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# GENERAL STATUTES OF MINNESOTA

## SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES  
AND OTHER LAWS OF A GENERAL AND PERMANENT  
NATURE, ENACTED BY THE LEGISLATURE  
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

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1918

ments which may be rendered against them in the action. The bond in this case held a common-law bond. Such a bond must be supported by a valid consideration, and an agreement to stay proceedings and forbear entering judgment is a sufficient consideration (123-218, 143+355). Appeal and Error, [↔](#)1223.

Evidence held to show that an agreement was made between the parties to an action to the effect that appellant should give a common-law bond (123-218, 143+355). Appeal and Error, [↔](#)1246.

Where the bond on appeal, though in form a supersedeas, was not approved, it did not stay proceedings, and the trial court had power to dismiss the action for want of prosecution (135-474, 159+1067). Appeal and Error, [↔](#)452, 470.

An appeal from a nonappealable order and a supersedeas thereon do not deprive the district court of jurisdiction to proceed further in the case (128-10, 150+169). Appeal and Error, [↔](#)436.

#### 8014. Death of respondent—Substitution—

Upon suggestion in the supreme court of the death of a party a hearing of the appeal will not be had without a substitution. If the death occurred before commencement of the action, the proper practice is to move to dismiss the appeal. Respondents are not entitled to a remand in order that proof may be made in the trial court of the death of the party (132-409, 157+648). Appeal and Error, [↔](#)334(1), 780(1), 1106(4).

#### 8015. Death of party after submission of appeal—

132-409, 157+648; note under § 8014.

## CHAPTER 82

### ACTIONS RELATING TO REAL PROPERTY

#### GENERAL PROVISIONS

#### 8025. Notice of lis pendens—

The defendant, not claiming ownership of the land included in a highway, an obstruction in which plaintiff seeks to abate, and who is not an abutting owner, and who has no interest in the highway, except as a member of the general public, cannot move for a cancellation of a lis pendens improperly filed by plaintiff. A lis pendens filed in an action not of an authorized class, may be canceled on motion, and an action brought to abate a nuisance consisting of the obstruction of a public highway and recover damages, is not of such class (123-342, 143+911). Lis Pendens, [↔](#)3(1), 20.

#### 8026. Notice of no personal claim—

Failure to publish notice of lis pendens required by § 8061 was not cured by the publication, in connection with the summons, of a notice of no personal claim under this section, where such notice did not contain the information required by § 8061 (123-199, 143+361). Quieting Title, [↔](#)31.

#### 8027. Transfer of title by judgment—

Jurisdiction of the person is not essential to the operation of this section (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Judgment, [↔](#)807.

The courts of the state may determine plaintiff's interest in real estate within the state, as against his nonresident partner, served by publication, though a partnership accounting is necessary (123-431, 144+138, 52 L. R. A. [N. S.] 1061). Partnership, [↔](#)323.

An intestate's estate, having been reduced to personalty, the probate court had jurisdiction to determine the rights of a child, claiming under a common-law adoption of her mother, therein, and to award to such child the share to which she was entitled under a contract of the mother with the adopting parents (124-85, 144+455). Descent and Distribution, [↔](#)71(1).

#### ACTIONS FOR PARTITION

#### 8028. Action for partition or sale, who may bring—

The grantee in a deed from a tenant in common granting the absolute right for a period of five years to take and remove all the sand he might wish and find use for, with the right of entry for such purpose, the value of which right was alleged to be \$1,500, did not have an "estate of inheritance \* \* \* or for years" within this section (129-276, 152+534). Partition, [↔](#)16.

A cotenant has a right to compel partition, actual or by sale, unless he has waived such right by agreement. An agreement between cotenants as to possession of the common property held not to prevent partition (128-207, 150+798, Ann. Cas. 1916D, 925). Partition, [↔](#)14, 22.

**8031. Judgment for partition—Referees—**

128-207, 150+798, Ann. Cas. 1916D, 925. Partition, [§22](#).

