THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

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CHAPTER 75.

ACTIONS CONCERNING AND RIGHTS IN REAL PROPERTY.

See § 5134.

§ 5816. Appointment, by non-resident, of agent to accept service.

Any person or persons, copartnership or corporation, not resident of this state owning or claiming any interest in or lien upon any lands lying within this state, may file in the office of the secretary of state of the state of Minnesota, a written agreement, duly executed and acknowledged in the manner provided by law for the execution and acknowledgment of deeds, thereby stipulating and agreeing upon the part of the party or parties executing the same, that service or process and summons in any action or proceeding concerning such real estate, or any interest therein or lien thereon, hereafter commenced in any of the courts of this state, in which such owner or claimant shall be made a party, may be made upon such agent or agents as shall be designated in such agreement, who shall be resident of this state; and authorizing such agent or agents for such party or parties to admit such service of process or summons upon him or them; and agreeing that the service of process or summons upon such agent or agents shall be valid and binding upon such party or parties. Such agreement shall designate such agent or agents, and the place of residence of such agent or agents, and shall be recorded in the office of the secretary of state, in a book to be provided for that purpose; and he shall be entitled to demand and receive, for the filing and recording thereof, and of any revocation thereof, a fee of fifteen cents for each folio of one hundred words contained therein. Service of process or summons, or of any writ or notice in such action, shall be made upon the person or persons so designated as such agent or agents, in the manner provided by law for the service of process upon persons residing in this state, and shall be held and deemed a valid and effectual service thereof upon such owner or claimant, in like manner, and shall have the same effect in all respects, as if served personally upon such owner or claimant within the state; but where such party in the action appears by his attorney therein, the service of papers shall be upon the attorney, instead of the party, as by law provided. The original record of such agreement, or a duly certified copy of such record thereof, shall be deemed and taken to be sufficient evidence thereof; and no service by publication of summons in such action shall be made upon any person or persons, copartnership or corporation, non-resident of this state, who shall have made, and had recorded, such agreement in accordance with the provisions hereof, while the same shall remain in force and unrevoked: provided, that no agreement made under the provisions of this act shall in anywise affect any action or proceeding commenced prior to the taking effect thereof; and provided further, that such owner or claimant may at any time revoke or amend any such agreement made by him or them; but such revocation shall in no wise affect any action or proceeding which shall have been commenced prior to the recording of such revocation, which shall be executed, acknowledged and recorded in like manner as hereinbefore provided in respect to the original agreement: provided further, that this act, or anything therein contained, shall not apply to, nor in any wise affect, any action or proceeding for the collection of any tax, general or special.

(1877, c. 88, § 1; G. S. 1878, c. 75, § 1.)

As to appointment of agent to receive notice of redemption from tax sale, see §§ 1657–1661.

See In re St. Paul & N. P. Ry. Co., 36 Minn. 85, 30 N. W. Rep. 432.

§ 5817. Action to determine adverse claims.

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. 1866, c. 75, § 1, as amended 1874, c. 68, § 1; G. S. 1878, c. 75, § 2.)

"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 §§ 5817, 5819, 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.

One having neither title nor possession cannot maintain an action. Jellison v. Halloran, 40 Minn. 485, 42 N. W. Rep. 392.

See, also, Wakefield v. Day, 41 Minn. 344, 43 N. W. Rep. 71; Abraham v. Holloway, 41 Minn. 163, 42 N. W. Rep. 870; Mitchell v. McFarland, 47 Minn. 535, 50 N. W. Rep. 610; Pinney v. Russell, 52 Minn. 443, 54 N. W. Rep. 484.

Possession without title is sufficient. Child v. Morgan, 51 Minn. 116, 52 N. W. Rep. 1127.

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 plain-

tiff 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.)

In an action under the statute, if a party relies on a legal title, and seeks no equitable relief, his claim is barred only by the statute of limitations, and the equitable rule as to laches does not apply. Morris v. McClary, 43 Minn. 346, 46 N. W. Rep. 238.

Whether the action is to be deemed legal or equitable. Bausman v. Faue, 45 Minn. 412, 416, 48 N. W. Rep. 13.

