

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

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CHAPTER 77 (G. S. ch. 75).

ACTIONS CONCERNING AND RIGHTS IN REAL PROPERTY.

Act 1877, ch. 88 (*ante*, § 4752), provides for service of process upon non-resident parties in actions respecting real estate. This chapter intended to provide for two remedies: (1) By one in possession against any one claiming an adverse interest. (2) For the recovery of possession and damages for the unlawful detention. The former is the equity action to quiet title, and the latter the action of ejectment. Prior to Hen. VII. (1485), writs of entry, assize, formedon, descender, reverter, remainder and writ of right were used. In this reign ejectment began to be applied to trying the title to land, thus merging writs of entry and right. When Blackstone wrote, this was the common method of trying title to lands and tenements (2 Bl. Com. 156), and writs of entry, assize, formedon and right were out of use, but not abolished. The New York statute (2 R. S. 302) was the first to merge all the benefits of the possessory and droitual writs into the action of ejectment and to eliminate all matters of form and fiction. Many of the principles of quieting title are not impinged by this chapter; and there does not appear to be any statute interfering with the ejectment as it stood at common law and prior to 3 and 4 Will. IV. ch. 26, with all its fiction and form; when the writ did not possess the principles of writ of right; and the conflicting question whether the defendant can show better title in third person. 3 Wheat. 224, a leading case; 7 Wheat. 27; 4 Burr. 2484; 16 Johns. 284; Buller, N. P. 110.

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JURISDICTION.

SEC. 5401. **To pass title.**—The district court has power to pass the title to real estate by a judgment, without any other act to be done on the part of the defendant, when such appears to be the proper mode to carry its judgments into effect; and such judgment, being recorded in the registry of deeds of the county where such real estate is situated, shall, while in force, be as effectual to transfer the same as the deed of the defendant.

G. S. ch. 75, § 14 (32).

SEC. 5402. **To order survey.**—The court in which an action is pending for the recovery of real property, may, on motion, upon notice by either party, and for cause shown, grant an order allowing to such party the right to enter upon the property, and make survey and measurement thereof for the purpose of the action.

G. S. ch. 75, § 9 (27).

SEC. 5403. **Same—Contents of order.**—The order shall describe the property, and a copy thereof shall be served on the owner or occupant; and thereupon such party may enter upon the property with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury is done to the property, he is liable therefor.

G. S. ch. 75, § 10 (28).

SEC. 5404. **Not prejudiced by alienation.**—An action for the recovery of real property, against a person in possession or in receipt of the rents and profits thereof, cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action; but in such case if the defendant has no property sufficient to satisfy the damages recovered for

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the withholding of possession, such damages may be collected by action against the purchaser.

G. S. ch. 75, § 13 (31).

SEC. 5405. Termination of right pending suit.— In an action for the recovery of real property, when the plaintiff shows a right to recover at the time the action was commenced, but it appears that such right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

G. S. ch. 75, § 4 (10). 10 M. 397; 17 M. 215.

SEC. 5406. Notice to quit in estates at will.— Estates at will may be determined by either party, by three months' notice in writing for that purpose, given to the other party; and when the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient, if it is equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, is sufficient to determine the lease.

G. S. ch. 75, § 21 (40). 24 M. 174.

SEC. 5407. When mortgagee entitled to possession.— A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure.

G. S. ch. 75, § 11 (29). 4 M. 499; 7 M. 167, 456; 11 M. 22; 12 M. 287, 335; 13 M. 364; 14 M. 345; 16 M. 26; 19 M. 221.

SEC. 5408. Treble damages.— If a person, put out of real property in a forcible manner, without lawful authority, or, being so put out, is afterwards kept out by force, recovers damages therefor, judgment may be entered for three times the amount at which the actual damages are assessed.

G. S. ch. 75, § 31 (50). 34 M. 472.

SEC. 5409. Same.— In case of forcible entry or forcible detention, if a person claiming in good faith, under color of title, to be rightfully in possession, so put out, or kept out, recovers damages therefor, judgment may be entered in his favor for three times the amount at which the actual damages are assessed.

G. S. ch. 75, § 32 (51).

SEC. 5410. Rights of aliens.— Aliens may take, hold, transmit and convey real estate; and no title to real estate shall be invalid on account of the alienage of any former owner.

