GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

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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. 183.

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. 244, 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.

Myrick v. Coursalle, 32 Minn. 153, 19 N. W. Rep. 736. When the plaintiff fails in such action to show title, he is not prejudiced by a judgment, whether regular or not, adjudging title in the defendants. Id.

The answer of the defendant, asserting the validity of the claim, and demanding affirmative relief, sets up a counter-claim, and is in effect the instituting of a cross-action in the nature of ejectment. Eastman v. Linn, 20 Minn. 433, (Gil. 387.)

In such an action, defendant denied that he claimed any estate or interest in or lien upon the property, except as the holder of a certificate of sale for delinquent taxes, which were claimed to be a lien upon the land. Held, a disclaimer. Brackett v. Gilmore, 15 Minn. 245, (Gil. 190.)

The right or title of a third person cannot be litigated, and whatever the rights of such third persons they will not aid in the support of an unjust adverse claim of defendant. Wilder v. City of St. Paul, 12 Minn. 192, (Gil. 116.)

An adverse claim by the defendant is all that is necessary to constitute a cause of action, and, on proof of possession by plaintiff, defendant is put to the proof of his adverse interest. Id.

In an action under this section, as it stood in 1866, an actual possession by the plaintiff must be shown. Steele v. Fish, 2 Minn. 153, (Gil. 129;) State v. Bachelder, 5 Minn. 223, (Gil. 178;) Meighen v. Strong, 6 Minn. 177, (Gil. 111;) Hamilton v. Batlin, 8 Minn. 403, (Gil. 359;) Wilder v. City of St. Paul, 12 Minn. 192, (Gil. 116;) Eastman v. Lamprey, 12 Minn. 153, (Gil. 89;) Murphy v. Hinds, 15 Minn. 182, (Gil. 139.) In an action under this section as amended, to entitle plaintiff to recover, proof must be made that plaintiff is in actual possession, or that the land is vacant and unoccupied. Conklin v. Hinds, 16 Minn. 457, (Gil. 411.) In such an action ownership in plaintiff was alleged, and that the land was vacant and unoccupied. Issue was joined. Plaintiff offered the record of the patent to W., dated May 23, 1859; of covenant by W. to convey to H., dated November 1, 1856, when title should be acquired; deed from H. to plaintiff, dated May 4, 1857. Held, sufficient to authorize plaintiff to maintain the action as one having or claiming title, even though the contract to convey was not recorded in the proper book, but was no evidence that the land was vacant and unoccupied. Id. The fact that a man owning land occupied the same as a homestead for ten years, and then left with the intention of returning, and of retaining his homestead rights therein, but who had not returned at the date of commencing the action, does not show such actual possession as is required to maintain the action. Byrne v. Hinds, 16 Minn. 521, (Gil. 469.)

See, also, Sanborn v. Cooper, 31 Minn. 307, 17 N. W. Rep. 856; Kipp v. Johnson, 31 Minn. 360, 17 N. W. Rep. 957; Banning v. Bradford, 21 Minn. 308, 313; Messerschmidt v. Baker, 22 Minn. 81; Curtiss v. Livingston, 36 Minn. 312, 30 N. W. Rep. 814.

*§ 4*a*. In case of 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 follow-

ing next thereafter in the columns of the newspaper wherein said summons is printed and published. (1881, *Ex. Sess.*, *c.* 81, § 1.)

§ 10. (Sec. 4.) Termination of plaintiff's interest.

Before defendant can avail himself of the fact that since the commencement of the action plaintiff has conveyed part of the property for injury to which the action is brought, he must plead the fact by supplemental answer. Harrington v. St. Paul & Sioux City R. Co., 17 Minn. 215, (Gil. 188.)

§ 11. (Sec. 5.) Second trial in ejectment.

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 causes 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. (*As amended* 1867, *c.* 72, § 2; 1881, *c.* 71, § 1.)

This section applies only to an action in which, whatever may be its form, recovery of possession of real estate is sought, either on part of plaintiff or defendant. Knight v. Valentine, 35 Minn. 367, 29 N. W. Rep. 3.

It is applicable to a case where judgment was obtained by the defendant in an action to determine an adverse claim to the property in controversy. Eastman v. Linn, 20 Minn. 433, (Gil. 387.)

It does not apply to an action to set aside a conveyance of real estate on the ground of fraud. Somerville v. Donaldson, 26 Minn. 75, 1 N. W. Rep. 808.

