 1894 s 4269; 1907 c 210 s 15; GS 1913 s 6802.

503.16 SUCCESSOR OF JUDGE TO COMPLETE EXECUTION OF TRUST

HISTORY. GS 1866 c 42 s 16; GS 1878 c 42 s 16; 1885 c 24 s 2; 1889 c 132 s 2; GS 1894 s 4270; 1907 c 210 s 16; GS 1913 s 6803.

503.17 CHAPTER APPLIES TO LANDS NOW HELD IN TRUST

HISTORY. GS 1866 c 42 s 17; GS 1878 c 42 s 17; GS 1894 s 4271; 1907 c 210 s 17; GS 1913 s 6804.

503.18 CERTAIN ACTS VALIDATED

HISTORY. GS 1866 c 42 s 18; GS 1878 c 42 s 18; GS 1894 s 4272; 1907 c 210 s 18; GS 1913 s 6805; GS 1923 s 8185; MS 1927 s 8185.

CHAPTER 504

LANDLORDS AND TENANTS

504.01 DISTRESS FOR RENT

Landlord and tenant, duty to repair. 32 MLR 76.

Government orders and regulations affecting tenant's liability for rent; application of the doctrine of frustration as applied to leases. 32 MLR 837.

Leases; express condition for occupancy for adults only; child born during term. 32 MLR 840.

Landlord's right of action against insured based on tenant's policy. 35 MLR 102.

Reversions; concurrent lessee's right to rent. 35 MLR 218.

Effect of "loss by fire excepted" clause in a repair and surrender covenant upon tenant's liability for negligence. 35 MLR 603.

The obligation of an assignee of a lease is based on privity of estate. The assignee can avoid duties based upon covenants running with the land covered by the lease of which he is assignee by assigning to another. However, the assignment will not serve to relieve the assignee of liability for performance of the covenants if it is merely colorable or if it is fraudulent. In the instant case the evidence sustains the conclusion that the reassignment was not fraudulent. Whitney v Leighton, 225 M 1, 30 NW(2d) 329.

Where the lease of farm property specified that "each party shall pay one-half of the threshing bill," the landlord was compelled to pay one-half of the combine bill when it appeared that, because of condition of crop, it could not be harvested in the usual way, and the landlord was fully advised before harvesting operations began and suggested it be combined, and was present part of the time when the work was being done, and made no objection. Mitchell v Rende, 225 M 145, 30 NW(2d) 27.

Although a tenant may be familiar with the defective condition of a stairway through long use, such tenant is not, as a matter of law, guilty of contributory negligence in using the stairway, unless the defective condition is so obviously dangerous that a reasonably prudent person would consider such use foolhardy. Nubbe v Hardy, 225 M 496, 31 NW(2d) 333.

A landlord who retains possession and control of stairways and similar building facilities for the common use of the tenants therein, although not an insurer of the safety of these facilities, owes a duty of exercising ordinary care to see that such stairways and facilities are originally constructed and subsequently maintained in a reasonably safe condition for the use of tenants who are themselves exercising ordinary care. Nubbe v Hardy, 225 M 496, 31 NW(2d) 333.

Provision in lease to effect that during extended term thereof lessor "shall have the right to sell said (leased) property at any time in said term to any one, but shall give said second party (lessee) sixty days notice in writing of said sale" is not ambiguous so as to permit parol evidence to arrive at intent of parties in connection therewith, nor to constitute an option from lessors to lessee granting latter the right to purchase leased property during extended term of lease. Bergland Oil Co. v Grommesh, 226 M 19, 31 NW(2d) 644.

An exception is good where the grant in a deed or lease is in general terms and the excepted part is not specifically granted. Where a lease demised a building in general terms for a period of five years, but in an exception retained in the lessors parts of it for specified periods, "and commencing at that time when the said parties of the first part (lessors) shall vacate the remainder of said building, (lessees should pay) the sum of $200 per month, which shall include the entire building," and specified the rent to be paid by lessees for the various parts of the building as by the terms of the exception they became available to the lessees, the exceptions were not repugnant to the grant, and the lessees were not entitled to possession of the whole building until the lessors vacated "the remainder." Johnson v Mason, 226 M 23, 31 NW(2d) 910.

An oral agreement to cultivate land on shares which provided for exclusive possession of the premises in the tenant and that part of the rent was to be paid in cash and part in crops; where the owner considered that the contract could be terminated at the end of any contract year; and under which the tenant made certain fence repairs creating landlord-tenant relationship, an action for conversion of flax straw did not lie where plaintiffs did not have title thereto at the time of the alleged conversions. Larson v Archer-Daniels, 226 M 315, 32 NW(2d) 649.

