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(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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CHAPTER 61A

Official Trusts

8168. Corporate authorities or judge to convey lands.

Note. The act herein referred to should probably be Act May 23, 1844, instead of Act May 23, 1854.

CHAPTER 62

Landlords and Tenants

8186. Distress for rent.

1. The relation in general.

Contract which contemplated a lease of property which lease was never executed, held properly referred to as a "contract for a lease," by the lessor in a Torrens registration suit. Nitkey v. S. (USCCA8), 87F(2d)916. Cert. den., 301US697, 57SCR925. Reh. den., 58SCR5.

Under ordinary contract between landowner and cropper they are co-owners of the crop, and cropper may mortgage his share before division, and a provision authorizing landowner to retain possession of the cropper's share as security for his indebtedness is in legal effect a mortgage on the crop. 171M461, 214NW288.

Except as security for rent or the purchase price of the land, the landowner cannot acquire a valid lien on crops to be grown later than the season beginning on May 1st next following the date of the contract. 171M 461, 214NW288.

If without the consent of the cropper, the landowner retains more than his share of the crops, he must account therefor and cannot apply the value thereof on the unsecured indebtededness of the cropper. 171M461, 214NW288.

Covenant of lessee "to pay all unpaid taxes and assessments that are now levied or assessed upon said real estate during the term" held to evidence an intention of parties to impose tax obligation upon lessee. 173M 247, 217NW135.

Conversion of grain dependent on construction of lease. Randolph v. T., 174M283, 219NW91.

Lessor informing guarantor on lease that tenant was paying the rent, held to estop him from claiming that tenant was in arrears at such or a subsequent time. 176M 227, 222NW929.

Return of lease with a change in it was not an acceptance but a counter offer, but acceptance of the counter offer may be implied from circumstances. M. Samuels & Co. v. Z., 182M345, 234NW468. See Dun. Dig. 1740(24).

City held not to have become bound contractually under a lease to it and was not liable for rent. Noyes v. C., 183M496, 237NW189.

In the absence of a contrary provision in a written lease for an apartment in a modern multiple apartment building, the landlord impliedly covenants that the premises will be habitable. Delamater v. F., 184M428, 239NW148. See Dun. Dig. 5393.

Where lessee of unexpired mining leases, upon which a large sum as advance royalty had been paid, took a conveyance of fee, it was to interest of lessee that leases should not merge so that a proper reduction on occupation tax for advance royalty paid could be made for ore mined and produced each year for unexpired term of leases. State v. Wallace, 196M212, 264NW775. See Dun. Dig. 6117.

One can become a tenant at will only by permission from owner or one acting for him to go onto land. Johnson v. W., 197M280, 266NW852. See Dun. Dig. 5361.

Where plaintiff foreclosed a mortgage upon premises leased to defendants after mortgage was given, and there was no redemption and title went to plaintiff February 14, 1931, and defendants notified plaintiff that premises would be vacated on March 31, 1931, and that they would remain no longer, plaintiff could not, without defendants' consent, convert tenancy at will or at sufferance to a tenancy under lease, and no rent could be recovered for April, May, and June, 1931. Geo. Benz & Sons v. W., 198M311, 269NW840. See Dun. Dig. 5377.

Proprietor of an apartment hotel, who prevented tenant from entering rooms, let by the week, for purpose of removing personal property, was not an innkeeper having a lien against property but was a landlord, and was guilty of coercion. State v. Bowman, 202M44, 279NW 214. See Dun. Dig. 2648, 4514, 5361, 5362.

Evidence warrants a determination that defendant leased a store building from plaintiff for four months and thereby obligated himself for rental for that period. Gates v. H., 202M610, 279NW711. See Dun. Dig. 5361.

Relation of landlord and tenant exists where one person occupies premises of another in subordination to that other's title and with his consent, and no particular form of words is necessary to create a tenancy. Id. See Dun. Dig. 5361.

One offering to rent premises from owner if stock therein could be purchased from third party owning it cannot question owner's right to rent to him by reason of lease to such third person, there being no claim that his possession was in any way disturbed by such third person or anyone claiming under him. Id. See Dun. Dig. 5363.

Relationship of landlord and tenant exists when one person occupies premises of another in subordination to that other's title. State v. Brown, 203M505, 282NW136. See Dun. Dig. 5361.

In action for injuries caused by ice forming on sidewalk from spout on oil station, evidence held to justify finding that defendant oil company was occupying station through its manager, notwithstanding that station had been leased to a third person by the owner thereof. Noetzelman v. W., 204M26, 283NW481. See Dun. Dig. 5369.

Effect of provision in lease giving lessor sole right to terminate. 16MinnLawRev214.

2. Abandonment.

Evidence supports finding that a tenant surrendered its lease and landlord accepted surrender and terminated relationship. Sjoberg v. H., 199M81, 271NW329. See Dun. Dig. 5407.

3. Assignments and subleases.

Dissolution of corporation that assigned lease to defendant's assignor, held to constitute defendant equitable assignee liable for rent accruing during possession. Medical Arts Bldg. Co. v. M. (USCCA8), 78F(2d)937.

Where the taxes on a leasehold were to be paid as additional rent lessee's equitable assignee was obligated to pay taxes, and where he had not paid them lessor could recover therefor whether lessor had paid them or not, and although assignee had taken steps to contest validity of delinquent taxes. Minnesota L. & T. Co. v. M., (USDC-Minn), 8FSupp907. See Dun. Dig. 5399, 5430.

The evidence compels a finding that a thirty-year lease and a subsequent modification thereof, taken by the promoter of a bank to be organized, was not adopted by the bank occupying the premises leased, improving the same, and paying the rent; for the covenants contained in the lease to be performed by the lessee were such that the bank could not lawfully assume them. Veigel v. O'T., 183M407, 236NW710. See Dun. Dig. 2114, 2114a, 2116.