Where the action is to determine adverse claims and to cancel deeds, the plaintiff is not entitled, as of right, to a jury trial. Roussain v. Patten, 46 Minn. 308, 48 N. W. Rep. 1122.

A suit in the federal court under this section should be by bill in equity. Bigelow v. Chatterton, 2 C. C. A. 402, 51 Fed. Rep. 614.

If the defendant sets up a legal title, his proof must be confined to a claim of that character; if his claim is an equitable one, equitable rules govern. Stuart v. Lowry, 49 Minn. 91, 51 N. W. Rep. 662.

See Hersey v. Lambert, 50 Minn. 373, 52 N. W. Rep. 963.

A judgment, in an action under this section, against a nonresident defendant, upon service by publication, is valid, the action being in the nature of a proceeding in rem. Bennett v. Fenton, 41 Fed. Rep. 283.

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; Windom v. Wolverton, 40 Minn. 439, 42 N. W. Rep. 296, Duford v. Lewis, 43 Minn. 26, 44 N. W. Rep. 522; Prentice v. Duluth S. & F. Co., 7 C. C. A. 293, 58 Fed. Rep. 437.

§ 5818. Same—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. c. 81, § 1; G. S. 1878, v. 2, c. 75, § 4a.)

See §§ 5839-5842.

Laws 1881, Ex. S. c. 81, held constitutional. Shepherd v. Ware, 46 Minn. 174, 43 N. W. Rep. 773.

Requisites of published summons against unknown defendants. Id.

The provisions of this act must be strictly construed and complied with. If it is sought to bar unknown persons claiming under the patent title, the record holder of that title must be made defendant. Ware v. Easton, 46 Minn. 180, 48 N. W. Rep. 775.

The fact that the named defendant was dead when the action was commenced will not prevent the court from acquiring jurisdiction to determine the right of "other persons, or parties unknown." Inglee v. Welles, 53 Minn. 197, 55 N. W. Rep. 117.

See Windom v. Schuppel, 39 Minn. 35, 37, 38 N. W. Rep. 757.

§ 5819. Same—Disclaimer—Tender of deed—Costs.

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. 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. 1866, c. 75, § 2; G. S. 1878, c. 75, § 3; as amended 1889, c. 111, § 1.)

§ 5820. Actions by claimants under common grantor to confirm his title.

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, c. 57, § 1; G. S. 1878, c. 75, § 4.)

This section (Laws 1870, c. 57) was not intended to give any new remedy, but is simply a regulation of practice in respect to joinder of parties, where there is one general right to be established. Mogan v. Carter, 48 Minn. 501, 51 N. W. Rep. 614.

The amount in controversy, as determining the right of removal, is the value of all the lots owned by the complainants. Lovett v. Prentice, 44 Fed. Rep. 459; Prentice v. Duluth S. & F. Co., 7 C. C. A. 293, 58 Fed. Rep. 437.

§ 5821. Action to test tax titles.

That it shall be lawful for any person having or claiming title to any land, whether in his possession, or whether it is vacant or unoccupied, or in the possession of any other person, to commence and maintain at any time an action against any person who claims any title or interest in said land, or lien upon the same adversely to him by or through any tax certificate or tax deed, heretofore or hereafter made, to test the validity of the tax sale and tax judgment

under which the same was made to quiet his title to said land as against [such claims of such] adverse claimant, and to remove a cloud from his title, arising from such tax certificate or tax deed, and it shall also be lawful for any person having or claiming title to any land to interpose and maintain at any time a defense to any action in law or equity concerning said land which may be brought against him by any person so claiming title adversely under any such tax certificate or tax deed, and to test in such defense the validity of the tax sale and tax judgment upon which such certificate or deed was made, to remove the clouds upon his title arising therefrom, and to quiet his title against such person so claiming title adversely thereunder, notwithstanding any and all laws heretofore passed, which limited the time within which such action might be commenced or defense interposed.

(1887, c. 127, § 1;[1] G. S. 1878, v. 2, c. 11, § 152.)

Averment or proof of possession, or that the land is vacant, is unnecessary. In an action merely to test the validity of the defendant's tax title, the value of his improvements cannot be assessed or allowed. Sanborn v. Mueller, 38 Minn. 27, 35 N. W. Rep. 666.