Conversion is an act of wilful interference with the chattel, done without lawful justification, by which any person entitled thereto is deprived of use and possession. In bringing an action for conversion property the plaintiff must enjoin an ownership either general or special in the property converted by the defendant. Knowledge or motive of the converter is immaterial except as affecting the amount of damages. Larson v Archer-Daniels, 226 M 315, 32 NW(2d) 649.

The liability of landlord for concealing or failing to disclose a dangerous condition unknown to the tenant is based on the theory of negligence. Landlord's liability to tenant's employee for injuries caused by defective condition of premises is the same as liability to tenant. Breimhorst v Beckman, 228 M 409, 35 NW(2d) 719.

No one is privy to a judgment whose succession to rights of property affected thereby occurred prior to the commencement of the action in which the judgment was rendered. One is not a bona fide purchaser and entitled to the protection of the recording act, though he paid a valuable consideration and did not have actual notice of a prior unrecorded conveyance from the same grantor, if he had knowledge of facts which ought to have put him on an inquiry that would have led to a knowledge of such conveyance. Where the mortgagor's title is free of outstanding claims and equities, the mortgagee's rights under the mortgage also are free of them. Henschke v Christian, 228 M 412, 36 NW(2d) 547.

The record supports a conclusion that conferences between the owners of the premises here in question and defendant claiming as lessees, resulted in an arrangement which amounted to a termination of defendant's lease if it was still in force as of Dec. 31, 1947. The original lease so superseded by the said conference contained an automatic annual renewal clause. The conference completely superseded the lease and the purchaser from the lessor is entitled to possession as against the lessee. N. W. Tractor Co. v Wadsworth, 229 M 213, 38 NW(2d) 841.

Where the lessee expressly waived any and all claims against the lessor on account of any personal injury sustained or any loss by fire, water or explosion, the clause waiving claims for personal injury was general and unrestricted; and where the lease was executed by the lessee as agent of and on behalf of her two sisters, a waiver operated to exempt the lessor from liability to the lessee's sister for injuries sustained in a fall due to darkened stairs in the leased apartment. Mackenzie v Ryan, 230 M 378, 41 NW(2d) 878.

A store occupant is not required to remove ice from a sidewalk in front of a store forming as a result of negligence of the owner in maintaining a building cornice unless some act of negligence on the part of occupant prevents dripping water from flowing off sidewalk into street, and in an action against a tenant occupying premises adjacent to public sidewalk for injuries sustained as result of fall on ridge of ice on sidewalk, evidence was insufficient to support finding that any negligent acts of the tenant had caused such ice to form or accumulate. Bentson v Berde, 231 M 451, 44 NW(2d) 481.

Where an earnest money contract covering the sale and purchase of an apartment building provided that the vendors could remain in the building for a period of one year from December 31, 1948, at an increase of 15 percent over the figure set by OPA and that legal process of the described property was to be given the vendee not later than December 31, 1948, vendors became tenants of the vendee and therefore the vendee was unable to evict the vendors except by complying with the provisions of the Federal Housing and Rent Act. Graf v Root, 232 M 183, 44 NW(2d) 732.

As to contracts, an acceptance which qualifies the terms of the offer amounts in legal contemplation to a rejection of the offer and is regarded as merely a counteroffer. An acceptance must be co-extensive with the offer and may not introduce additional terms and conditions. Requested or suggested modifications of an offer will not preclude formation of a contract where it clearly appears that offer is positively accepted, regardless of whether requests are granted; but where acceptance of an offer is expressly conditioned on acquiescence in requested modification of offer, or such inference is contained in the language employed, no contract is formed. Podany v Erickson, 235 M 36, 49 NW(2d) 193.

In passing upon questions of offer and acceptance, as determinative of whether a contract has thereby been created, a greater exactitude is required than where the object is to salvage an existing contract. To be valid, an acceptance must be in unequivocal and positive terms which comply exactly with the requirements of the offer. The acceptance must be such that it unequivocally, without the aid of anything else, creates a contract. Minar v Skoog, 235 M 262, 50 NW(2d) 300.

A possessor of land who leases part thereof and retains in his own possession any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee for bodily harm caused by a dangerous condition upon that part of the land retained in lessor's control, if the lessor by exercise of reasonable care could have discovered the condition of unreasonable risk

involved therein, and could have made the condition safe. Where the tenant brought an action against the landowner for personal injuries sustained in a fall in an alleyway between two segments of the hotel owned by the landowner, and the evidence was conflicting as to the extent that snow and ice covered the alleyway and as to the amount of light at the time of the accident, the question whether the tenant had been contributorily negligent in using the alleyway was a question of fact for the jury. Rosmo v Amherst Holding Co., 235 M 320, 50 NW(2d) 698.