Acceptance of rent from assignees under an assignable lease did not show a surrender by lessors of right to demand rent from lessee. Wilcox v. H., 185M1, 239NW 763. See Dun. Dig. 5429.

A lessee's covenant against assignment without written consent of lessor, however stringent, may be waived. Id. See Dun. Dig. 5408.

Covenant against assignment of lease was waived where assignee remained in possession for two years, paying rent directly to lessor. Id.

Assignee of lease is primarily liable for rent, and lessee, being compelled to pay upon his default, is entitled to reimbursement. See Dun. Dig. 5430. Id.

A sublease of a part of premises for entire term of an original lease is an assignment of original lease as to that part of premises. Wiedemann v. B., 190M33, 250NW 724. See Dun. Dig. 5406, 5408.

Where lessee contracted to assign lease but retained legal title as security for performance by the other, such other was the equitable owner or tenant of the leasehold. Minnesota Loan & Trust Co. v. M., 192M6, 255 NW85. See Dun. Dig. 5406.

An assignee of a lease may, by assigning it, even to a pauper, put an end to his liability for rent under the lease. McLaughlin v. M., 192M203, 255NW839. See Dun. Dig. 5430.

A testamentary trustee, accepting a leasehold as part of trust property, becomes an assignee thereof and, as such, liable on covenants of lease, running with title, to pay rent and taxes, and such liability is not terminated by a mere unaccepted offer to surrender the lease, although it can be disposed of by assignment. McLaughlin v. M., 192M203, 255NW839. See Dun. Dig. 5415, 5430, 9928a.

Defendant could not remain in possession of leasehold for months after discovering that it had been defrauded without thereby affirming sublease, and it is not entitled to a decree rescinding sublease. E. E. Atkinson & Co. v. N., 193M175, 258NW151. See Dun. Dig. 5417.

Assignee of leasehold was relieved from liability for rent because of rescission of executory contract for assignment of lease to it and its surrender of possession. Northwestern Nat. Bank & Trust Co. v. M., 194M344, 260 NW296. See Dun. Dig. 5429.

Effect of sublease by a tenant at will. 15MinnLaw Rev120.

Personal liability of trustee as assignee of leasehold on covenants running with the land. 19MinnLawRev568.

3½. Rents and royalties.

Defendant lessee could not apply against royalties accruing in 1928 royalties which had accrued under a sublease terminated in 1925. Hammel v. H., 182M1, 234NW 674. See Dun. Dig. 6123.

Where landlord brings suit to recover rent, tenant may recoup damages caused by a wrongful interference by landlord with use or possession, although tenant has not been evicted and has not surrendered premises. Hoppman v. P., 190M480, 252NW229. See Dun. Dig. 5426, 5427.

Tenant, seeking to recoup damages in action by landlord for rent, has burden of proof on issue of interference with possession. Id. See Dun. Dig. 5481.

Where lessee, due to general business depression, is losing money and will be obliged to vacate premises unless amount of rent is reduced, an agreement to modify lease as to amount of rent to be paid is valid and is supported by a sufficient consideration. Ten Eyck v. Sleeper, 65Minn413, 67NW1026, approved and followed. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 5421a.

Where three trustees of a business trust lease property, signing lease "as trustees," and simultaneously therewith two of trustees execute a written guaranty personally guaranteeing performance of lease for first three years of eight-year term, as to trustee not signing said guaranty it is a question for jury whether it was intended that that one trustee was to be personally bound. Wm. Lindeke Land Co. v. K., 190M601, 252NW650. See Dun. Dig. 9928a.

While district court may become temporary repository of title in case of a vacancy arising in a testamentary trusteeship, there can arise no liability of the court or its judges under covenants of a lease which happened to be part of the trust property. McLaughlin v. M., 192M 203, 255NW839. See Dun. Dig. 9928.

Provision in a lease requiring payment of rents in gold coin of its then weight and fineness or its then equivalent in purchase power is of no effect and rent is now payable in any dollar which is legal tender. E. E. Atkinson & Co. v. N., 193M175, 259NW185. See Dun. Dig. 5420.

In action for rent, defended on ground that plaintiff breached provision of lease by bringing unlawful detainer action and in taking possession and also later compromising for rent, both issues held properly submitted to jury. Petterseu v. F., 194M265, 260NW225. See Dun. Dig. 5410.

A lessee who covenants to pay all taxes assessed during term of lease is liable for taxes assessed for calendar year if lease terminates on or after May 1st of that year. Merle-Smith v. M., 195M313, 262NW865. See Dun. Dig. 5399.

Reentry clause providing for nonforfeiture of rent in case of reentry gave no right to rent in case of surrender of premises and acceptance thereof by lessor. Sjoberg v. H., 199M81, 271NW329. See Dun. Dig. 5437.

Evidence that lessor commenced a prior suit against lessee for rent due, upon theory that lessee owed same under liability imposed by law to support wife, and not on lease, is not material, where it conclusively appears that lease is in full force and effect. Hildebrandt v. N., 199M124, 272NW257. See Dun. Dig. 5407.

An arrangement between lessor and lessee's wife, occupant of the leased premises under lessee, whereby lessor agreed to accept part of rent from her for part of term, does not operate as a modification of lease as a matter of law where it appears wife is acting solely for herself and not as husband's agent. Id.

Modification of a lease reducing future rent is legal and binding. Id. See Dun. Dig. 5409.

Fair rental value of premises is what they would be worth in market if lessor had been free and able to rent them. Fagan v. S., 199M260, 271NW458. See Dun. Dig. 5420.

Where lessee was bound by terms of lease to repair and keep plumbing and furnace in good order, it was no defense to action for rent after lessee moved out that house had been "blue-carded" by health department because of defective furnace and plumbing. Miller v. P., 199M331, 271NW818. See Dun. Dig. 5397.

