

MINNESOTA STATUTES 1953 ANNOTATIONS

CHAPTER 559

ADVERSE CLAIMS TO REAL ESTATE

NOTE: Chapter 559 is excepted from the Rules of Civil Procedure. See, Rule 81.01 and appendix A.

559.01 ACTION TO DETERMINE ADVERSE CLAIMS

Attornment by tenant of the adverse claimant to the record owner. 37 MLR 144.

In an action by the village of Newport against the defendant to remove obstructions from a street, adverse possession may be established only by clear and positive proof based on strict construction of the evidence without resort to any inference or presumption in favor of the disseisor, or with the indulgence of every presumption against him. The burden of proving the essential facts which create title by adverse possession rests upon the disseisor; and possession of the disseisor must be shown to be hostile, open, actual, continuous, and exclusive, and the absence of any one of these essential elements is fatal to the establishment of adverse possession. Village of Newport v Taylor 225, M 299, 30 NW(2d) 589.

When a street is vacated by plat, a municipality may choose its own time to occupy, open and use the street. Until it does so, possession of the street by an abutting owner is not regarded as hostile, and the statute of limitations will not commence to run. Nonuser for any length of time, unless accompanied by some affirmative or unequivocal acts of the municipality, indicative of an intent to abandon and inconsistent with the continued existence of the easement, will not operate as an abandonment of a public street. Village of Newport v Taylor, 225 M 299, 30 NW(2d) 589.

In a suit for specific performance, the court may require the commencement of an action to determine adverse claims against any person who claims an estate or interest in the property. Henschke v Young, 226 M 339, 28 NW(2d) 766.

In a suit by vendee for specific performance, vendor may not set up as a defense his own failure or neglect to make the title marketable where he has not sustained the burden of proof of showing that he cannot make the title marketable as agreed. Henschke v Young, 226 M 339, 28 NW(2d) 767.

Parties to a contract may provide for its annulment or cancelation either by subsequent valid agreement or by incorporating conditional provisions in the contract itself to accomplish the same purpose, and by so doing they may limit and determine the rights and liability of each to the other in the event of a failure of performance as stipulated. Henschke v Young, 226 M 339, 28 NW(2d) 766.

Neither the American Legion Post which was a corporation composed of a membership comprising large numbers of citizens of a village, nor a private citizen, would be proper party defendant in action to quiet title to realty devised to village for public park purposes, where no showing was made that the attorney general has refused or will refuse to perform his legal function of compelling compliance with conditions impressed upon a gift for charitable purposes. Schaeffer v Newberry, 227 M 259, 35 NW(2d) 287.

The object of an action under section 559.23 is not alone to determine boundary lines, but to settle controversies between owners, parties to the action, whose interests are affected by the boundary line. In such an action, not to assert a right claimed by adverse possession is a waiver of it, and a judgment therein is res judicata of the right of each party to the land involved as well as the boundary. In the instant case, brought under section 559.01, an attempt therein to amend or elaborate

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a judgment rendered in an action under section 559.23 is a collateral attack and cannot be entertained. *Hodson v Hammer*, 229 M 389, 39 NW(2d) 601.

If a party to whose pleading a demurrer is sustained again proposes the same pleading, or one with additions which are clearly immaterial, and so makes improper and unfair use of the leave to amend, his amended pleading, if ends of justice be promoted thereby, may be stricken. That portion of a complaint seeking to enjoin the defendant city from making improvements to an alley which would cut away lateral support of plaintiff's lot, were not of such character as to cancel out a cause of action pleaded to determine adverse claims to the lot. Since the injunction demand in the complaint was not inconsistent with allegations setting up a cause of action to determine adverse claims, it could be considered mere surplusage. *Smola v City of West St. Paul*, 234 M 157, 47 NW(2d) 789.