Where the purchaser relies primarily not upon his own personal assets but upon the proceeds of a contemplated loan or loans to be made to him by a third party, he is financially able to buy only if he has a definite and binding commitment from such third-party loaner. Shell Oil Co. v Kapler, 235 M 292, 50 NW(2d) 707.

Title to growing crops passes with the title to the land. Wojahn v Faul, 235 M 397, 51 NW(2d) 97.

Where plaintiff who collected garbage from a restaurant operated by a tenant in the basement of defendant's building brought an action for damages sustained when the door of the elevator therein, when being operated by plaintiff, smashed his thumb, the failure of the defendant to call attention of the trial court to a statute providing that it shall be the duty of the owner of the building to provide a competent person to operate an elevator in common use, that no other person shall operate such elevator, or to support the statute as one of the grounds of supporting defendant's motion for a directed verdict, prevented such statute from being made the basis of determination of the issues on appeal. Swenson v Slawik, 236 M 403, 53 NW(2d) 107.

Under the terms of the Emergency Price Control Act which expired on June 30, 1947, and of the Housing and Rent Act of 1947 for rental overcharges wilfully made, the landlord in the instant case was liable to tenants for treble amount of overcharges plus reasonable attorney fees and costs. Sampson v Thomas, 76 F Supp 691.

Where an action by the acting housing expediter to enjoin charging of over-ceiling rents and eviction of tenants because of refusal to pay over-ceiling rents presented grave and difficult questions of law and fact, the grant of an interlocutory injunction was not an abuse of discretion. Benson Hotel Corporation v Woods, 168 F(2d) 694.

Under a covenant by a lessee to obtain written consent of the lessor and furnish a bond before making repairs and improvements, and to save the lessor and the premises free from all costs and liability, and under the provisions of the lease giving lessor a lien on the property of the lessee as security for performance of the lease by the lessee, if improvements were made at the instance of the lessor as well as at the instance of the lessee, the lessor became primarily liable and the lien clause was not operative. Schleiff v Bennitt, 175 F(2d) 890.

504.02 CANCELATION OF LEASES IN CERTAIN CASES; ABANDONMENT OR SURRENDER OF POSSESSION

Express condition for occupancy of leased premises by adults only; child born during term. 32 MLR 303, 840.

Liability of tenant for fire losses caused by his negligence where the tenant in the lease covenants to surrender the premises in good condition. 35 MLR 603.

Where a tenant moved out ten days before the expiration of his lease but kept the keys of the apartment until two days before the lease ran out and the tenant based her claim of unlawful eviction solely on the landlord's acts relative to mail delivered to the apartment about a week before the tenant turned over the keys, no eviction took place. There can be no constructive eviction of a tenant without a surrender of possession. Where an instruction is favorable to the plaintiff no prejudice can result to him and in an action where the tenant claimed an unlawful eviction, the court did not err in instructing the jury that under the facts there was no eviction. Loining v Kilgore, 232 M 347, 45 NW(2d) 554.

504.03 TENANT MAY NOT DENY TITLE; EXCEPTION

Restrictive covenants in conveyances; waiver by acquiescence; estoppel. 32 MLR 524.

Rescission is an equitable remedy which may be granted for a substantial breach of contract. Equitable estoppel arises from the conduct of a party including his words, acts, silence or negative omission to do anything. From motives of equity and fair dealing it vests opposing rights in a party who obtains benefit of estoppel. Where under contract a village public well was constructed under supervision of the village engineer who failed to reject the well at the 350 foot level and instructed the contractor to continue, the village was estopped from rescinding the well drilling contract because of a bulge located within the first 350 feet. Village of Wells v Layne-Minnesota Co., ... M ....., 60 NW(2d) 621.

504.04 PERSON IN POSSESSION LIABLE FOR RENT; EVIDENCE

In an action for injuries sustained by a three year old boy in falling through a skylight located on the roof of a three story building, the owner was not negligent in maintaining a building with such a skylight where evidence showed proof that the building was not a place where the presence of children could reasonably have been anticipated. Ewing v Benz, 224 M 508, 28 NW (733).

The obligation of an assignee of a lease is based on privity of estate. The assignee can avoid duties based upon covenants running with the land covered by the lease of which he is assignee by assigning to another. However, the assignment will not serve to relieve the assignee of liability for performance of the covenants if it is merely colorable or if it is fraudulent. In the instant case the evidence sustains the conclusion that the reassignment was not fraudulent. Whitney v Leighton, 225 M 1, 30 NW(2d) 329.