Priority as between landlord's lien for rent and mortgage on chattels. 20MinnLawRev436.

5. Crops, rights as to.

Possession of crops by lessor under a lease in effect a chattel mortgage. 178M344, 227NW199.

Contract to farm on shares, designated a "lease" where part of "rent" is to be paid in cash and part in grain, and where landowner takes from cropper a chattel mortgage on all crops to be grown on land that year, held to create relationship of landlord and tenant rather than that of joint adventurers; hence landowners and cropper are not tenants in common of crops grown on land, but tenant is owner thereof and share due landowner is rent. Mutual Ben. Life Ins. Co. v. C., 190M144, 251NW129. See Dun. Dig. 6230.

Farm tenant sowing crop of rye in the fall and subsequently notified that he could not have farm for next season, but remaining in possession either as a tenant at sufferance or a trespasser and harvesting his crop, was owner of crop so raised and severed. Crain v. B., 192M426, 256NW671. See Dun. Dig. 2509, 5379.

Bundles of harvested rye on land at time landlord repossessed land under a writ of restitution was personal property which tenant had a right to enter and take. Id. See Dun. Dig. 2509, 5379.

Lien of cropping contract on cropper's share of grain is not security generally for payment of damages arising from cropper's breach of contract. Fitzgerald v. K., 194M316, 260NW294. See Dun. Dig. 5484.

Evidence that bank advised lessee of one of its farms to sell corn raised on the farm was not sufficient to show that tenant was agent of bank in sale so as to render bank liable for damages for breach of contract of sale. Welcome Nat. Bank v. H., 195M518, 263NW544.

Evidence held to sustain finding that defendant's contract with landowner included only hay and did not include sweet clover crop growing on land. Wiseth v. G., 197M261, 266NW850. See Dun. Dig. 5387.

Where plaintiff went upon certain land after agreement with county attorney who was acting neither in an official capacity nor for owner, he acquired no rights to crops growing thereon as against owner, and none against defendant acting under contract with owner covering the crops on the land. Johnson v. W., 197M280, 266 NW852. See Dun. Dig. 5361.

Growing crops are part of land, and, whether tenant or trespasser, an occupant's title to growing crops is dependent upon possession of land, in absence of special contract. Mehl v. N., 201M203, 275NW843. See Dun. Dig. 2508.

In replevin against tenant on share crop plan to recover seed grown and threshed, evidence held to sustain finding of jury as to counterclaim for plowing, painting, *and threshing. McDowell v. H., 204M349, 283NW537. See* Dun. Dig. 5484.

5½. Manure.

Manure resulting from feed purchased by lessee and not grown upon leased premises as accretion to land. 15MinnLawRev244.

6. Eviction.

Facts admitted held to show there was no ground for claim of constructive eviction for rent. 173M155, 216NW 802.

In action for damage to personal property of evicted lessee, evidence held to show that property belonged to such lessee. Bronson Steel Arch Shoe Co. v. K., 183M 135, 236NW204. See Dun. Dig. 5366.

Reservation in a lease of right of lessor to enter to make repairs or improvements did not warrant a major improvement which damaged the lessee's personal property and amounted to an eviction. Bronson Steel Arch Shoe Co. v. K., 183M135, 236NW204. See Dun. Dig. 5365.

Bedbugs in apartment may constitute constructive eviction of tenant. Delamater v. F., 184M428, 239NW148.

Evidence held not to require a finding that, after default of defendant, plaintiff, by demanding and obtaining possession of leased premises, waived his right to future rent under a clause in lease which provided that in case of delinquency he might reenter without forfeiting his right to future rent. Newberg v. C., 190M459, 252NW221. See Dun. Dig. 5427.

For a tenant to recover damages from landlord for interference, interference must have been without consent of tenant and he must have sustained damage thereby. Hoppman v. P., 190M480, 252NW229. See Dun. Dig. 5366.

A tenant consenting to making of repairs on premises cannot claim wrongful interference with his use thereof. Id.

Acts of landlord to effectuate eviction of his tenant must be something more than a mere trespass. Ordinarily *it is essential that act be of a grave and permanent* character and to such extent as to deprive tenant of use, occupation, and enjoyment of demised premises. Donaldson v. M., 193M283, 258NW504. See Dun. Dig. 5366.

Exemplary damages of $600 to dentist unlawfully evicted from his office for two weeks is a matter emphatically reserved to jury, and unless so excessive as to indicate that jurors were actuated by passion or prejudice, it will not be disturbed. Sweeney v. M., 199M21, 270NW906. See Dun. Dig. 5366.

Where a practicing dentist with a good standing in his community, was unlawfully evicted from his office for a period of almost two weeks, a verdict of $300 for actual damages on a showing of a specific loss of at least $245 in addition to that which might have been received from patients that called at his office is not excessive, nor can it be said to have been based on pure speculation or guess. Id.

Where lessee was bound by terms of lease to repair and keep plumbing and furnace in good order, it was no defense to action for rent after lessee moved out that house had been "blue-carded" by health department be-

cause of defective furnace and plumbing. Miller v. P., 199M331, 271NW818. See Dun. Dig. 5425.

Nuisance as constituting constructive eviction. 16MinnLawRev445.

7. Improvements.

Agreement of lessor at termination of lease to credit lessee with the value of improvements held not to include cost of digging well. Chute v. F., 178M524, 227 NW856.

Lease to gun club granting right to hunt and fish did not give permission to dam outlet of waters upon the land. Pahl v. L., 182M118, 233NW836. See Dun. Dig. 5388.

9. Negligence of landlord.

Evidence held not to show that lease included sidewalk and therefore lessor and not lessee was liable for defective manhole cover. 176M156, 222NW913.