Where, in an action for divorce, issues involving the title and right to possession of real estate are tried and determined, the judgment adjudging the title to be in one of the parties, and that such party have possession, the other is entitled to a second trial of those issues, though not to a second trial of the issues as to the divorce. Schmitt v. Schmitt, 32 Minn. 132, 19 N. W. Rep. 649.

Defendant is not entitled to another trial where he has failed to answer, and has allowed judgment to be rendered against him by default. Hallam v. Doyle, 35 Minn. 337, 29 N. W. Rep. 130.

The statute, § 5, *c.* 64, Comp. St., giving the right to a second trial, in an action to recover real property, does not apply to the plaintiff. Howes v. Gillett, 10 Minn. 397, (Gil. 316.) An order in such an action, giving the plaintiff a second trial, he having paid costs, is appealable as an order granting a new trial. Id.

Either party to an action for the recovery of real property has a right to a second trial of the action on complying with the provisions of the law. Davidson v. Lamprey, 16 Minn. 445, (Gil. 402.)

A payment to the clerk of the amount of judgment for costs and damages, in an action for the recovery of real property, is not, in the absence of an order or rule of court authorizing it, a payment into court, or compliance with this section. Id. Payment of costs and damages recovered by first judgment, and demand for another trial, by notice in writing to the adverse party, within six months after notice of judgment, are conditions precedent to the right to a second trial. Id. The payment of the costs of a former trial is a condition upon performance of which the right to a second trial depends. After payment of part of such costs in such an action, the adverse party noticed the cause for retrial, and caused it to be entered on the calendar, both parties supposing the whole costs to have been paid. Held, to be no waiver of the statutory requirement, and that no right to a second trial was thereby acquired. The time for performing the statutory conditions having expired, the court could not relieve from the default. Dawson v. Shillock, 29 Minn. 189, 12 N. W. Rep. 526.

The payment and receipt of costs of the first trial of an action for the recovery of real property will not estop the party in whose favor judgment is rendered on such trial from opposing an application for a second trial, claimed under this section, even if such costs were paid for the avowed purpose of obtaining such second trial. Whitaker v. McClung, 14 Minn. 170, (Gil. 131.)

An action brought by a lessor to recover the possession of leased premises, on the ground of non-payment of rent, the lessor having the right of re-entry for such non-payment, is governed by section 33 of this chapter; and this section, providing for a second trial of an action for the recovery of real property on compliance with certain conditions therein named, has no application to such case. Id.

See, also, Ferguson v. Kumler, 25 Minn. 183; Steele v. Bond, 32 Minn. 14, 18, 18 N. W. Rep. 830; Stocking v. Hanson, 22 Minn. 542.

§ 12. (Sec. 6.) Same—Judgment.

A second verdict for the same party in ejectment is final only so far as to bar another action for the same cause, but not so as to prevent a review by this court for errors on the trial. Baze v. Arper, 6 Minn. 220, (Gil. 142.)

§ 13. (Sec. 7.) Damages—Improvements.

The damages for withholding real property, which the lawful owner is entitled to recover from the disseizor, is the fair value of the property, exclusive of the use of improvements made by the defendant, for a period not exceeding six years. This is so whether he seeks to recover them in the action brought to recover the property, or elects to bring a subsequent action for them. Nash v. Sullivan, 32 Minn. 189, 20 N. W. Rep. 144.

A disseizee cannot maintain an action against a disseizor to recover the value of crops sowed and harvested by the latter while in the actual adverse possession of the premises, and removed therefrom before the disseizee recovered possession. Id.

See note to *§ 15.

*§ 15. Compensation for improvements.

The act of March 10, 1873, entitled "An act to protect *bona fide* occupants of real estate," was not intended to apply to cases of improvement upon land made before its passage. Wilson v. Red Wing District School, 22 Minn. 488.

An action to redeem from a tax sale, brought under *c.* 11, § 91, is an action to test the validity of title to land within this section and following sections, providing for compensation for improvements to occupying claimants in good faith. Goodrich v. Florer, 27 Minn. 98, 6 N. W. Rep. 452.