The complaint need not specifically set forth the proceedings or deed complained of. Lewis v. Bartleson, 39 Minn. 89, 38 N. W Rep. 707.

Laws 1887, c. 127, held not invalid. Sharp v. Merrill, 41 Minn. 492, 43 N. W. Rep. 385.

§ 5822. Repeal—Saving vested rights.

All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall not be construed so as to affect vested rights.

(1887, c. 127, § 2; G. S. 1878, v. 2, c. 11, § 153.)

§ 5823. Action to determine boundary lines.

Any person owning land or any interest in land may bring an action in the district court against the owner or owners or persons interested in the adjoining land to have the boundary lines fixed and established.

(1893, c. 68, § 1.[2])

§ 5824. Same.

When the lines and boundaries of two or more tracts of land depend upon any common point, line or landmark, the owner or any person interested in any of such tracts may bring an action against the owners or persons interested in the other tracts to have all the boundaries fixed and established.

(Id. § 2.)

§ 5825. Same—Additional parties.

Whenever it shall appear to the court in any action brought for the purposes aforesaid that any owner, lienholder or person interested in any of the tracts involved ought, for a full settlement and adjudication of all the questions involved, to be made a party to the action, the court shall stay proceedings in the action and issue an order requiring such persons to come in and plead in the action within twenty days after service of the order, which order shall be served upon the persons named, in the same manner as is provided for the service of a summons in a civil action. Any person so served may file an answer within twenty days after such service, and if he fail to file such answer shall be deemed in default. All pleadings in the action, or copies thereof, shall be filed before such order is made. The court may also in its discretion in like manner order the owners and persons interested in other tracts than those originally involved to appear and plead, in which case the order shall describe such additional tracts and state that the purpose of the action is to establish the boundary lines of such tracts.

(Id. § 3.)

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[1] An act enabling owners of land to test the validity of tax judgments and tax sales heretofore or hereafter made, and to quiet their title against adverse claimants under tax certificates and tax deeds heretofore or hereafter made under such judgments and sales, and to remove the clouds upon their title arising therefrom. Approved March 2, 1887.

[2] An act to provide for fixing and establishing boundary lines of land by civil action. Approved March 14, 1893.

§ 5826. Same—Pleadings.

Actions brought under this act shall be governed by the rules governing civil actions except as otherwise provided in this act, but every allegation in every answer shall be deemed in issue without further pleading.

(Id. § 4.)

§ 5827. Same—Judgment—Landmarks.

The court in rendering judgment shall locate and define the boundary lines involved, by reference to some well known permanent landmarks, and in case it shall be deemed best for the interest of the parties, the court may, after the entry of judgment, direct a competent surveyor of the county where the land is situated to establish a permanent stone or iron landmark in accordance with the judgment so entered from which future surveys of the land, the boundary line or lines of which have been established in such action, shall be made. Any landmarks so established shall have distinctly cut or marked thereon the words "Judicial Landmark." The said surveyor shall report to the court after executing its order and shall in such report accurately describe the landmark erected by him and define its location as nearly as practicable.

(Id. § 5.)

§ 5828. Costs and disbursements.

The court shall make such order respecting costs and disbursements in the action as it shall deem just.

(Id. § 6.)

§ 5829. Adverse claims.

The court shall try and determine any adverse claims in respect to any portion of the land involved which it may be necessary to determine for a complete settlement of the boundary lines involved.

(Id. § 7.)

§ 5830. Action may be brought for leave to open mineral deposits, when.

That where veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, coal, clay, sand, gravel or peat are known to or do exist on or in lands which are shown by properly executed deeds or leases having more than one year to run, of record in the county in which said lands are situate, to belong to a plurality of owners, the owner or owners of an interest equal to one-half or greater in said lands as shown by said deeds or leases so recorded, may bring action in the district court in the county where said lands are situated, for permission to open, operate and develop said veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, coal, clay, sand, gravel or peat, that are found in or on said lands.

(1893, c. 37, § 1.[s])

§ 5831. Same—Complaint—Court to determine ownership.

The complaint shall describe the land to be affected, and there shall be an abstract of said lands thereto attached, showing the title thereof as appears by the deeds or leases recorded in the county where said land is situated. Upon the case being brought on for hearing the court shall determine who are the owners of the property described in the complaint as appears by the properly executed deeds or leases thereof of record in said county in which the same is situated.