G. S. ch. 75, § 22 (41). This section is qualified by acts 1887, ch. 204, as amended 1889, chs. 113, 117, 129, for which see §§ 3996-3999, *ante*.

ACTION TO QUIET TITLE.

SEC. 5411. When to be brought.— An action may be brought by any person in possession, by himself or his tenant, of real property, against any person who claims an estate or interest therein, or lien upon the same, adverse to him, for the purpose of determining such adverse claim, estate, lien or interest; and any person having or claiming title to vacant or unoccupied real estate may bring an action against any person claiming an estate or interest therein adverse to him, for the purpose of determining such adverse claim, and the rights of the parties respectively.

G. S. ch. 75, § 1 (2), as amended 1867, ch. 72; 1874, ch. 68. 2 M. 153; 5 M. 223; 6 M. 177; 8 M. 403; 10 M. 59; 12 M. 152; 15 M. 182, 245; 16 M. 521; 35 M. 319, 367; 33 M. 358; 32 M. 154; 31 M. 245, 308, 360; 30 M. 434; 28 M. 414; 27 M. 93; 26 M. 205; 36 M. 313; 38 M. 29; 38 N. W. 707, 758; 41 N. W. 238.

SEC. 5412. **Unknown parties.**— That in any action brought to determine any adverse claim, estate, lien, or interest in real property, under section two of chapter seventy-five of the general statutes A. D. one thousand eight hundred and seventy-eight, the plaintiff may include as defendant in such action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have some title, claim, estate, lien or interest in the lands in controversy, the following, viz: “Also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the complaint herein.” And service of the summons may be had upon all such unknown persons or parties defendant, by publication, as provided by law in case of non-resident defendants. And all such unknown persons or parties so served, shall have the same rights as are provided by law in case of all the other defendants upon whom service is made by publication, and the action shall proceed against such unknown persons or parties in the same manner as against the defendants who are named, upon whom service is made by publication, and with like effect; and any such unknown persons or parties who have or claim any right, estate, lien or interest in the said property in controversy, at the time of the commencement of the action duly served as aforesaid, shall be bound and concluded by the judgment in such case, if the same is in favor of the plaintiff therein, as effectually as if the action was brought against such defendant by his or her name, and personal service of the summons obtained.

Provided, however, that such judgment shall not bind such unknown persons or parties defendants, unless the plaintiff shall file a notice of *lis pendens* in the office of register of deeds, as provided by law, before commencing the publication of the said summons, and a copy of said notice of *lis pendens* be printed and published with said summons, and following next thereafter in the columns of the newspaper wherein said summons is printed and published.

1881, Ex. S. ch. 81: “An act relating to actions brought to determine adverse claims to real estate under section 2, ch. 75, G. S. 1878.” Approved November 22, 1881.

SEC. 5413. **Disclaimer — Default.**— If the defendant in such action disclaims, in his answer, any interest or estate in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs.

Costs.— * But if the summons has been served upon the defendant personally, and it is made to appear that, after the cause of action has accrued and before the commencement of the action, the plaintiff has demanded in writing of defendant, and defendant has neglected to furnish within a reasonable time thereafter, a good and sufficient quit-claim deed to the property described in the complaint, upon tender of such deed ready for execution, the plaintiff shall nevertheless recover his costs.

G. S. ch. 75, § 2(3), as amended 1889, ch. 111. Approved March 8th. Amendment below *.

EJECTMENT.

SEC. 5414. **Second trial.**— Any person against whom a judgment is recovered in an action for the recovery of real property, may, within six months after written notice of such judgment, upon payment of all costs and damages recovered thereby, demand another trial, by notice in writing to the adverse party, or his attorney in the action; and thereupon the action shall be retried, and may be brought to trial by either party. *Provided*, that in all cases in which an appeal shall be taken from such judgment to the supreme court, such demand for another trial may be made at any time within six months after written notice of the determination of such appeal, and thereupon the action shall be retried, and may be brought to trial by either party.

G. S. ch. 75, § 5 (11), as amended 1867, ch. 72, § 2; 1881, ch. 71. Approved March 7th. 10 M. 397; 14 M. 170; 16 M. 445; 20 M. 433; 32 M. 130; 29 M. 190; 26 M. 76; 25 M. 185; 35 M. 338, 367; 41 N. W. 1033.