Where a tenant in common has given a mortgage on his undivided interest, he cannot, in a partition suit, base error upon the action of the court in shifting the mortgage to the portion allotted to him (135-134, 160+496). Partition, [§88](#).

Where a permanent improvement has been erected by one cotenant with the consent of the others, the court in partition, where a division is practicable, may award that portion of the land on which the improvement is to the one who erected it, without taking its value into consideration, if no injustice results to the other cotenants; but, if a sale is necessary, the court may determine in what amount the present value of the whole is enhanced by the improvement, and direct that the amount so determined be paid to the cotenant making the improvement. The relation of landlord and tenant held not to have existed between cotenants, so that an improvement placed on the premises by the alleged lessee tenant with the consent of the other would accrue to the cotenant claimed to have occupied the position of landlord (135-134, 160+496). Partition, [§85](#).

**8033. Duty of referees—Report—Expenses—**

The referees are not required to make and report findings of evidentiary facts. A partition reported and concurred in by two of the referees is binding on approval by the court (133-49, 157+908). Partition, [§94\(1\)](#).

The report has the effect of a verdict, and, when confirmed, will not be disturbed on appeal on the ground of error of judgment by the referees unless manifestly inequitable (133-49, 157+908). Appeal and Error, [§1022\(1\)](#).

**8037. Costs apportioned—**

Costs and disbursements under this section may be apportioned among the parties in the district court, but this rule is not applicable to an appeal to the supreme court, since that is an adversary proceeding; and hence a party who did not prevail on appeal as to the real issue cannot complain of the action of the appellate court in making an equal apportionment of the costs of that court (135-134, 160+496). Partition, [§114\(1\)](#).

On reversal of a judgment denying partition the costs on appeal are to be taxed to the unsuccessful party and are not expenses under this section (128-539, 151+1102). Partition, [§114\(1\)](#).

**8038. Compensation for equality—**

In partition, evidence as to payment of taxes, in the absence of objection at the time to its character, held to support the court's finding as to amounts due from different parties for taxes (162+463). Partition, [§63\(3\)](#).

**8041. Sale ordered, when—**

128-207, 150+798, Ann. Cas. 1916D, 925; note under § 8028.

A lot 25 feet wide occupied by a business building held not capable of division, and a sale ordered (135-134, 160+496). Partition, [§63\(3\)](#).

**8042. Liens—New parties—No sale, when—**

123-471, 144+140.

**8043. Proceeds, how applied—**

Mode of adjusting rights of cotenants to improvement erected by one cotenant with consent of others (see 135-134, 160+496). Partition, [§85](#). See, also, note under § 8031, ante.

**ACTIONS TO TRY TITLE****8060. Action to determine adverse claims—**

126-218, 148+273; note under § 2168.

**Title and proof**—Plaintiff claiming under tax title cannot prevail by merely showing that defendant has no title (121-339, 141+293). Taxation, [§793](#).

A finding of the trial court that a defendant never had any interest in the land in controversy held sustained by the evidence (130-365, 153+861). Quieting Title, [§44\(3\)](#).

Enforcement of lien for taxes paid where plaintiff's tax title fails (see 135-186, 160+490). Taxation, [§814\(4\)](#).

129-237, 152+405. Boundaries, [§3\(1\)](#), [37\(3\)](#).

**Conclusiveness of judgment**—Where evidence that plaintiffs were the equitable owners of the land involved in an action to determine adverse claims was excluded as not within the issues, a judgment for defendant did not bar plaintiffs from asserting their equitable rights in a subsequent action (126-1, 147+662, Ann. Cas. 1915D, 589). Judgment, [§590\(4\)](#).

Judgment in action to quiet title, in which validity of redemption from mortgage foreclosure is determined, held not an adjudication of the mortgagor's right to rents and royalties under a mining lease of the land during the period of redemption (135-443, 161+165). Judgment, [§721](#).

Conclusiveness and effect of judgment as to parties and their privies (see 130-397, 153+758, Ann. Cas. 1916E, 157). Judgment, [§678\(1\)](#), [682\(1\)](#), [713\(2\)](#).