An assignment executed by the county auditor and issued to a purchaser, in conformity with Laws 1874, *c.* 1, § 129, held to be an "official deed" within the terms of this section. As such it was properly executed by the auditor in his official capacity, and sealed with his official seal. Everett v. Boyington, 29 Minn. 264, 13 N. W. Rep. 45. A *bona fide* occupant of land under such deed of assignment, in order to be entitled to the indemnity provided by the "occupying claimant's act," is not bound to establish the validity of the tax judgment and prior proceedings. Id.

The improvements must have been made while holding under color of title. McLellan v. Omodt, 33 N. W. Rep. 326. These provisions apply only to improvements made on land under color of title in fee. Hence the occupant is not entitled to compensation for improvements made before he acquired such color of title. Wheeler v. Merriman, 30 Minn. 372, 15 N. W. Rep. 665.

A grantee does not occupy a better position, in regard to improvements made by his grantor, than the latter himself occupied. Hence, to entitle him to recover for such improvements, he must show that his grantor was within the provision of the statute when he made the improvements. Id.

"Color of title in fee" means color of title in fee in the occupying claimant himself, or in the person under whom he claims. Hall v. Torrens, 32 Minn. 527, 21 N. W. Rep. 717. A person is properly said to have color of title to lands when he has an apparent (though not real) title to the same, founded upon a deed which purports to convey the same to him. In the absence of evidence to the contrary, a taking possession of land is presumably peaceable. Taking possession of land in good faith is taking possession in a belief that such taking is rightful. Seigneuret v. Fahey, 27 Minn. 60, 6 N. W. Rep. 403.

One in possession of real estate under an instrument which, upon its face, does not appear to give him any title or right to possession, is not holding under color of title. O'Mulcahy v. Florer, 27 Minn. 449, 8 N. W. Rep. 166.

The fact of such good faith may be proved directly by the testimony of the party whose good faith is to be shown. The question of good faith is one of fact, and for a jury. Upon the simple issue as to whether a party has paid taxes upon land, the receipts of the proper county treasurer are competent *prima facie* evidence of such payment. Id.

*§ 16. Same—Pleadings—Trial—Verdict, etc.

Allegations in the answer that defendant entered under an official deed, has had no notice of any defects invalidating the deed, and has made improvements and paid taxes, are not admitted by failure to reply. Reed v. Newton, 22 Minn. 541.

If there is no conflict in the evidence, the court may direct a verdict as in other cases. Hallam v. Doyle, 35 Minn. 337, 29 N. W. Rep. 130.

See Everett v. Boyington, 29 Minn. 264, 266, 13 N. W. Rep. 45.

*§ 17. Same—Payment before execution.

This provision, requiring payment by claimant of purchase price of land paid by occupant, held, unconstitutional as applied to the particular case. Madland v. Benland, 24 Minn. 372.

*§ 25. Actions to set aside foreclosure.

[Repealed 1881, Ex. Sess., *c.* 51.]

The payment or deposit required by *§ 25, in actions to set aside or test the validity of a mortgage foreclosure sale, is no part of the right of action, but simply a condition precedent to the entry of judgment, and hence need not be made before the commencement of suit. Van Meter v. Knight, 32 Minn. 205, 20 N. W. Rep. 142.

*§ 26. Same—Pending suits.

[Repealed 1881, Ex. Sess., *c.* 51.]

§ 29. (Sec. 11.) Mortgagee not entitled to possession.

A mortgagee has no conveyable interest in the mortgaged premises, and a conveyance by him to a third party does not assign the mortgage, unless it appear to be intended so to operate. Everest v. Ferris, 16 Minn. 26, (Gil. 14.) The execution by a mortgagee of a warranty deed of the premises mortgaged, before foreclosure or entry for condition broken, is inoperative unless intended as an assignment of the mortgage and transfer of the mortgage debt, and such intention must be made to appear. Gale v. Battin, 12 Minn. 287, (Gil. 188.) Until foreclosure or entry after condition broken, a mortgagee of real estate has no conveyable interest in it. His conveyance of the land will not operate as an assignment of the mortgage and debt, unless it be made to appear that such was the intention. Hill v. Edwards, 11 Minn. 22, (Gil. 5.) Followed, Greve v. Coffin, 14 Minn. 345, (Gil. 264.) A quitclaim deed of the mortgaged premises, by the mortgagee to a stranger, before maturity of the mortgage, does not operate to assign the debt or mortgage. Johnson v. Lewis, 13 Minn. 364, (Gil. 337.)