SEC. 5415. **Judgment on second trial.**— The judgment given on a trial to be had under the last section shall be annexed to the judgment-roll of the former trial, and the judgment last given shall be the final determination of the rights of the parties. If a prior judgment has been executed, restitution shall be ordered as the last judgment may determine the rights of the parties, and the same may be enforced by execution.

G. S. ch. 75, § 6 (12). 6 M. 220; 10 M. 397; 32 M. 190.

SEC. 5416. **Removal of buildings, etc.**— Any person who erects any building, tenement or fences upon land, in good faith, and having color of title, and good reason to believe that the legal title to such lands is or was vested in him, when, in fact, such title was or is not in him, and he has no legal or equitable rights whereby he can enforce a conveyance to him of such title, such person shall be entitled to and may remove such buildings, tenements or fences from said land, doing no unnecessary damage to the land, and, in so doing, shall only be liable for the actual damage done the land: *provided*, that no person shall remove a building or fence, under the provisions of this section, unless he removes the same within sixty days after the determination of the action or proceeding respecting the title to the premises on which such building or fence is erected, as contemplated herein, or within sixty days after notice to remove the same, given by the holder of the legal title, unless, within said sixty days, an action is commenced and prosecuted to try such question of title.

G. S. ch. 75, § 8 (14).

SEC. 5417. **Damages recoverable.**— Damages for withholding the property recovered, shall not exceed the fair value of the property, exclusive of the use of improvements made by the defendant, for a period not exceeding six years; and when permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value thereof shall be allowed as a set-off against the damages of the plaintiff for the use of the property.

G. S. ch. 75, § 7 (13). 37 M. 153.

OCCUPYING CLAIMANTS.

This statute, like similar statutes in other states, introduced no new principle. Courts of equity always gave *bona fide* occupants of land, recovered from him by paramount title, compensation for valuable improvements made while he believed himself to be the real owner. 5 John. Ch. 184; 3 Eng. Ex. R. 443; 40 E. C. L. 598; 1 John. Ch. 450; 4 Pet. 1; 15 Wall. 624. The Massachusetts statute is a well-considered condensation of the equity principles involved in this subject.

SEC. 5418. **Compensated for improvements.**— Where any person, under color of title in fee, and in good faith, has peacefully taken possession of any land for which he has given a valuable consideration, or when any person has taken possession of any land under the official deed of any person or officer empowered by law, or by any court of competent jurisdiction, to sell land, and such person has no actual notice of any defects invalidating such deed, and such deed is regular upon its face, neither such person, nor his heirs, representatives or assigns, shall be ejected from such land, except as hereinafter provided, until compensation is tendered him or them for all improvements which he or they may have made upon said land previous to actual notice of the claim upon which the action is founded, or, in case of possession under an official deed, previous to actual notice of defects invalidating the same.

1873, ch. 55, § 1: "An act to protect *bona fide* occupants of real estate." Approved March 10, 1873. 22 M. 488; 32 M. 528; 30 M. 376; 27 M. 62, 101, 452; 37 M. 157; 38 M. 30, 238, 436; 38 N. W. 758.

SEC. 5419. **Same—When not in possession.**— All the provisions of this act shall apply to cases where occupant is not, as well as where he is, in

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actual possession, and also to cases where the action is brought by the occupant himself to determine an adverse claim.

1873, ch. 55, § 10. 27 M. 62.

SEC. 5420. **"Improvements" defined.**— The word "improvements," as used in this act, shall be construed to include all kinds of buildings, fences, ditching, draining, grubbing, clearing, breaking, and all other necessary or useful labor of permanent value to the land.

1873, ch. 55, § 5.

SEC. 5421. **Non-resident.**— When occupant holds as heir or devisee, or as grantee, either immediate or remote, of any person who is a non-resident of this state, the good faith of the original taker shall be presumed.

1873, ch. 55, § 9.

SEC. 5422. **Pleadings — Trial — Verdict.**— In any action to try the title to land, the occupant may, in addition to his other defences, allege the amount and value of all improvements made by himself or those under whom he claims, and also the amount of all taxes and assessments paid upon such land by himself or those under whom he claims, and, if the claim be under an official deed, the purchase-money paid therefor; the claimant may reply, alleging the value of the premises, without the improvements, at the time of the commencement of the action, and also the value of the yearly rent of the land, without the improvements, during the possession of the occupant. In case the title is found to be in the claimant, the jury, or court, in case the action is tried without a jury, shall assess the value of all improvements made, and all taxes or assessments paid upon the land by the occupant, or those under whom he claims, with interest at seven per cent., and, if his claims be under an official deed, regular upon its face, and without actual notice of any defect invalidating the same, shall also find the purchase-money paid by him or those under whom he claims, with interest thereon at seven per cent. The jury, or court in case of trial by the court, shall also assess the value of the land at the time of commencing the action, without the improvements, and also the value of yearly rent thereof during the occupant's possession.