Possession in order to be adverse must be hostile, actual, open, continuous, and exclusive. In an action to define and locate the boundary line between adjacent farm lands, the evidence was clearly sufficient, positive, and unequivocal that the line established by the defendant of plaintiff's predecessor in title pursuant to the predecessor's request and by agreement with defendant predecessor in title was acquiesced in for nearly 25 years, and disclosed practical location of the boundary by acquiescence for a sufficient length of time to bar the right of entry under the statute of limitations. *Fishman v Neilsen*, 237 M 1, 53 NW(2d) 553.

Evidence that a ridge had been recognized and acquiesced in by adjoining landowners and their predecessors in interest as location of boundary line for more than twenty years, during which time they had occupied and cultivated the land to such ridge under claim of right, was sufficiently clear, positive and unequivocal to justify establishing boundary line by practical location. *Vogel v Gruenhagen*, M, 56 NW(2d) 427.

559.013 STATE AS PARTY DEFENDANT

HISTORY. 1953 c 21 s 1, 2.

559.02 UNKNOWN DEFENDANTS

NOTE: The third sentence is superseded by Rules of Civil Procedure, Rule 4.041.

559.05 ACTION AGAINST CO-TENANT; DENIAL OF RIGHT

Right of a joint tenant to maintain a suit to cancel a deed executed by the other joint tenant. 34 MLR 245.

559.11 PLEADINGS; TRIAL; VERDICT

Attornment by tenant of the adverse claimant to the record owner. 37 MLR 144.

A boundary is established by adverse possession where disseisors or predecessors in title, for at least fifteen years prior to commencement of the action, have been in hostile, open, actual, continuous, and exclusive possession of the premises. The burden of proving the essential facts which create title by prescription rests on him who asserts it. *Bjerketvedt v Jacobson*, 232 M 152, 44 NW(2d) 775.

559.15 OCCUPANT NOT IN ACTUAL POSSESSION; ACTIONS IN OTHER FORM

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 succeeds to the rights of a landlord brought action against a tenant to recover future rental after destruction of the leased build-

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ing 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.

A town has no right to invade the property of a private owner in disposing of stumps resulting from the construction of a road; and placing the stumps upon the property would constitute a trespass for which act the town is liable. OAG Aug. 18, 1948 (844-H).

559.18 CONVEYANCE BY MORTGAGOR TO MORTGAGEE

In an ejectment action in which both parties claimed under a common grantor the evidence authorized the jury to find that two deeds, absolute in form, held by defendant were in fact mortgages. *Henschke v Young*, 226 M 339, 32 NW(2d) 854.

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

Suits in equity may be brought to cancel contracts, section 559.21 does not provide an exclusive remedy. *Sovell v First National Bank*, 167 M 384, 209 NW(2d) 22; *Madsen v Powers*, 194 M 418, 260 NW(2d) 510.

Acceptance of payment after default under a contract for a deed is inconsistent with the right to insist upon a forfeiture. Forfeitures are not favored, and the waiver principle has always been available under certain conditions in order to defeat them. A vendor may waive his right to insist upon a forfeiture by acts done after the expiration of the 30-day period in a contract for a deed, and his acceptance of the amount in default as a payment on the contract constitutes such a waiver. Retention of the amount in default by the vendor or his agent for a period of 14 days was sufficient evidence to support an inference that plaintiff intentionally accepted the payment. *Jandric v Skahan*, 235 M 250, 50 NW(2d) 625.

In an action to restrain proceeding to cancel a contract of sale, and it appears from the record that the action involves the determination of an estate or interest in land, it shall be tried in the county where the real estate is located. *Studeman v Palmer*, M, 55 NW(2d) 439.

Where the parties executed a contract for a deed in which it is stated that the sum of \$2,500 is to be paid at the time of execution of the instrument, "receipt of which is hereby acknowledged," it is a question of fact whether the parties intended that the down payment would constitute a condition precedent to the formation of a contract, and in the instant case, the evidence shows that such down payment did not constitute a condition precedent. The false recital of receipt of a down payment cannot be used to void the contract. The vendee's agreement to pay the consideration of the future is a sufficient consideration to support the contract. *Craigmile v Sorenson*, M, 58 NW(2d) 865.