A mortgagee, before foreclosure, is not entitled to the possession of timber which has been cut on the mortgaged premises. Adams v. Corriston, 7 Minn. 456, (Gil. 365.) If trees growing on mortgaged real estate are cut down and removed, the mortgagee has no rights in them except to preserve his security. If he proceed and foreclose, and at the sale bids in the land at the full amount due on the mortgage, he has no further claim to the logs. Berthold v. Holman, 12 Minn. 335, (Gil. 221.)

A mortgagor of real estate cannot maintain ejectment against his mortgagee, lawfully in possession after condition broken. Pace v. Chadderdon, 4 Minn. 499, (Gil. 390.)

The fact that the mortgage debt was not paid, and that the rights of action to foreclose and for leave to redeem have become barred by the statute of limitations, does not affect the right to recover possession. Meighen v. King, 31 Minn. 115, 16 N. W. Rep. 702.

On a foreclosure under the power in a mortgage, the purchaser gets no title till the time to redeem expires. Donnelly v. Simonton, 7 Minn. 167, (Gil. 110.)

See, also, Loy v. Home Ins. Co., 24 Minn. 315, 319.

§ 32. (Sec. 14.) District court — Power to pass title by judgment.

A case in which the court has jurisdiction over the land, but has not, or for any cause cannot enforce, jurisdiction over the person to compel a conveyance, comes within this section. St. Paul & Chicago Ry. Co. v. Brown, 24 Minn. 575.

§ 33. (Sec. 15.) Action by landlord—Effect—Restoration.

Section 11, *supra*, does not apply to an action under this section by a landlord who has a right of re-entry against his tenant, or the assignee of his tenant, to recover the leased premises for non-payment of rent. Whitaker v. McClung, 14 Minn. 170, (Gil. 131.)

See Byrane v. Rogers, 8 Minn. 281, (Gil. 247;) Radley v. O'Leary, 36 Minn. 173, 30 N. W. Rep. 457.

§ 34. (Sec. 16.) Notice of lis pendens.

Since the passage of this section one purchasing real estate in litigation, from one of the parties thereto, *pendente lite*, is not chargeable with notice of the proceeding, or bound by the judgment, unless notice of *lis pendens* was filed as provided by such statute. Jorgenson v. Minneapolis & St. L. Ry. Co., 25 Minn. 206.

Notice of *lis pendens* binds only those who acquire rights *pendente lite*, or after judgment, and does not affect a prior or paramount right. Thus, where a creditors' bill, with notice of *lis pendens*, was filed, and decree rendered subjecting to the lien of a judgment the interest of a vendee in a contract to convey real estate, the vendor not being a party to the bill, was not bound, and a decree subsequently obtained by him in a suit against the vendee, canceling the bond, extinguished all rights under it, such vendor having no actual notice of the creditor's bill or decree. Bennett v. Hotchkiss, 20 Minn. 165, (Gil. 149.)

See Hart v. Marshall, cited in note to *c.* 66, § 200, *supra;* Conkey v. Dike, 17 Minn. 457, (Gil. 434;) Windom v. Schappel, 38 N. W. Rep. 757.

§§ 36-38. (Secs. 18-20.) Apportionment of rent.

See Dutcher v. Culver, 24 Minn. 584, 589.

*§ 38*a*. Tenants need not pay rent in certain cases.

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 untenantable or unfit for occupancy, shall not be liable or bound to pay rent to the lessor 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, *c.* 100, § 1.)

See Graves v. Berdan, 26 N. Y. 498; Johnson v. Oppenheim, 55 N. Y. 280; Suydam v. Jackson, 54 N. Y. 450; Doupe v. Genin, 45 N. Y. 123; Thomas v. Hubbell, 35 N. Y. 123; Kingsbury v. Westfall, 61 N. Y. 356; Smith v. Sonnekalb, 67 Barb. 66.

*§ 39. Distress for rent abolished.

Where distraint had been made and possession of goods taken at the time of the passage of this provision, held, that the rights of parties thereto were not affected by such act, though an action to determine the validity of such distress was pending at the time of the passage of the bill. Dutcher v. Culver, 24 Minn. 584.

§ 40. (Sec. 21.) Estates at will—Notice to quit.

Where no term is fixed in a lease, the lessee is a tenant at will, and he may terminate his tenancy by proceeding as directed in this section. Sanford v. Johnson, 24 Minn. 172.