Under the decontrol section of the Federal Housing Act accepting housing accommodations in any establishment commonly known as a hotel which is occupied by persons who are provided customary hotel services, such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, etc., expediter properly refused to approve application for decontrol of 190 units of hotel where none received all the services specified, but each of the services were available on request and they might receive it by paying reasonable charges, but not otherwise. Wood v Benson Hotel Corp., 75 F Supp 743.

In an action by the housing expediter to enjoin defendant from charging over-ceiling rents and to compel refunds to tenants of any over-ceiling rents already collected, evidence established that the building, which did not have transient guests and which had laundry facilities and mail boxes of an ordinary apartment house, was not a "hotel," that requisite and customary hotel service was not provided, and decontrol was not authorized. Wood v Doolson, 75 F Supp 758.

In an action by the price administrator under the Emergency Price Control Act to enjoin collection of rents in excess of legal maximum, that part of the judgment requiring the landlord to reimburse its tenants to the extent of overcharges was not improper on the ground that its effect was to enforce claims against the landlord barred by limitations imposed by the Act. Warner Holding Co. v Creedon, 166 F(2d) 119.

The scope of estoppel of judgment depends upon whether the question arises in a subsequent action between the same parties on the same claim or demand or on a different claim or demand, and in the former case judgment on the merits is an absolute bar to subsequent action and in the later case inquiry is whether the point or question to be determined in the later action is the same as that litigated and determined in the original action. One who succeeded to the rights of a landlord brought action against a tenant to recover future rental after destruction of the leased building by fire caused by negligence of the tenant. Since the right of the landlord's successor to recover for future rents was determined adversely to the landlord's successor in a former action, judgment in that action was a bar to prosecution of an action on the lease to recover future rentals. Goldman v General Mills, 203 F(2d) 439.

504.05 RENT LIABILITY; DESTROYED UNTENANTABLE TENEMENTS

Federal government orders and regulations affecting tenant's liability for rent. 32 MLR 837.

504.06 ESTATE AT WILL, HOW DETERMINED; NOTICE

Effect of a sublease by tenant at will. 31 MLR 620.

Government orders and regulations affecting tenant's liability for rent; application of the doctrine of frustration as applied to leases. 32 MLR 837.

Leases; express for occupancy for adults only; child born during term. 32 MLR 840.

The notice to terminate a month-to-month tenancy, although technical as to the amount of time required, may be informal as to its contents. In the instant case, the statement of the landlord that the tenants had "until June 30" to vacate, must be construed together with the statement that he "expected to occupy the premises by July," and evinced an intent that the tenants had until midnight of the 30th to vacate. Heinsch v Kirby, 223 M 302, 26 NW(2d) 263.

An arrangement based upon a conference between the lessors and lessees permitting the lessees to have the land for 1947 by requiring them to surrender possession not later than December 1, 1947, completely superseded the original lease in which there was provision for an automatic annual renewal on January 1, of each year unless six months notice to terminate was given. Northwest Tractor v Wadsworth, 229 M 213, 38 NW(2d) 841.

504.09 NOTICE TO BE GIVEN OF VACATION OF BUILDING

Provision in lease to effect that during extended term thereof lessor "shall have the right to sell said (leased) property at any time in said term to any one, but shall give said second party (lessee) 60 days notice in writing of said sale" is not ambiguous so as to permit parol evidence to arrive at intent of parties in connection therewith, nor to constitute an option from lessors to lessee granting latter the right to purchase leased property during extended term of lease. Bergland Oil Co. v Grommesh, 226 M 19, 31 NW(2d) 644.

504.10-504.17 Obsolete.

CHAPTER 505

PLATS; COORDINATES

PLATS

505.01 PLATS AUTHORIZED; DONATIONS EFFECTIVE

A dedication of a public square for public use is one for specially qualified and limited purposes. A "statutory dedication" is by plat executed and recorded as required by statute; and a "common law dedication" is one otherwise made, as by dedication in fact or by defective statutory dedication; and where an owner made a plat of his land dedicating a part thereof as a public square for public use, the dedication, regardless of whether it was a statutory or a common law dedication, passed to the public in trust only such an estate or interest in land as the trust required and it reserved to the dedicator the fee to the property. Headley v City of Northfield, 227 M 458, 35 NW(2d) 606.

The city council cannot by ordinance authorize a public square to be used for purposes other than those for which it was dedicated; and abutting property owners