The original contract for deed is not entitled to record as a part of cancellation proceedings without the payment of taxes. OAG March 30, 1950 (373-B-9-E).

559.23 ACTION TO DETERMINE BOUNDARY LINES

HISTORY. Amended, 1947 c 244 s 1.

Recording decrees in actions to determine boundary lines. 33 MLR 48.

Adjoining landowner's remedies for encroaching trees. 35 MLR 220.

Practical location of boundaries; establishment by acquiescence. 37 MLR 382.

The object of an action under section 559.23 is not alone to determine boundary lines, but to settle controversies between owners, parties to the action, whose interests are affected by the boundary line. In such an action, not to assert a right claimed by adverse possession is a waiver of it, and a judgment therein is res judicata of the right of each party to the land involved as well as the boundary. In the

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instant case, brought under section 559.01, and attempt therein to amend or elaborate a judgment rendered in an action under section 559.23 is a collateral attack and cannot be entertained. *Hodson v Hammer*, 229 M 389, 39 NW(2d) 601.

The supreme court interferes with findings of the trial court only where evidence taken as a whole furnishes no substantial support for them or where it is manifestly or palpably contrary to findings; and in an action to determine a boundary line and adverse claims to land the evidence sustained findings of the trial court as to the location of the boundary line. *Bjerketvedt v Jacobson*, 232 M 152, 44 NW(2d) 775.

The evidence to establish a boundary line by practical location must be clear, positive, and unequivocal. In this suit to define and locate the boundary between the farms of plaintiff and defendant where it appeared that plaintiff's predecessor in title in consultation with defendant's predecessor in title had jointly ordered construction of a fence on the west boundary line of plaintiff's land, the evidence warranted a finding that it was the intention of the parties to establish a practical boundary between the farms now owned by plaintiff and defendant, and that the parties and their predecessors in title were satisfied with the location of the boundary and had acquiesced therein, and this established a practical boundary line. *Fishman v Nielsen*, 237 M 1, 53 NW(2d) 553.

The survey based upon obliterated corners was sufficient to support the court's findings locating a disputed boundary line. *Minneapolis and St. Louis Railway Company v Ellsworth*, 237 M 439, 54 NW(2d) 800.

Evidence that a ridge had been recognized and acquiesced in by adjoining land-owners and their predecessors in interest as location of boundary line for more than twenty years, during which time they had occupied and cultivated the land to such ridge under claim of right, was sufficiently clear, positive and unequivocal to justify establishing boundary line by practical location. *Vogel v Gruenhagen*, M, 56 NW(2d) 427.

Where a Missouri corporation claiming an option to purchase realty brought a specific performance action against grantors who were residents of Minnesota and against a Minnesota corporation which claimed the right by cross-bill to the same relief under the same option, and the pleading sought no relief against the Minnesota corporation, and the relief to be granted to the claimants under the option would be identical, the court would realign the Minnesota corporation on the plaintiff's side and dismiss the action for lack of jurisdiction on the ground that diversity of citizenship was absent. *Knaus Truck Lines v Mair*, 85 F Supp 101.

CHAPTER 561

NUISANCE, TRESPASS, WASTE; DAMAGES

561.01 NUISANCE, ACTION

Attractive nuisance doctrine in Minnesota as compared with restatement of the law. 32 MLR 526.

Intentional multi-state torts. 36 MLR 1.

To justify a finding that a tenant is committing or permitting a nuisance under the Price Administration Rent Regulation Act, justifying the eviction of a tenant, the nuisance must be such as to justify abatement proceedings. *Cohen v Steinke*, 223 M 292, 26 NW(2d) 843.

The rights of habitation in residential districts are superior to the rights of trade or business therein, particularly where the business, such as a riding academy, is nonessential and not dependent upon a fixed location. The appellate court is not at liberty to speculate on what might develop in the future if defendants change the