**Pendency of registration proceedings**—Pendency of proceeding to register title as ground of abatement of action under this section (see 127-416, 149+735). Abatement and Revival, [§7](#).

**8061. Unknown defendants—**

Where the heirs of a record owner were made defendants under a designation "unknown persons." failure to publish the notice required by this section was fatal to the jurisdiction of the court as to such heirs, and the judgment against them was void. Failure to publish the notice was not cured by the publication, in connection with the summons, of a notice of no personal claim under § 8026, where such notice did not by itself contain all the information required by this section (123-199, 143+361). Quieting Title, Ⓒ31.

**8062. Disclaimer—Default—Costs—**

In an action to determine adverse claims, where defendant answered claiming title absolute, the court properly allowed costs to plaintiff, though under § 2168 the lien was decreed defendant as holder of the tax certificate (126-218, 148+273). Taxation, Ⓒ818.

**8066. Ejectment, etc.—Trial, how conducted—No second trial—**

This section, prior to its amendment, was not applicable to equitable actions for the determination of title in which a counterclaim in ejectment was interposed, but was dismissed prior to trial (122-158, 142+150). New Trial, Ⓒ178(1).

Where a purchaser of land, by a contract under which he is not entitled to possession until payment of the price and execution of a deed to him at a time stated, fails to make the payment, the vendor may maintain ejectment to recover possession of the land from such purchaser (127-238, 149+287). Ejectment, Ⓒ9(3), 17.

**8075. Occupant not in actual possession—Actions in other form—**

Action for use and occupation does not lie against a mere trespasser (123-447, 143+1128). Use and Occupation, Ⓒ1.

**8077. Mortgagee not entitled to possession—**

One acquiring the right of a mortgagee in possession does not lose the same by being temporarily or involuntarily dispossessed (122-235, 142+198). Mortgages, Ⓒ191.

Under this section the mortgagor is entitled to the full usufruct of the mortgaged land until his rights are barred by foreclosure and expiration of the period of redemption, and this applies to rents and royalties under a mining lease; and this right cannot be contracted away by stipulation in the mortgage, and cannot be affected by a sale by the sheriff under advertisement of the rents and profits (135-443, 161+165). Mortgages, Ⓒ199(1, 2).

A judgment for plaintiffs, in an action by creditors who have redeemed from a mortgage foreclosure sale, quieting title to the land and to a mining lease thereof, determining their redemption valid and determining a later redemption invalid, is not an adjudication of their right to recover rents or royalties that accrued during the year allowed for redemption (135-443, 161+165). Judgment, Ⓒ721.

**8078. Conveyance by mortgagor to mortgagee—**

128-126, 150+396.

Parol evidence admissible; sufficiency of evidence (128-398, 151+132). Mortgages, Ⓒ32(6), 38(3).

**8081. Notice to terminate contract of sale—**When default is made in the conditions of any contract for the conveyance of real estate or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, 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 such contract will terminate thirty days after the service of such notice unless prior thereto the purchaser shall comply with such conditions and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary, and shall be served within the state in the same manner as a summons in the district court; without the state, in the same manner, and without securing any sheriff's return of not found, making any preliminary affidavit, mailing a copy of said notice or doing any other preliminary act or thing whatsoever. Service of said notice without the state may be proved by the affidavit of the person making the same, made before an authorized officer having a seal, and within the state by such an affidavit or by the return of the sheriff of any county therein.

Provided, however, that three weeks' published notice, and the personal service of a copy of said notice within ten days after the first publication of said notice, and in like manner as the service of a summons in a civil action in the district court upon the person in possession of the premises described in said contract, if the same are actually occupied, shall have the same effect as the personal service of said notice upon said purchaser, his personal representatives or assigns, either within or without the state as herein provided for; and provided further, that in case of such service by publication as herein provided, the said notice shall specify the conditions in which default has

been made and shall state that such contract will terminate ninety days after the service of such notice, unless prior thereto the purchaser shall comply with such conditions and pay the costs of service, and the purchaser, his personal representatives or assigns, shall be allowed ninety days from and after the service of such notice to comply with the conditions of such contract.