An assumed warranty of landlord as to safety of cellar steps held limited to adequacy of two stair steps claimed to be too thin, and without reference to supports thereunder. 181M471, 233NW14. See Dun. Dig. 5369.

Landlord held not charged with notice of defective rotten supports under cellar steps. 181M471, 233NW14. See Dun. Dig. 5369, 7231.

The rule is that a landlord, in the absence of fraud, concealed dangers known to the landlord unknown to the tenant, or a warranty, is not liable for injuries suffered because of defective premises, unless there is a violation of his covenant to repair. 181M471, 233NW14. See Dun. Dig. 5369.

In action by tenant against landlord for injuries received when step gave way, evidence held to sustain verdict in favor of plaintiff on issues of negligence, assumption of risk and contributory negligence. Klugman v. S., 186M139, 242NW625. See Dun. Dig. 5369.

In action by tenant burned by flame coming from incinerator door, evidence held to justify finding that incinerator was negligently operated by janitor. Matlincky v. C., 192M166, 255NW625. See Dun. Dig. 5369.

In action for damages by tenant who was burned when he opened door to incinerator, it was proper not to submit the case to the jury on the theory of res ipsa loquitur. Id. See Dun. Dig. 5369, 7044.

Owner of an apartment building fronting a boulevarded city street who, for convenience of tenants and public, has laid a cement walk from city sidewalk across nine-foot boulevard to curb, is not under obligation to his tenants or others to keep such walk free from snow and ice. Burke v. O., 192M492, 257NW81. See Dun. Dig. 5369.

A tenant taking the risk of walking in darkness, feeling his way, assumes risk of encountering such a common and customarily used article as a broom. Johnston v. T., 193M635, 259NW187. See Dun. Dig. 7041a.

Where there was a properly lighted front entrance and a dark rear entrance, a tenant selecting rear entrance was guilty of contributory negligence as a matter of law. Id. See Dun. Dig. 5369a.

Where defendant rented a hall on third floor of its building to company in order that latter might display its wares, and also furnished chairs for occasion, and a chair collapsed, doctrine of res ipsa loquitur is not applicable, since chair was not under control of defendant. Szyca v. N., 199M99, 271NW102. See Dun. Dig. 5369.

A lessor is liable for harm suffered by his lessee because of negligence of an independent contractor employed by lessor to make repairs which lessor was bound by covenant with lessee to make. Pacific Fire Ins. Co., v. K., 201M500, 277NW226. See Dun. Dig. 5368.

Duty of owner of real property to maintain premises in such condition as not to render use of abutting public ways unsafe or dangerous, and consequent liability for breach of this duty, continues after a lease of premises, where lease reserves a right of entry in owner for purpose of making repairs. Paine v. G., 202M462, 279NW257. See Dun. Dig. 5365, 5369.

Trap door in lavatory in restaurant held not a nuisance, nor so faulty in design or construction that landlord could be held responsible for creation of an unreasonable risk to patrons of lessee. Lyman v. H., 203M225, 280NW 862. See Dun. Dig. 5369(39).

In a case where a landlord, not under covenant to repair, had promised to repair a leaky faucet and leak had been repaired but in such a manner as to require it to be closed tight to prevent dripping, and a tenant injured his hand by using all his strength on porcelain handle, record does not disclose such a condition of handle as to indicate that a man of ordinary prudence would have anticipated injury to anyone from its use. Hoger v. M., 204M615, 282NW484. See Dun. Dig. 5369.

One in control of oil station was liable for injuries resulting from formation of ice on sidewalk from spout, notwithstanding that another person was in sole control of station under a lease, nuisance causing injury being on premises at time lessee took possession. Noetzelman v. W., 204M26, 283NW481. See Dun. Dig. 5369.

Port of instruction "the owner or occupant of premises is bound to exercise ordinary or reasonable care to keep them in safe condition for those who come upon them by his express or implied invitation" held not applicable to an action by a guest of a tenant against lessor for injuries received when falling into a cesspool, only proper issue in case being whether lessor was negligent in not informing lessee of existence of a hidden danger. Honan v. K., 286NW404. See Dun. Dig. 5369.

Where there is no covenant or agreement by lessor to keep leased premises in repair, he is not liable in tort to tenant or his invitees for dangerous conditions or defects therein, but rule is different where there exists a hidden danger or trap known to lessor but unknown to tenant, in which case there is a duty on lessor to disclose its existence. Id. See Dun. Dig. 5369.

Lessor was negligent in not disclosing to lessee the existence of an unfilled abandoned cesspool, which was unfilled and covered by sod. Id. See Dun. Dig. 5369.

Liability of vendor to hold-over tenant for defects in premises after transfer of possession. 15MinnLawRev 485.

Liability of landlord who retains privilege to repair for injury to stranger caused by defect in premises. 18 MinnLawRev229.

Procedural effect of res ipsa loquitur. 20MinnLawRev 241.

10. Repairs.

Recovery by lessor of expenditures made in restoring premises to proper condition at termination of lease. 178 M391, 227NW211.

11. Rescission by lessee.

Tenant, by acceptance and retention of possession, with knowledge that landlord's promise to construct a new hallway had not been performed as relied upon, manifested its election to accept performance tendered, and thereby lost its right to rescind, or to refuse to comply with terms of lease. Josten Mfg. Co. v. M. (USCCA8), 73F(2d)259. See Dun. Dig. 5426.

Right to disaffirm a contract for fraud is lost where, after discovery of fraud by victim, he continues his unquestioning performance of contract, in this case a lease, for nearly a year. Shell Petroleum Corp. v. A., 191M 275, 253NW885. See Dun. Dig. 1814.