(Id. § 2.)

§ 5832. Same—Order—Bond.

If upon said hearing it appears that the complainant or complainants own one-half or more of said property, as shown by the properly executed deeds or leases of record in said county, the court shall make an order permitting and

[s] An act providing for the opening, working and operating mines, quarries, coal, gravel, clay, sand and peat deposits, on and in lands the title of which appears by properly executed deeds of record to be in a plurality of persons. Approved April 18, 1893. By § 10 all inconsistent acts are repealed.

authorizing complainant or complainants, upon the filing in the office of the clerk of the court having jurisdiction of the action, of such bond with such sureties as may be ordered and approved by the court or a judge thereof, conditioned for the faithful, complete and timely performance of all orders of the court made in the action or concerning the subject matter thereof, and for the faithful, complete and timely performance of all the provisions of this act, to enter upon, open, develop and operate said lands for the purpose of producing therefrom and from the veins, lodes and deposits therein situate, the iron, iron ore or other minerals or mineral ores of any kind, coal, clay, sand, gravel and peat, that may exist thereon or therein.

(Id. § 3.)

§ 5833. Same—Entry on land—Accounting—Application of receipts.

Said complainant or complainants may thereupon, after the filing and approval of the bond provided for in section three of this act, enter upon said lands and develop the same and produce therefrom and from the lodes, veins and deposits the iron, iron ore, minerals, mineral ores of any kind, coal, sand, clay, gravel and peat, that exists thereon or therein. A strict account shall be kept, by the party or parties operating said properties and workings, of all expenses of opening and working any and all such mines of iron or iron ores, minerals or mineral ores of any kind, coal, or deposits of clay, sand, gravel or peat; and a true and correct account of the output of said workings in tons and of the receipts from the sale or disposal of the output. A monthly statement of said expenses and said output shall be made by said parties operating said workings and properties and filed with the clerk of said court where said action was commenced or is pending. The parties operating such property shall be entitled to use so much of the receipts from the sales of the total output as may be necessary for the payment of the expenses and charges of opening and operating such property, and the surplus of receipts over the amount so paid out for expenses and charges of opening and operating such property shall be divided pro rata among all the owners of such property according to their interests, and the amount to which any party is entitled shall be paid to him by the parties operating such property upon demand at any time after the filing of any monthly statement as herein provided, which shows a surplus over the charges and expenses aforesaid. No part of the expenses or charges, and no claim for work or labor performed in or about the opening, operating or improvement of such property shall be a lien upon or a charge against any portion of the property or interest therein not owned by the parties operating such property, and none of the owners of any part of or interest in the property who are not operating such property shall be liable for any of the charges or expenses of opening, operating or improving such property.

(Id. § 4.)

§ 5834. Surface rights of operators.

The parties operating the said veins, lodes and deposits as herein provided shall have the right to use the surface of the ground for placing machinery and coverings therefor, for roads, tramways, drains, water pipes, steam and electric plants and all other appliances necessary in the operation and developing of said properties and workings, including buildings for offices and houses for man and shelter for animals engaged and employed in and by said workings, without charge from co-owners.

(Id. § 5.)

§ 5835. Rights of nonoperating owners.

The owners of said property not engaged in operating the same shall have access to the property and workings thereon at all reasonable times for the purpose of measuring up the workings and verifying thereby the accounts of operators thereof, and shall have access to the property for the purpose of removing and taking away the property delivered to them on the dump on said property as herein provided. But this right must be so exercised as not to interfere with the parties operating the property and workings on or in said property, or of any of the hoisting or working apparatus, railroads, roads, tram-

ways or other appliances thereon, or of the workmen, servants of the operators of the property.

(Id. § 6.)

§ 5836. Operation by owners of minority interest, when.

In case the parties owning one-half or more of the property and land on which said veins, lodes or deposits of iron, iron ores, minerals or mineral ores of any kind, or coal, clay, sand, gravel, or peat are known to or do exist, fail or refuse to proceed under this chapter, or if, after commencing the work and operations hereunder, said parties abandon said work for one year, then the owners of less than a half interest of said property, lands and the title therein as shown by properly executed deeds recorded in the county in which the same is situated, may proceed to open and work said property in the same manner and under the same restrictions as provided herein.