1873, ch. 55, § 2. 22 M. 541; 29 M. 266; 27 M. 453.

SEC. 5423. **When land has depreciated.**— In case the land has depreciated in value since its purchase at an official sale, the jury, or court in case of trial by the court, may allow such part only of the purchase-money as, in their discretion, they may see fit.

1873, ch. 55, § 8.

SEC. 5424. **Compensation before execution.**— Should claimant succeed in the action, execution for possession shall not issue, except as herein provided, unless, within one year from the entry of judgment on the verdict, or the finding of the court, the claimant pay into court for the occupant the amount so found as the value of the improvements, and also the amount of the taxes or assessments, and also the purchase-money, if occupant claim under an official deed as aforesaid, with interest thereon as aforesaid, less the assessed value of the yearly rent of the land, without the improvements, during occupant's possession:

1873, ch. 55, § 3, as amended 1889, ch. 190, by striking out "rendition of" and inserting "entry of judgment on." 38 M. 435.

SEC. 5425. **Occupant pay value of land, when.**— Unless the occupant claims under an official deed, given either to himself or to those under whom he claims, as provided in section one of this act, the claimant may, within thirty days after * entry of judgment on the verdict, or finding of the court in his favor, serve upon the occupant a written demand that within one year he pay claimant the sum assessed as the value of the land without improvements, less the taxes or assessments paid thereon as aforesaid, with interest

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as aforesaid. Such demand shall be served, and the service proved, as in case of a summons, and shall then be filed with the clerk of the court where the judgment was rendered. If occupant do not, within one year after the service of such demand, pay into court for claimant the amount so demanded, he shall forfeit all claim to compensation, and execution may then issue for the possession of the land. If he do so pay into court the amount demanded, the court shall, by decree, confirm the title in him. But when the occupant claims under an official deed, as provided in section one of this act, which is regular upon its face, and occupant had no notice of any defect making it void, execution shall not issue, unless claimant, within one year * after judgment pay into court the value of improvements, taxes, assessments, purchase-money and interest, as provided in section three of this act: *provided*, that when claimant has had notice, either actual or constructive, of occupant's possession, or when the claim of the occupant is derived through or under any entry in the land-office of the United States, or the official certificate, duplicate or receipt thereof, the provisions of this section shall not apply, and execution shall not issue, unless plaintiff comply with the provisions of section three of this act.

1873, ch. 55, § 4, as amended 1889, ch. 190, by inserting "entry of judgment on" and "after judgment" at *. 38 M. 436.

SEC. 5426. Remove crops.— The occupant, in case of ejection, shall be entitled to enter the land, and gather and remove all crops sown thereon previous to the entry of judgment against him.

1873, ch. 55, § 6.

SEC. 5427. Apply to all actions testing title.— In case an action is brought for damages for trespass upon such land, or for the rents and profits, or use and occupation thereof, or in any other form, but which action is in effect one testing the validity of the title thereto, all the foregoing provisions of this act shall so far as possible be complied with; and the value of all improvements, taxes and assessments, and purchase money, in case the occupant claims under an official deed, with interest as aforesaid, shall be set off against any judgment for money that the claimant may obtain; and if any excess remains in favor of occupant after such set-off, such excess may be set off against any judgment or judgments that claimant or those claiming under him may subsequently obtain, in any such or similar action relating to said land.

1873, ch. 55, § 7.

SPECIAL ACTIONS.

SEC. 5428. By reversioners.— A person seized of an estate in remainder or reversion may maintain a civil action for any injury done to the inheritance, notwithstanding an intervening estate for life or years.