It cannot fairly be said that representations as to lessor's financial standing was a material representation upon which lessee was entitled to rely. E. E. Atkinson & Co. v. N., 193M175, 258NW151. See Dun. Dig. 5417.

12½. Termination of lease.

Evidence held to show a waiver by both parties of a provision requiring written notice to prevent the automatic extension of a lease for another term. 175M421, 221NW645.

Evidence held sufficient to go to jury upon question whether lease was surrendered before the rent for a particular month accrued. 178M177, 226NW411.

Evidence held insufficient to show modification of term of lease or a notice to lessor that lessee would vacate at the end of the first year. Kueffner v. H., 184M188, 238NW161. See Dun. Dig. 5409(49), 5412.

A fee owner executing a 100-year lease and after default executing a second long term or concurrent lease and assigning to the lessee therein the right to enforce the payment of rent and taxes as provided in the former lease still had the right to give notice provided in the lease to make operative right of re-entry. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 5440(89).

A right of re-entry in a lease providing for a 60-day notice for default is not complete until the expiration of 60 days after service of notice. First Minneapolis Trust Co. v. T., 185M121, 240NW459. See Dun. Dig. 5440 (89).

Lease could not be rescinded by reason of technical violation by lessor of covenant against leasing other property for soda fountain. United Cigar Stores Co. v. H., 185M534, 242NW3. See Dun. Dig. 5412.

Equity disfavors forfeiture of lessee's interest in farm lease upon which crops are growing, and, when forfeiture will work great injustice and lessor is otherwise protected in his rent, forfeiture will not be enforced; and in proper case it may be held that right of forfeiture is waived. Warren v. D., 186M1, 242NW346. See Dun. Dig. 5437.

Lessor held not entitled to claim absolute right of forfeiture of lease. Warren v. D., 186M1, 242NW346.

Facts held not to show surrender of lease by operation of law. Hamilton v. W., 186M220, 242NW709. See Dun. Dig. 5407.

Upon proving lease, occupancy under it, and that rent had not been paid, burden was on defendant to show some valid excuse for failure to pay. Hamilton v. W., 186M220, 242NW709. See Dun. Dig. 5464.

Evidence held to show tenant, from month to month, did not give proper notice of intention to vacate. Cottrell v. S., 186M292, 243NW62. See Dun. Dig. 5440.

Evidence held to support finding that there was an agreement to modify a lease by surrendering right of cancellation without cause. Oakland Motor Car Co. v. K., 186M455, 243NW673. See Dun. Dig. 5409.

Under lease giving lessor no option to terminate except upon complying with certain conditions, which were not complied with, and which only required lessee to return leased property at termination of lease in as good condition as received, a suit by lessor for damages before expiration of term would only be effective as termination of lease if it evidenced an intent on lessor's part to rescind, surrender or abandon it, and was acquiesced in by lessee, or if it worked an estoppel. Donaldson v. M., 190M231, 251NW272. See Dun. Dig. 5412.

A voluntary vacating of leased premises by defendant lessee and surrender of crops thereon were sufficient consideration for a promise on part of lessor to in effect

waive balance of rent then unpaid. Donnelly v. S., 193 M11, 257NW505. See Dun. Dig. 5436.

Marital relation alone did not constitute wife agent of husband to surrender lease and make a new one for him. Hildebrandt v. N., 199M124, 272NW257. See Dun. Dig. 4262a.

A surrender of leased premises by agreement can take place only pursuant to agreement between parties acting themselves or through their agents. Id. See Dun. Dig. 5407.

Permitting wife of lessee to occupy leased premises and accepting part of rent from her does not constitute a surrender of premises by operation of law. Id.

Evidence held not to show abandonment by lessee of leased premises. Id.

Where tenant duly exercises option to purchase, relation of landlord and tenant ceases and that of vendor and purchaser arises, and lessor cannot abrogate such right by thereafter undertaking to forfeit lease because of claimed past violations thereof. Gassert v. A., 201M 515, 276NW808. See Dun. Dig. 5404, 5437.

As it is optional with lessor whether to avail himself of breach of a covenant giving him right to forfeit a lease, if he desire to forfeit he must manifest his intent by some clear and unequivocal act. Gassert v. A., 201M515, 276NW808. See Dun. Dig. 5439.

Under a clause in a farm lease that "if sold after the crop is in, then second party shall have right to remove such crop when ready to be harvested", fact that winter wheat had been planted when farm was sold in December did not entitle lessee to remain in possession and plant additional crops the next spring. Jennison v. P., 202M 338, 278NW517. See Dun. Dig. 5412.

Landlord of apartment on which rent is payable from week to week cannot retake possession of premises when tenant defaults, unless he reserves the right, and is guilty of coercion in rendering apartment uninhabitable to force tenant to remove without resort to unlawful detainer proceedings. State v. Brown, 203M505, 282NW136. See Dun. Dig. 5438.

Effect of abandonment by tenant and re-letting by landlord on liability for rent. 17MinnLawRev96.

13. Trade fixtures.

Finding that wiring, lights, poles and appliances installed in miniature golf course were removable trade fixtures, held justified. Johnson v. G., 187M104, 244NW 409. See Dun. Dig. 3773.

Gasoline pumps, tanks, engines, and other trade appliances, installed, paid for, and used exclusively by tenant in its business as a dealer in oil and gasoline products, held trade fixtures and removable during leased term, removal being made without material injury to freehold. Moffat v. W., 203M47, 279NW732. See Dun. Dig. 3773.

Right of tenant to remove erections made by him in furtherance of purpose for which premises were leased is founded upon public policy and has its foundation in interest which society has that every person shall be encouraged to make most beneficial use of his property circumstances will admit of. Id. See Dun. Dig. 3766.

Provisions in lease did not preclude removal of gasoline pumps, tanks, engines and other trade appliances as trade fixtures, language of lease relating to improvements to real estate and not to trade fixtures. Id. See Dun. Dig. 3766.