If within the time mentioned the person served complies with such conditions and pays the costs of service, the contract shall be thereby reinstated; but otherwise shall terminate. A copy of the notice with proof of service thereof, and the affidavit of the vendor, his agent or attorney, showing that the purchaser has not complied with the terms of the notice, may be recorded with the register of deeds, and shall be prima facie evidence of the facts therein stated; but this act shall in no case be held to apply to contracts for the sale or conveyance of lands situated in another state or in a foreign country. (Amended '15 c. 200 § 1)

**In general**—A writing held not an option contract, but one for the sale of land, which could not be canceled, except by service of the statutory notice (125-447, 147+442). Vendor and Purchaser, [§18\(4\)](#).

As to what law governs a contract for the sale of land located in Washington, but which is executed and is to be performed in Minnesota, determined. A contract to sell land located in Washington may be a Minnesota contract, so that its cancellation will be governed by this section (126-72, 147+948). Vendor and Purchaser, [§47](#).

Injunction will lie to restrain foreclosure under this section during the pendency of an action by the vendee to rescind for fraud of the vendor (132-384, 157+587). Injunction, [§4](#).

**Termination of rights**—This section provides the exclusive method by which a vendor may terminate the rights of the vendee, but it does not relieve the vendee from the effect of an abandonment which the vendor elects to treat as such and in which he acquiesces. The facts held to show an abandonment by the vendee and acquiescence by the vendor (132-346, 157+589). Vendor and Purchaser, [§86, 101](#).

Notwithstanding this section, a purchaser may, by his acts, be held to have abandoned his contract (161+587). Vendor and Purchaser, [§86](#).

Acts constituting breach warranting cancellation (see 126-72, 147+948). Vendor and Purchaser, [§95\(2\), 99](#).

**Notice**—The parties to a contract for the sale of land may stipulate as to the character of notice which may be given to cancel the contract under this section (126-72, 147+948). Vendor and Purchaser, [§101](#).

Where the vendor has given the statutory notice, and the time for payment has expired, the vendee cannot reinstate the contract by thereafter electing to apply his claim for damages in discharge of the installments due under his contract (127-89, 148+895). Vendor and Purchaser, [§105](#).

## MISCELLANEOUS ACTIONS

### 8085. Nuisance defined—Action—

Cited (126-95, 147+953).

**What is a nuisance**—An open ditch maintained by a village, in which filth and sewage is permitted to collect, which, with the surface water, is allowed to be discharged on plaintiff's land, is a nuisance within this section (132-121, 155+1067, L. R. A. 1916D, 426). Municipal Corporations, [§846](#).

Barns, located in a residence district, in which a large number of horses are stabled, though not per se a nuisance, may become such because of offensive and disagreeable odors and noise coming therefrom to the substantial detriment and discomfort of adjacent property owners, though such barns are not negligently cared for (131-346, 155+390). Nuisance, [§3\(4\)](#).

Where a railroad embankment constitutes a continuing nuisance by ponding water at rain falls, it may be abated by injunction (126-470, 148+311, L. R. A. 1916E, 977). Injunction, [§48](#).

Lantern placed at excavation in street as nuisance attractive to children (see 161+503). Negligence, [§39](#).

Operation of railroad as nuisance (125-224, 146+353, 51 L. R. A. [N. S.] 1017). Railroads, [§222\(2\)](#).

**Private actions—Who may sue**—A private action cannot be maintained to abate a public nuisance, unless the injury to plaintiff is peculiar to himself, and not an injury common to himself and the general public (123-323, 143+910). Nuisance, [§72](#).

Applying the rule stated in the last paragraph, plaintiff held not entitled to maintain a private action for the obstruction of a highway leading from another highway to a public lake (123-323, 143+910). Highways, [§155](#).

