

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

JANUARY 1. 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

ST. PAUL:
WEST PUBLISHING CO.
1888.

§ 103. (Sec. 93.) Confessions—Admissibility.

The confessions cannot properly be admitted until there is evidence from which the jury might reasonably infer that the offense charged has been committed. *State v. Laliyer*, 4 Minn. 368, (Gil. 277.)

Evidence that the offense charged has been committed by some person is all that is required in order that the confession of the defendant may be sufficient to warrant his conviction. It is not necessary that such evidence should be introduced before the confession is received. *State v. Grear*, 29 Minn. 221, 13 N. W. Rep. 140.

See *State v. New*, 22 Minn. 76, 80.

§ 104. (Sec. 94.) Testimony of accomplice.

The purchaser of beer unlawfully sold on Sunday, though in pursuit of evidence against persons violating the law prohibiting such sales, is not an accomplice. *State v. Baden*, 34 N. W. Rep. 24.

Bastardy proceedings, under the statute, are not properly criminal in their nature, and it is not necessary that the testimony of the complainant (the mother) be corroborated by other evidence. *State v. Nichols*, 29 Minn. 357, 13 N. W. Rep. 153.

Whether a witness is an accomplice in the commission of the crime for which the defendant is on trial, is a question for the jury, and not for the court. In order to a conviction upon the testimony of an accomplice, the corroborating evidence is sufficient if, independently of the testimony of the accomplice, it tends in some degree to establish the guilt of the accused, and it need not be sufficiently weighty or full as, standing alone, to make out a *prima facie* case. *State v. Lawlor*, 23 Minn. 217, 9 N. W. Rep. 693.

See, also, *State v. Brin*, 30 Minn. 522, 16 N. W. Rep. 406.

CHAPTER 74.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.**§ 1. Who may bring partition.**

Where lands leased for a term of years are in the actual possession of the lessee, and owned by several persons as tenants in common, both of the rents and the reversionary estate, they may be partitioned, under this chapter, in an action brought by one of such owners and tenants in common. *Cook v. Webb*, 19 Minn. 167, (Gil. 129.) Actual possession of premises, or right to the actual possession thereof, is not necessary to enable one tenant in common to maintain an action for partition, under this chapter. *Id.*

§ 2. Address of summons.

If the complaint shows that the only persons having or claiming an interest in the property are the plaintiffs and defendants, the summons, the title to the action being given, is sufficient if addressed "to the above-named defendants," without being addressed to "all persons unknown having or claiming an interest in the property." *Martin v. Parker*, 14 Minn. 13, (Gil. 1.)

§ 5. Title to be established before judgment—Dispute between defendants no defense.

Judgment of partition shall not be rendered in any case until the title to the property and the rights of the parties are established by evidence, unless upon written stipulation of the parties to be affected thereby: *provided*, that it shall be no defense to an action for partition, in which the title of the plaintiff or plaintiffs to a certain undivided share or shares of the property is proved or admitted, that there is a dispute or litigation undetermined between some of the defendants as to the title or right of such defendants, or any of them, in or to any undivided share or shares of such property claimed by them, or any of them; but in such case the court shall proceed to render judgment that partition be made, or to order a sale of such property as in other cases, and shall cause the portion of such property or of the proceeds thereof pertaining

to the undivided share or shares in dispute to be allotted to the defendants claiming such undivided share or shares, without determining their respective rights thereto, and, in case of sale of said property, may order the proceeds pertaining to the undivided share or shares in dispute to be paid into court to abide the result of any existing or subsequent litigation between such disputing defendants as to their title and right therein. (*As amended 1887, c. 38.*)

§ 9. Persons not affected by judgment.

An action for partition of real estate between tenants in common will lie, though the premises are in possession of tenants for a term of years of such tenants in common. *Cook v. Webb, 19 Minn. 167, (Gil. 129.)*

CHAPTER 75.

ACTIONS CONCERNING AND RIGHTS IN REAL PROPERTY.

§ 2. (Sec. 1.) Action to determine adverse claims.

"Action for the recovery of real property," as used in this chapter, was intended to refer to the common-law action of ejectment, which, though in form a possessory action, has come to be the most usual action for the trial of title. *Ferguson v. Kumler, 25 Minn. 133.*

A lien upon land is not an interest or estate, or proper subject for adjudication, in an action under this section, to determine adverse claims. *Brackett v. Gilmore, 15 Minn. 245, (Gil. 190.)* Same point, *Bidwell v. Webb, 10 Minn. 59, (Gil. 41;)* *Turrell v. Warren, 25 Minn. 9.*

Any interest or estate in or lien upon land claimed adversely to the plaintiff may be determined, whether claimed under the same or a different and independent source from that under which the plaintiff claims. *Walton v. Perkins, 33 Minn. 357, 23 N. W. Rep. 527.*

A purchaser of real property at a tax sale, which proves to be invalid by reason of an illegality in the assessment of the property and the levy of the tax, acquires no lien upon the property for the amount of his purchase money. *Barber v. Evans, 27 Minn. 92, 6 N. W. Rep. 445.*

An assignment of real property, in a decree of distribution, to a party named, "to have and to hold the same unto her, her heirs and assigns, forever," is an assignment of an estate in fee. *Tidd v. Rines, 26 Minn. 202, 2 N. W. Rep. 497.*

Under this section a person having or claiming title to vacant or unoccupied lands may bring an action against any person claiming a lien upon the same adverse to him, for the purpose of determining such adverse lien. *Donohue v. Ladd, 31 Minn. 44, 17 N. W. Rep. 381.* In such an action, if the defendant asserts no estate, interest, or lien upon the property in himself, the plaintiff is entitled, as against him, to judgment, although, in his answer, he puts in issue other allegations of the complaint. If he claims no interest in the subject of the litigation, any other issues raised by his denials are immaterial. This is true, whether his answer contains an express and formal disclaimer, or otherwise affirmatively shows that he has no interest in the premises. *Id.*

A complaint which is clearly framed as one to remove a specified cloud upon title, cannot, if defective as such, be sustained as a complaint to determine an adverse claim, although it states facts showing that plaintiff might have brought and maintained such statutory action. *Knudson v. Curley, 30 Minn. 433, 15 N. W. Rep. 873.* A complaint which is clearly one to remove a specified cloud upon title to real estate, cannot, if it fail to show that the instrument under which defendant claims is invalid, be sustained against a demurrer, on the ground that the facts stated show that plaintiff might have brought an action under §§ 2, 3, to determine adverse claims upon real estate. *Walton v. Perkins, 28 Minn. 413, 10 N. W. Rep. 424.*

Plaintiff must allege and prove some title to or interest in the land. *Herrick v. Churchill, 35 Minn. 318, 29 N. W. Rep. 129.* In the action given by the statute for the determination of adverse claims to "vacant and unoccupied" land, the plaintiff must allege in his complaint, and in case of contest show upon the trial, some title to the land.