Fixtures must be removed before the expiration of time limited by the notice, or the right to remove them is lost. Erickson v. Jones, 35 N. W. Rep. 267.

*§ 41*a*. Aliens—Power to own real estate.

That it shall be unlawful for any person or persons, not citizens of the United States, or who have not lawfully declared their intentions to become such citizens, or for any corporation not created by or under the laws of the United States or of some state or territory of the United States, to hereafter acquire, hold, or own, real estate so hereafter acquired, or any interest therein, in this state, except such as may be acquired by devise or inheritance, or in good faith in the ordinary course of justice in collection of debts hereafter created: *provided*, that the prohibition of this section shall not apply in such cases as the right to hold lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights shall continue to exist so long as such treaties are in force: *provided, further*, that the provisions of this section shall not apply to actual settlers upon farms of not more than one hundred and sixty acres of land, who may settle thereon at any time before January first, one thousand eight hundred and eighty-nine: *provided, further*, that none of the provisions of this act shall be construed to apply to lands acquired, held, or obtained in good faith by due process of law in the collection of debts, or the foreclosure of mortgages. (1887, *c.* 204, § 1.*)

*§ 41*b*. Alien corporations—Power to own real estate.

That no corporation or association, more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire, or shall hold or own, any real estate hereafter acquired in this state. (*Id.* § 2.)

*"An act to restrict the ownership of real estate in the state of Minnesota to American citizens and those who have lawfully declared their intentions to become such, and so forth, and to limit the quantity of land which corporations may acquire, hold, or own." Approved March 2, 1887. Took effect from and after July 1, 1887.

*§ 41*c*. Corporations—Power to own real estate.

That no corporation, other than those organized for the construction or operation of railways, canals, or turnpikes, shall acquire, hold, or own over five thousand acres of land, so hereafter acquired in this state; and no railroad, canal, or turnpike corporation shall hereafter acquire, hold, or own lands so hereafter acquired in this state other than as may be necessary for the proper operation of its railroad, canal, or turnpike, except such lands as may have been granted to it by act of congress, or of the legislature of this state. (1887, *c.* 204, § 3.)

*§ 41*d*. Forfeiture of lands illegally held.

That all property acquired, held, or owned in violation of the provisions of this act shall be forfeited to this state, and it shall be the duty of the attorney general of the state to enforce every such forfeiture by due process of law. (*Id.* § 4.)

§ 43. (Sec. 24.) Action by joint tenant, etc., against co-tenant.

A tenant in common cannot, in the absence of an agreement or understanding with his co-tenant to that effect, make improvements upon the common property at the expense in any part of his co-tenant, so as to enable him to recover any portion of the cost or value of the improvements, either in an action brought by him for that purpose, or by way of set-off in an action brought against him by such co-tenant. Walter v. Greenwood, 29 Minn. 87, 12 N. W. Rep. 145.

One co-tenant of real property cannot recover from his co-tenant on account of the appropriation by the latter directly to his own use of the products of the common property, where there is no agreement between the parties making the latter liable to the former on account of such appropriation, and where the latter has not excluded the former from the enjoyment of the common property. Kean v. Connelly, 25 Minn. 222. Where one co-tenant recovers of his co-tenant for receiving more than his just proportion of rents and profits of the common property, the latter is entitled to be allowed to offset, in reduction of the amount recovered, all sums paid by him, within six years, for taxes upon the former's share of the estate. Id.

See, also, Hause v. Hause, 29 Minn. 252, 13 N. W. Rep. 43.

§ 44. (Sec. 25.) Nuisance—Action.

A wooden flouring mill, run and operated by water as a motive power, is not, *per se*, a nuisance. Minneapolis Mill Co. v. Tiffany, 22 Minn. 463.

Where a dam causes the stream to overflow the land of another, he may maintain an action, though the damages be but nominal. This section does not change the rule. Dorman v. Ames, 12 Minn. 451, (Gil. 347.)

Dams, when nuisances to upper proprietors. See Ames v. Cannon Manuf'g Co., 27 Minn. 245, 6 N. W. Rep. 787.

In an action under this section, the abatement of a dam, and injunction against its maintenance prayed, do not follow the recovery of damages as a matter of course, but are matters discretionary with the court, and the failure of the jury to answer fully questions submitted to it, the only object of which is to aid the court in the exercise of this discretion, is error that neither party can complain of, and is not the subject of exception. Finch v. Green, 16 Minn. 355, (Gil. 315.)

