

MINNESOTA STATUTES 1953 ANNOTATIONS

558.01 PARTITION OF REAL ESTATE

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put out of realty without lawful authority to recover damages applies only when the person is put out in a forcible manner. *Behrendt v Rassmussen*, 234 M 97, 47 NW(2d) 779.

In an action to recover damages for unlawful eviction from agricultural lands leased from defendant on shares for crop purposes, where eviction took place after commencement of the 1950 growing season, and the trial was held in October of the same year, and where profits plaintiff would otherwise have realized from crops to be grown that season were ascertainable and proved with reasonable certainty, the loss of said profits was a proper measure of plaintiff's damages; and where defendant's entry upon the leased land was peaceable and consisted merely of posting "no trespassing" signs in plaintiff's absence and no force was used to keep plaintiff off the land, plaintiff was not entitled to treble damages. *Poppen v Wadleigh*, 235 M 400, 51 NW(2d) 75.

CHAPTER 558

PARTITION OF REAL ESTATE

NOTE: Chapter 558 is excepted from the Rules of Civil Procedure. See, Rule 81.01 and appendix A.

558.01 PARTITION, SALE; WHO MAY BRING ACTION

A fractional part of realty may be sold for nonpayment ad valorem taxes, and the person acquiring the fee to such part may sell it through partition proceedings. *Christian Committee v State*, 228 M 549, 38 NW(2d) 803.

Allegations in the counterclaim that the realty involved in a partition suit was purchased by defendant with her money while living with plaintiff as his wife and that plaintiff's name was included in the contract for deed solely because of convenience were in the absence of an allegation to that effect, insufficient to show that plaintiff owned no interest in the realty. *Bennett v Bennett*, 230 M 415, 42 NW(2d) 39.

558.02 SUMMONS; SERVICE

NOTE: Beginning with "in which case" Superseded by Rules of Civil Procedure, Rule 4.041.

Where a counterclaim asking for the reformation of deeds affecting title was interposed in a partition proceeding, and the case was tried on the counterclaim alone, and the findings were made and judgment ordered against the defendants, an order denying a motion to amend the findings, conclusions of law and order for judgment was non-appealable. *Johnson v Geise*, 230 M 185, 40 NW(2d) 909.

558.03 COMPLAINT

Allegation in a counterclaim that the realty involved in the partition suit was purchased by defendant with her money while living with plaintiff as his wife, and that plaintiff's name was included in the contract for deed solely because of convenience, and marriage of the parties were insufficient to show that plaintiff owned no interest in the realty in the absence of allegation to that effect. *Bennett v Bennett*, 230 M 415, 42 NW(2d) 40.

558.07 CONFIRMATION OF REPORT; FINAL JUDGMENT

In a partition proceeding, where a counterclaim is interposed asking for reformation of certain deeds affecting the title and the case is tried on the counterclaim only, findings being made and judgment ordered against the defendants, who appeal

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from an order denying amended findings, the order appealed from is not appealable. *Johnson v Geise*, 230 M 185, 40 NW(2d) 909.

In an ejectment suit, defendant may plead equitable defenses, and if the evidence submitted in support thereof entitles him to a conveyance of the property involved, the court has jurisdiction to find title in the defendant in such action. *Bastian v Brink*, 233 M 25, 45 NW(2d) 712.

558.09 LIENS, HOW AFFECTED

Where land on which school building was erected was conveyed to the school district for school purposes, the district could not legally move the building from the premises prior to abandoning the building. *Miller v Common School District*, 231 M 248, 43 NW(2d) 102.

Where the school building was erected on land conveyed to the school district for school purposes only and subject to provisions for reversion to grantor, his heirs or assigns should such use be discontinued and thereafter, pursuant to the condition, title to the land reverted to the grantor's heirs, the school district was not entitled to remove the building. *Miller v Common School District No. 99*, 231 M 248, 43 NW(2d) 102.

558.14 SALE MAY BE ORDERED

Where sale of land includes growing unmaturing crop the entire gain may be treated as a capital gain or share of profit attributable to crop and may be ordinary income for federal tax purposes, depending upon applicable state law. 35 MLR 615.

558.21 FINAL JUDGMENT ON CONFIRMING REPORT

Where, in a partition proceeding, a counterclaim is interposed asking for reformation of certain deeds affecting the title and the case is tried on the counterclaim only, findings being made and judgment ordered against the defendants, who appeal from an order denying amended findings, the order appealed from is not appealable. *Johnson v Geise*, 230 M 185, 40 NW(2d) 909.

558.215 ORDERS, INTERLOCUTORY JUDGMENTS; APPEALS TO SUPREME COURT

Where the counterclaim interposed by the defendant in partition proceeding by heirs of his divorced wife was sufficient to inform plaintiffs of alleged grounds for reformation of deeds by which the defendant and his wife had intended to change the title to all their lake land from tenancy in common to joint tenancy and the instruments to be reformed were introduced at the trial without objection and plaintiffs' rights would not be prejudiced by reformation of the deeds so as to include land omitted therefrom through mistake of the scrivener, regardless of the sufficiency of the counterclaim to state a cause of action. Defendant was not estopped because he signed a petition to probate his wife's estate and there was no evidence of laches. *Johnson v Geise*, 230 M 185, 42 NW(2d) 712.

Where, in a partition proceeding, a counterclaim is interposed asking for reformation of certain deeds affecting the title and the case is tried on the counterclaim only, findings being made and judgment ordered against the defendants, who appeal from an order denying amended findings, the order appealed from is not appealable. *Johnson v Geise*, 230 M 185, 40 NW(2d) 909.

Under the general appeals statute the giving of statutory notice of appeal to both the adverse party and the clerk of the district court is a jurisdictional prerequisite. The power to permit curative amendments to cure defects in an appeal exists only after the statutory notice of appeal has been timely served and filed. *Ullman v Lutz*, M, 55 NW(2d) 57.