Recovery may be had under Const. art. 1 § 13, for a private nuisance erected by a railroad company under authority of a statute, irrespective of the question of negligence in construction and irrespective of reasonableness and necessity of the structure from a public standpoint (161+501). Eminent Domain, [§69](#); Railroads, [§113\(12\)](#).

**8090. Trespass—Treble damages—**

It is error to exclude evidence that the cutting of timber by defendant's servants was casual or involuntary, where there was a general denial in the answer, though the answer admitted that some timber was cut without lawful authority, there being no averment therein that such cutting was with defendant's knowledge or consent (127-360, 149+461). Trespass, [↔](#)45(3), 61.

A willful trespass on land, committed by a servant within the scope of his employment, warrants treble damages under this section, though the act was without the master's knowledge or consent (127-360, 149+461). Master and Servant, [↔](#)302(4).

**8095. Action to determine boundary lines—**

125-258, 146+1106.

Order laying out cartway not evidence of boundary (121-468, 141+788). Boundaries, [↔](#)35(1).

Rule for location of lost corners (121-189, 141+102). Boundaries, [↔](#)7.

Evidence as to lost monuments (121-189, 141+102). Boundaries, [↔](#)37.

Correcting errors in government survey (121-189, 141+102). Boundaries, [↔](#)54.

Boundary line of land bordering on a meandered lake determined (126-214, 148+60). Waters and Water Courses, [↔](#)108, 111.

The maintenance of a fence for upwards of ten years held not to conclude adjoining owners as to the boundary line (126-206, 148+115). Boundaries, [↔](#)46(1).

In construing a deed with inconsistent description, preference is given to the part most likely to express the intention of the parties and as to which there is least likelihood of mistake. The reference to a county road as a boundary is held to prevail over courses and distances and figures as to the quantity of land conveyed (124-331, 144+1089). Boundaries, [↔](#)3(4); Deeds, [↔](#)93, 111.

If doubt exists as to the meaning of a deed, reference may be had to the circumstances connected with its execution, in determining the intent of the parties as to a boundary line (124-331, 144+1089). Deeds, [↔](#)100.

Evidence held to sustain findings of the trial court that there was a practical location of a boundary line (125-365, 147+241). Boundaries, [↔](#)37(3).

Evidence held to justify finding of a practical location of a boundary line (129-9, 151+273). Boundaries, [↔](#)37(3).

Evidence, in a boundary dispute, held insufficient to support verdict for plaintiff (124-233, 144+758). Adverse Possession, [↔](#)114(2); Boundaries, [↔](#)37(3).

**8097. Judgment—Landmarks—**

Evidence as to and establishment of lost government corner (125-258, 146+1106). Boundaries, [↔](#)6, 37(3).

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## CHAPTER 83

### FORECLOSURE OF MORTGAGES

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#### BY ADVERTISEMENT

**8107. Limitation—**

A mortgage not containing a power of sale cannot be foreclosed under this section (128-255, 150+899). Mortgages, [↔](#)331.

[8110—]1. **Defective assignments—Curative—**In every case where a mortgage heretofore made has been assigned in writing and said assignment is defective in that it incorrectly refers to the book or page or both book and page wherein said mortgage is recorded in the office of the register of deeds for the county wherein the land affected thereby is situated and where any said mortgage so assigned has been heretofore foreclosed according to law, by advertisement or otherwise, all said assignments and all said foreclosures of mortgages where so assigned, shall be and the same are hereby made valid and declared to be valid and sufficient for all purposes and of the same force and effect in all respects the same as if said assignment of said mortgage had correctly referred to the book or page or both book and page, wherein said mortgage was recorded in said register of deeds office. Provided, that this act shall not affect any proceeding now pending in any of the courts of this state. ('17 c. 250 § 1)

**8111. Notice of sale—Service on occupant—**

The occupancy requiring notice must be substantial and suited to an appropriate use of the property possessed. Notice should be served on the person in possession, though his occupancy is without authority or license (130-520, 153+997). Mortgages, [↔](#)353.