In order to lay the foundation for the abatement of, and an injunction against, a dam, erected too high, and causing damage from overflow, there should be a specific finding as to how much of the dam should be abated. If not so found by the jury, it must be determined by the court. Id.

In an action for damages resulting from the overflow of plaintiff's land, caused by the defendant's dam, the court refused to charge that "the attempt to measure the actual height or fall of the stream by a process of instrumental levelings is less satisfactory than, and must yield to, actual visible facts, because instrumental measurements are liable to accidents and mistakes." Held, not error. Id.

In an action under this section, the plaintiff may recover damages arising from the nuisance complained of, both direct and consequential. If necessary to a complete and effectual abatement of the nuisance, an injunction against its continuance may properly be adjudged for that purpose. Colstrum v. Minneapolis & St. L. Ry. Co., 33 Minn. 516, 24 N. W. Rep. 255.

See Grant v. Schmidt, cited in note to *c.* 66, § 264. Harrington v. St. Paul, etc., R. Co., cited in note to *c.* 34, § 47, *supra.*

§ 45. (Sec. 26.) Action for waste.

The action may be maintained by the reversioner against the assignee of a life-estate. Curtiss v. Livingston, 36 Minn. 380, (31 N. W. Rep. 357.)

§ 47. (Sec. 28.) Willful trespass—Treble damages.

See Tait v. Thomas, 22 Minn. 537.

§ 50. (Sec. 31.) Forcible eviction—Damages.

Where a tenant or under-tenant is wrongfully and forcibly ejected from the leased premises, he may recover treble damages under the statute, or may proceed, as in an ordinary action of trespass, for the recovery of damages actually suffered by him, including special damages to his property. Bagley v. Sternberg, 34 Minn. 470, 26 N. W. Rep. 602.

CHAPTER 76.

ACTIONS RESPECTING CORPORATIONS.

See Merchants' Nat. Bank v. Bailey Manuf'g Co., 34 Minn. 325, 326, 25 N. W. Rep. 639; Johnson v. Fischer, 30 Minn. 173, 176, 14 N. W. Rep. 799; Allen v. Walsh, 25 Minn. 543, 555; Merrill v. Ressler, 33 N. W. Rep. 117.

§ 2. Foreign corporations—Power to sue.

See Becht v. Harris, 4 Minn. 504, (Gil. 394.)

§ 10. Sequestration—Order of distribution.

Upon a final judgment on any such complaint, the court shall cause a just and fair distribution of the property of all such corporations, and of the proceeds thereof, not distributed prior to the passage of this act, to be made in the following manner: After the payment of costs, debts due the United States, the state of Minnesota, all taxes or assignments levied and unpaid, expenses of the receivership and executing the trust, the receiver shall pay in full, if sufficient there remains for that purpose, the claims duly proven of all servants, clerks, or laborers for personal services or wages owing from such corporation, for services performed for the three months preceding the appointment of a receiver of such corporation as provided in section nine, and the balance of said estate shall then be distributed among the general creditors of such corporation, under the direction of the court. (*As amended* 1887, c. 25.)

The receiver may avoid a chattel mortgage upon the property of a corporation not filed as required by law. Farmers' L. & T. Co. v. Minneapolis E. & M. Works, 35 Minn. 543, 29 N. W. Rep. 349.

§ 11. Action for dissolution of railroad corporations, etc.

The corporation is not dissolved until the forfeiture is judicially ascertained and declared. State v. Railroad Co., 36 Minn. 246, 30 N. W. Rep. 816.

§ 22. Action against stockholders—Judgment.

The remedy for enforcing the statutory liability of stockholders is that provided by this chapter, and it is the only remedy. Allen v. Walsh, 25 Minn. 543. Followed, Johnson v. Fischer, 30 Minn. 173, 14 N. W. Rep. 799.

A creditor of a corporation, such as those provided for in c. 34, may sue the corporation for the debt, and join as defendants one or more of the stockholders, to enforce their individual liability; and in such an action it is unnecessary to join all the creditors of the corporation, or all the stockholders subject to individual liability. Merchants' Nat. Bank v. Bailey Manuf'g Co., 34 Minn. 323, 25 N. W. Rep. 639.