8187. Cancellation of leases, in certain cases—Abandonment or surrender of possession.—In case of a lease of real property, when the landlord has a subsisting right of re-entry for the failure of the tenant to pay rent, he may bring an action to recover possession of the property, and such action is equivalent to a demand for the rent and a re-entry upon the property; but if, at any time before possession has been delivered to the plaintiff on recovery in the action, the lessee or his successor in interest as to the whole or any part of the property, pays to the plaintiff or brings into court the amount of the rent then in arrears, with interest and costs of the action, and an attorney's fee not exceeding five dollars, and performs the other covenants on the part of the lessee, he may be restored to the possession, and hold the property according to the terms of the original lease.

Provided, however, that if the lease under which the right of re-entry is claimed is a lease for a term of more than twenty years, re-entry cannot be made into said land or such action commenced by the landlord unless, after default, he shall serve upon the tenant, also upon all creditors having a lien of record legal or equitable upon the leased premises or any part thereof, a written notice that the lease will be cancelled and terminated unless the payment or payments in default shall be made and the covenant or covenants in default shall be performed within thirty days after the service of such notice, or within such greater period as the lessor shall specify in said notice, and if such default or defaults shall not be removed within the period specified within said notice, then said right of re-entry shall be complete at the expiration of said period and may be exercised as provided by law; provided further, that if any such lease shall provide that the landlord after default, shall give more than thirty days' notice in writing to the tenant of his intention to terminate the tenancy by reason of default in terms thereof, then the length of the notice to terminate shall be the same as provided for and required by the lease.

And provided further, as to such leases for a term of more than twenty years, if at any time before the expiration of six months after possession obtained by the plaintiff by abandonment or surrender of possession by the tenant or on recovery in the action, the lessee or his successor in interest as to the whole or part of the property, or any creditor having a lien legal or equitable upon the leased premises or any part thereof, pays to the plaintiff, or brings into court, the amount of rent then in arrears, with interest and the costs of the action, and performs the other covenants on the part of the lessee, he may be restored to the possession and hold the property according to the terms of the original lease; provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state.

Upon recovery of possession by the landlord in the action a certified copy of the judgment shall be recorded in the office of the Register of Deeds of the county where the land is situated if unregistered land or in the office of the Registrar of Titles of such county if registered land and upon recovery of possession by the landlord by abandonment or surrender by the tenant an affidavit by the landlord or his attorney setting forth such fact shall be recorded in a like manner and such recorded certified copy of such judgment or such recorded affidavit shall be prima facie evidence of the facts stated therein in reference to the recovery of possession by such landlord. (As amended Feb. 24, 1937, c. 38, §1.)

Where a tenant is in default in the payment of rent, the landlord's right of action for forcible entry and unlawful detainer is complete notwithstanding the lease contains a right to terminate optional with the landlord and effective upon sixty days' notice. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 5440(88).

8188. Tenant may not deny title—Exception.

In action to determine adverse claims by a landlord against his tenant, tenant is not estopped by his lease from denying his landlord's title, such estoppel arises in an action where possession only is sought. Merchants' & Farmers' State Bank v. O., 189M528, 250NW366. See Dun. Dig. 5363.

One holding land under a verbal lease is estopped to deny title of leasor. Exsted v. E., 202M521, 279NW554. See Dun. Dig. 5363.

8189. Person in possession liable for rent.

Tenant who takes possession under a void lease becomes a tenant at will and liable for the specified rent until the tenancy is terminated. 174NW233, 219NW79.

A conveyance of the fee by the lessor does not terminate a tenancy at will nor convert it into a tenaney at sufferance. 174M233, 219NW79.

Payment by tenant and acceptance by grantee of the monthly installments of rent under a void lease is sufficient to establish a tenancy at will even if it did not previously exist. 174M233, 219NW79.

Plaintiff, as owner, had a cause of action against defendant which took and retained possession of plaintiff's premises under plaintiff's tenant. Minnesota Loan & Trust Co. v. M., 192M6, 255NW85. See Dun. Dig. 5406.

While district court may become temporary repository of title in case of a vacancy arising in a testamentary trusteeship, there can arise no liability of the court or its judges under covenants of a lease which happened to be part of the trust property. McLaughlin v. M., 192M 203, 255NW839. See Dun. Dig. 9928.

The statute created no liability where there was none at common law, but its only purpose is to provide for an apportionment of rent where one is needed to accomplish justice, and to give an adequate remedy for its recovery. Id. See Dun. Dig. 5415, 5430.

A testamentary trustee, accepting a leasehold as part of trust property, becomes an assignee thereof and, as such, liable on covenants of lease running with title, to

pay rent and taxes, and such liability is not terminated by a mere unaccepted offer to surrender the lease, although it can be disposed of by assignment. Id. See Dun. Dig. 9928a.

In action to recover rent and for use and occupation of land, one claiming ownership of land could intervene. Scott v. V., 193M465, 258NW817. See Dun. Dig. 4899.

8190. Building destroyed, etc.—Rent.

Tenant cannot avoid payment of rent of premises rendered untenable unless he vacates or surrenders possession. Leifman v. P., 186M427, 243NW446. See Dun. Dig. 5425.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenantable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. Siggelkow v. A., 187M395, 245NW629. See Dun. Dig. 5412.

Lessor held not estopped to deny termination of lease by lessee after fire. Hoppman v. P., 189M40, 248NW281. See Dun. Dig. 5424(13).

Notice of tenant to surrender damaged premises does not terminate lease unless tenant vacates within reasonable time after fire. Id.

8191. Estate at will, how determined—Notice.

¼. In general.