G. S. ch. 75, § 23 (42).

SEC. 5429. For dower or against cotenant.— In an action for the recovery of dower, before admeasurement, or by a tenant in common, or joint tenant of real property, against a cotenant, the plaintiff shall show, in addition to the evidence of his right, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

G. S. ch. 75, § 3 (9).

SEC. 5430. By joint tenant or tenant in common.— One joint tenant or tenant in common, and his executors or administrators, may maintain an action against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

G. S. ch. 75, § 24 (43). 29 M. 88; 29 M. 252; 25 M. 225.

SEC. 5431. By claimants under common grantor.— Whenever lots or tracts of real estate are claimed in severalty by two or more persons from,

or under conveyance from, the same grantor as the common source of title, and a claim or title thereto is set up or made by any one else as against the title of such grantor, any one claiming under such grantor may bring an action, on behalf of himself and all others who may come in and become parties to such action, against the person so claiming adversely, to have the title of such grantor perfected, settled or quieted, as to the lots or real estate claimed by the plaintiff and others who may become parties to the action; and in such action, any person who claims title to property by conveyance from or under the same grantor or common source as the plaintiff, and when title thereto is disputed or controverted by the same defendant, upon the same ground as that of the plaintiff, may come in as of course and become a party in such action, by filing a statement therein in the form of a complaint, setting forth the property he claims, and his source of title, and may have his rights adjudicated the same as the plaintiff who commenced the action. The answer of the defendant to the complaint of the plaintiff shall be taken and considered as an answer also to all who may thus come in and become parties to such action.

1870, ch. 57: "An act relating to parties in civil actions." Approved March 1, 1870.

SEC. 5432. Against unknown heirs.—That when the heirs of a deceased person are proper parties defendant to any action relating to real property in this state, and when the names and residences of such heirs are unknown, such heirs may be proceeded against under the name and title of "the unknown heirs" of the deceased.

1867, ch. 69, § 1: "An act to provide for service of process in certain cases." Approved March 7, 1867. See 2 N. Dig. 381; 4 Pet. 466; 14 How. 334.

SEC. 5433. Publication of summons.—Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "unknown heirs," by publication thereof in the same manner as in actions against non-resident defendants.

1867, ch. 69, § 2.

SEC. 5434. Effect of judgment.—Any order, judgment or decree made or rendered in any such case shall be valid and binding on such unknown heirs, whether they be of age or minors.

1867, ch. 69, § 3.

SEC. 5435. Admitted to defend after judgment.—Such heirs may, on application to the court, and on sufficient cause shown, be allowed to defend such action, at any time within one year after the rendition of judgment thereon: *provided*, that if it shall appear that such heirs were minors at the time such judgment was rendered, they may be allowed to defend the action at any time within two years from the day of their becoming of age.

1867, ch. 69, § 4.

SEC. 5436. For waste.—If a guardian, tenant by the curtesy, in dower, for life or years, joint tenant, or tenant in common, of real property, commits waste thereon, any person injured by the waste may bring an action against him therefor, in which action there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the property.

G. S. ch. 75, § 26 (45). 36 M. 381.

SEC. 5437. Same — Judgment.—Judgment of forfeiture and eviction can only be given in favor of the person entitled to the reversion, against the tenant in possession, when the injury to the estate in reversion is adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

G. S. ch. 75, § 27 (46). 36 M. 381.

SEC. 5438. For wilful trespass.—Whoever cuts down or carries off any wood or underwood, tree or timber, or girdles, or otherwise injures, any tree, timber, or shrub, on the land of another person, or in the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction, except as provided in the next section.

G. S. ch. 75, § 28 (47).

SEC. 5439. Same — Single damages.—If, upon trial of such action, it appears that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that of the person in whose service, or by whose direction, the act was done, judgment shall be given for only the single damages assessed in the action.

G. S. ch. 75, § 29 (48).

SEC. 5440. Same — When recovery for just value.—Nothing in the last two sections authorizes the recovery of more than the just value of the timber taken from uncultivated wood land, for the repair of a public highway or bridge upon the land, or adjoining it.

G. S. ch. 75, § 30 (49).

SEC. 5441. Trespass after execution sale.—When real property is sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession, after the sale, and before possession is delivered under the conveyance.

G. S. ch. 75, § 12 (30).

SEC. 5442. To abate nuisance.—Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action; such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and, by the judgment, the nuisance may be enjoined or abated, as well as damages recovered.

G. S. ch. 75, § 25 (44). 12 M. 451; 16 M. 355; 17 M. 215; 22 M. 1, 463; 27 M. 249; 33 M. 517.

LIS PENDENS.