There was a surrender of property by tenant at will without notice only from date of re-renting. Maze v. M., 184M5, 237NW612. See Dun. Dig. 3161.

One who holds possession of premises by permission of owner or landlord, but without a fixed term, is a tenant at will. Wiedemann v. B., 190M23, 250NW722. See Dun. Dig. 5377.

A tenancy at sufferance arises where a person wrongfully holds over after expiration of his tenancy or after his estate or right has ended. Id. See Dun. Dig. 5379.

After proper notice tenant is obliged to quit premises on or before midnight of last day of month, and landlord is entitled to possession on first day of month following. Hyman Realty Co. v. K., 199M139, 271NW248. See Dun. Dig. 5444.

Whether tenancy of apartment from week to week was terminated by verbal notice held question of fact. State v. Brown, 203M505, 282NW136. See Dun. Dig. 5438.

1. When no default in rent.

Written notice must be served prior to first day of month to terminate lease from month to month with expiration of that month. Oesterreicher v. R., 187M497, 245NW825. See Dun. Dig. 5443.

3. Mode of service.

Taking possession of and operating a farm under an oral lease void under the statute of frauds creates a tenancy at will, which may be terminated only by statutory notice. Hagen v. B., 182M136, 233NW822. See Dun. Dig. 5377(83).

Notice to quit premises so that possession could be had "on and after May 31, 1936," held not insufficient as matter of law. Hyman Realty Co. v. K., 199M139, 271NW 248. See Dun. Dig. 5442.

8192-1. Termination of long term leases suspended. —Termination by the lessor, without the written assent of the lessee, of leases of real estate for the term of 20 years or more and the right to re-enter and to recover possession of such real estate for failure of the tenant to pay rent or to make other payments provided by the lease, whether such termination and/or action to recover possession be attempted pursuant to Mason's Minnesota Statutes of 1927, Sections 8187, as amended, or 9149 to 9163 inclusive and acts amendatory thereof and supplemental thereto, or otherwise, is hereby suspended and prohibited during the period of the emergency except upon order of the district court pursuant to notice and proceedings as herein provided. (Act Apr. 11, 1935, c. 157, §1; Mar. 2, 1937, c. 46, §1; Feb. 25, 1939, c. 34, §1.)

Preamble to act.

WHEREAS, There exists in the State of Minnesota a public economic emergency of such force and effect as to seriously interfere with the ordinary performance of lease contracts; and

WHEREAS, It is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth have created an emergency of such nature that justifies and validates legislation allowing the extension of the time of performance by lessees of real property for terms of 20 years or more in cases in which substantial and material payments or improvements have been made by the lessee; and

WHEREAS, the welfare of the people demands that the state, pursuant to its police power, interfere for a limited time with a literal enforcement of the law regarding certain leases; NOW, THEREFORE—

8192-2. Method of termination.—During such emergency no notice that a lease of real estate for the term of 20 years or more will be cancelled and terminated because of default of the lessee shall be sufficient to terminate the same or shall be sufficient to comply with Mason's Minnesota Statutes of 1927, section 8187, as amended, as to such notice, unless such notice shall be served upon the persons designated by this act, and also upon the persons designated by said section 8187, as amended, at least 40 days before the date of the hearing in district court provided for by this act and except in accordance with the order of said court pursuant to proceedings as herein provided.

When default is made in the conditions of any lease for 20 years or more, or any interest therein, whereby the lessor has a right to terminate the same, the lessor may serve upon the lessee, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that at a time specified, not less than 40 days after the service of said notice, he will apply to said court for an order adjudging said lease terminated, unless prior thereto the lessee, his personal representatives or assigns, shall comply with and perform the conditions then in default. Such notice must be given notwithstanding any provisions in the lease to the contrary, and shall be served within the state in the same manner as a summons in the district court, and, if served without the state, in the manner provided in Mason's Minnesota Statutes of 1927, section 9234.

Provided that in case of such service by publication the said notice shall specify the conditions in which default has been made and state that at a specified time, not less than 90 days after the first publication of said notice the lessor will apply to said court for an order adjudging said lease terminated, unless prior thereto the lessee, his personal representatives or assigns, shall comply with and perform the conditions then in default; provided further that if the lease shall contain a provision for personal service or mailing any notice of termination more than 40 days before such termination, then the notice of application to the court under this act shall be served at least the number of days before the hearing which is provided for in the lease; provided further that if any such lease contains a provision for the service of such notice of termination or cancellation by mail addressed to any definite or definitely ascertainable person and address, such service may be made by mailing such notice as so provided at least 40 days before the hearing provided for herein.

If within the time mentioned in said notice within which the lessee, his personal representatives or assigns must perform the conditions in default, the lessee complies with such conditions, the lease shall remain in full force and effect; but if the lessee fails or neglects to perform the conditions in default within the time mentioned in said notice for such performance, and fails to serve written objections to the termination of such lease upon the lessor within 15 days after service of notice on the lessee, the court shall, upon motion of the lessor, and proof of service of said notice, and in the absence of any appearance upon behalf of the lessee, make its order adjudging such lease terminated and said lease shall thereupon forthwith be and become finally terminated.

The lessee may within 15 days after service of said notice, serve upon the lessor, or his attorney, written objections to the making of any order adjudging the lease terminated and any legal or equitable defenses claimed by him; and when it shall be made to appear to the court upon the hearing of the application for an order adjudging the termination of said lease that the lessee has in addition to the payment of an amount equal at least to taxes, insurance,

and interest, if any, made and paid for valuable improvements upon the premises, or paid upon the leasehold price or rental of the premises whether to the lessor or to the owner of any incumbrance subject to which the lease was made, or which the lease provides that the lessee, his successors or assigns shall pay, or to both, a sum or sums equal to a substantial part of the original leasehold price or rental, and that the lessor's interest is reasonably secure, the court may, on taking into consideration the reasonable value of the income of such property, or, if the property has no income, then the reasonable rental value thereof, the efforts and ability of the lessee to pay, and all the facts and circumstances of the case, by order and upon such terms and conditions as to make it appear just and equitable, extend the time in which the lessee may perform the conditions of the lease in default, not to exceed one year from the date of the service of notice of termination on the lessee, and in no event beyond March 1, 1941.

If the lessee shall fail to perform the conditions in default, or any of them, as required and directed by the court to be performed, said lease shall forthwith be and become terminated, and the lessor may thereupon apply to the Court for an order adjudging said lease terminated, on giving at least ten days' written notice of such application to the lessee, served in the manner herein provided for the service of the notice of application for an order terminating the lease. If it shall be made to appear to the court, upon a hearing on said application, that the lessee has defaulted in performing such conditions, the court shall make an order declaring said lease terminated and said lease shall thereupon forthwith be and become finally terminated.

Every law and all the provisions thereof inconsistent with the provisions of this Act are hereby suspended until March 1st, 1941; provided, however, that proceedings heretofore begun and now pending for the cancellation and termination of any lease of real estate for a term of 20 years or more and all notices of cancellation of such leases served on the lessee more than 30 days prior to the 1st day of March, 1939, where the lessee shall have served upon the lessor as provided in Section 2, Chapter 46, Laws of 1937, and within the time therein limited, written objections to the making of any order adjudging the lease terminated and any legal or equitable defenses claimed by him, shall be governed by the provisions of this Act, otherwise such proceedings and such notices shall be governed by and become effective under the provisions of Sections 8187 as amended, and 9149 to 9163 of Mason's Minnesota Statutes 1927. (Act Apr. 11, 1935, c. 157, §2; Mar. 2, 1937, c. 46, §2; Feb. 25, 1939, c. 34, §2.)

8192–3. Copy of the order to be recorded.—A copy of any order of the court made pursuant to this act may be recorded with the register of deeds of the county wherein the real estate is situated. (Act Apr. 11, 1935, c. 157, §3; Mar. 2, 1937, c. 46, §3; Feb. 25, 1939, c. 34, §3.)

8192–4. Application of act.—The provisions of this act shall apply only to leases for terms of 20 years or more made prior to the passage and approval of this act, but shall not apply to leases made prior to the passage of this act which are hereafter renewed or extended for a period ending more than one year after the passage of this act; neither shall this act apply in any way which would allow an extension to such time that any right might be adversely affected by a statute of limitation. Upon the application of either party prior to the expiration of the extended period, as provided in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms, in such manner as the changed circumstances and conditions may require. (Act Apr. 11, 1935, c. 157, §4; Mar. 2, 1937, c. 46, §4; Feb. 25, 1939, c. 34, §4.)

8192–5. Trial.—The trial of any action, hearing or proceeding mentioned in this act shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during the vacation of the court. (Act Apr. 11, 1935, c. 157, §5; Mar. 2, 1937, c. 46, §5; Feb. 25, 1939, c. 34, §5.)

8192–6. Emergency shall be terminated by proclamation of governor.—The emergency herein declared to exist shall be deemed to be terminated whenever the governor of this state shall by proclamation declare that the emergency is at an end or whenever in fact the emergency shall have terminated, and this act shall remain in effect no longer than March 1, 1941. (Act Apr. 11, 1935, c. 157, §6; Mar. 2, 1937, c. 46, §6; Feb. 25, 1939, c. 34, §6.)

8192–7. Limitation of act.—Nothing herein shall be construed to modify or give the court power to modify the provisions of Mason's Minnesota Statutes of 1927, section 8187, as amended, with regard to the right of the lessee or his successor in interest or any creditor having a lien upon the leased premises or any parts thereof, at any time before the expiration of six months after possession is obtained by the plaintiff on recovery in any action, to be restored to the possession and to hold the property according to the terms of the original lease on the conditions set forth in said section. (Act Apr. 11, 1935, c. 157, §7; Mar. 2, 1937, c. 46, §7; Feb. 25, 1939, c. 34, §7.)

8192–8. Definitions.—The terms 'lessor' and 'lessee' shall be construed to include the plural and the survivor or survivors, the heirs, executors, administrators, assigns or successors thereof. (Act Apr. 11, 1935, c. 157, §8; Mar. 2, 1937, c. 46, §8; Feb. 25, 1939, c. 34, §8.)

8192–9. Provisions severable.—The provisions of this act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this act. (Act Apr. 11, 1935, c. 157, §9; Mar. 2, 1937, c. 46, §9; Feb. 25, 1939, c. 34, §9.)

8193. Urban real estate—Holding over.

Provision in lease for purchase of fixtures from the lessor by the lessee in the extent the lease is "extended," did not intend a statutory extension from month to month but an extension as a result of an agreement between the parties. 174M87, 218NW242.

Holding over by tenant pursuant to an extension or renewal clause in a lease works a renewal of lease upon all terms of old lease except clause for renewal or extension. Hildebrandt v. N., 199M124, 272NW257. See Dun. Dig. 5413.

CHAPTER 63

Conveyances of Real Estate

8195. Terms defined—Mortgages, etc., included.

1. In general.

In view of this section the husband or wife may mortgage the homestead in case of the incompetency of the other spouse. 172M504, 215NW857.

Evidence held not to require finding that grantor was mentally incompetent, or that deed was induced by undue influence. 174M131, 218NW455.

There may be a valid transfer of land by verbal gift where there is an acceptance and a taking of possession. 175M549, 221NW908.

Vendee repudiating contract held not entitled to recover earnest money. 176M50, 222NW288.

Vendor's lien. 176M188, 222NW916.

A construction should not be adopted which will render nugatory a grant of lands where a reasonable con-