SEC. 5443. Notice — Filing — Discharge.—In all actions heretofore or hereafter commenced, in which the title to, or any lien upon, or interest in real property shall be affected, involved or brought in question by either party, any party to such action may, at the commencement or any time during the pendency thereof, file for record in the office of the register of deeds of each county in which the real property so affected, involved or brought in question, or some part thereof, is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in the county affected, involved or brought in question thereby. And when any pleading in such action is amended by altering the description of the premises affected, involved or brought in question, or so as to extend the claim against such premises, the party filing such notice shall file a new notice. And the register of deeds shall record all such notices in the same book and in the same manner as mortgages are recorded. From the time of filing such notice, and from such time only, the pendency of the action shall be notice to purchasers and incumbrancers of the rights and

equities of the party filing such notice, to the real property in such notice described.* The said notice may be discharged, and the effect thereof annulled, by an entry to that effect on the margin of the record thereof by the party filing the same, or his attorney, in presence of the register of deeds, or by an instrument in writing executed in the manner provided by law for the execution of deeds of conveyance; and such register shall thereupon enter a minute of the same, on the margin of the record of such notice.

G. S. ch. 75, § 16 (34), as amended 1869, ch. 75. Amendment below *. 4 M. 204; 17 M. 457; 20 M. 165, 170; 35 N. W. 758.

SEC. 5444. Same — Notice of no personal claim.— If, in any such action, there are defendants against whom no personal claim is made, the plaintiff may serve upon such defendants, at the time of the service of the summons on them, a written notice, subscribed by the plaintiff or his attorney, setting forth the general object of the action, a description of the property affected by it, and that no personal claim is made against such defendants. If any such defendant on whom such notice is so served unreasonably defends the action, he shall pay full costs to the plaintiff.

G. S. ch. 75, § 17 (35).

RENT.

SEC. 5445. Distress for rent abolished.— That the remedy by distress for rent is hereby abolished.

1877, ch. 140: "An act to abolish the remedy by distress for rent." Approved March 3, 1877. At common law the remedy for rent was by action and distress. Statutes 32 Hen. VIII. ch. 37; 8 Anne, ch. 14, § 4; 11 Geo. II. ch. 19, regulated these remedies and made them more effective. 1 Tho. Co. Litt. 458; Cro. Car. 471; 4 M. & S. 113; 16 Johns. 159; Six Carpenters' Case, 8 Rep. 146; 40 E. C. L. 42.

SEC. 5446. Action by landlord.— When, in case of a lease of real property, and the failure of the tenant to pay rent, the landlord has a subsisting right to re-enter for such failure, he may bring an action to recover possession of the property, and such action is equivalent to a demand of the rent, and a re-entry upon the property; but if, at any time before the expiration of six months after possession obtained by the plaintiff on recovery in the action, the lessee, or his successor in interest as to the whole or part of the property, pays to the plaintiff, or brings into court, the amount of rent then in arrear, 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.

G. S. ch. 75, § 15 (33). 8 M. 281; 14 M. 170; 36 M. 173; 37 M. 5.

SEC. 5447. Action to recover rent.— Such rent may be recovered in a civil action; and the deed, demise, or other instrument in writing, if there is any, showing the provisions of the lease, may be used in evidence by either party, to prove the amount due from the defendant.

G. S. ch. 75, § 19 (37).

SEC. 5448. Tenant liable.— Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it is only a part of what was originally demised.

G. S. ch. 75, § 18 (36). 24 M. 589.

SEC. 5449. Other remedy.— Nothing contained in the two preceding sections shall deprive landlords of any other legal remedy for the recovery of their rent, whether secured to them by their leases or provided by law.

G. S. ch. 75, § 20 (38).

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REAL PROPERTY.

[SEC. 5450.]

SEC. 5450. **When premises untenable.**—The lessees or occupants of any building which shall, without any fault or neglect on their part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable or unfit for occupancy, shall not be liable or bound to pay rent to the lessees or owners thereof after such destruction or injury, unless otherwise expressly provided by written agreement or covenant, and the lessees or occupants may thereupon quit and surrender possession of the leasehold premises, and of the land so leased or occupied.

1883, ch. 100: "An act in relation to the rights and liabilities of owners and lessors, and of lessees and occupants of buildings." Approved March 2, 1883.