(Id. § 7.)

§ 5837. No liens to attach to lands—Exception.

No liens created by the statutes of this state, whether mechanics or material men or laborers or for supplies or any other liens except those of judgment against owners of interests in said lands, shall attach to the lands on or in which operations for producing from the veins, lodes or deposits of iron, iron ores, minerals or mineral ores of all kinds, coal, clay, sand, gravel or peat, are carried on under and in accordance with this act.

(Id. § 8.)

§ 5838. Actions apply only to output—Decrees in partition.

Actions for operation of property in all cases where lands are held by a plurality of owners, are opened, operated and developed for the purpose of obtaining therefrom the products of the veins, lodes and deposits of iron, iron ores, minerals, mineral ores of any kind, coal, clay, sand, gravel and peat under the provisions of this chapter, shall be held to apply only to the output of said workings, and decrees of partition shall be made by the courts to apply only to the division of the output of said workings of said lands, and the veins, lodes and deposits aforesaid therein.

(Id. § 9.)

§ 5839. Proceedings 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, c. 69, § 1; G. S. 1878, c. 75, § 5.)

See § 5818.

See Boeing v. McKinley, 44 Minn. 392, 46 N. W. Rep. 766.

§ 5840. Same—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, c. 69, § 2; G. S. 1878, c. 75, § 6.)

§ 5841. Same—Effect of judgments and decrees.

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, c. 69, § 3; G. S. 1878, c. 75, § 7.)

§ 5842. Same—Such heirs admitted to defend after judgment—Minors.

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 ren-

dition 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, c. 69, § 4; G. S. 1878, c. 75, § 8.)

"Unknown heirs," upon whom the summons was served by publication, and against whom judgment by default has been entered, or their grantees, may apply for relief under § 5267 within one year after notice of the entry of judgment. Boeing v. McKinley, 44 Minn. 392, 46 N. W. Rep. 766.

§ 5843. Actions for dower or against cotenant—Denial of right to be shown.

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. 1866, c. 75, § 3; G. S. 1878, c. 75, § 9.)

§ 5844. Termination of plaintiff's estate 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. 1866, c. 75, § 4; G. S. 1878, c. 75, § 10.)

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.)

§ 5845. 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.

(G. S. 1866, c. 75, § 5, as amended 1867, c. 72, § 2; G. S. 1878, c. 75, § 11; 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 ac-

tion 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 § 5865; 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.

The defendant's attorney may stipulate for a dismissal of the demand. Bray v. Doheny, 39 Minn. 355, 40 N. W. Rep. 262.

The demand may be made by the party, or by a new attorney, without substitution; and a notice embodying the demand in his name by an agent is sufficient. West v. St. Paul & N. P. Ry. Co., 40 Minn. 189, 41 N. W. Rep. 1031.

The right to demand a second trial is not affected by the mere fact that the complaint asks additional and incidental relief. City of St. Paul v. Chicago, M. & St. P. Ry. Co., 49 Minn. 88, 51 N. W. Rep. 662.

This section does not apply to actions to determine adverse claims, except where judgment for recovery of possession is demanded. Godfrey v. Valentine, 50 Minn. 284, 52 N. W. Rep. 643.

Where the first trial results in judgment for the plaintiff, and a second trial for the defendant, the plaintiff has not a right to another trial. Lewis v. Hogan, 51 Minn. 221, 53 N. W. Rep. 367.

Where, in an action against a railway company, it puts in issue plaintiff's right to recover, it is entitled, if defeated, to another trial, notwithstanding that it asks, under § 2658, for an assessment of the compensation to be paid in case plaintiff establishes his right to recover. Kremer v. Chicago, M. & St. P. Ry. Co., 54 Minn. 157, 55 N. W. Rep. 928.

§ 5846. Same—Judgment on second trial—Restitution.

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. 1866, c. 75, § 6; G. S. 1878, c. 75, § 12.)

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.)

§ 5847. Ejectment — Damages recoverable — Improvements.

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. 1866, c. 75, § 7; G. S. 1878, c. 75, § 13.)

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 § 5849.

§ 5848. Removal of buildings, etc., erected in good faith.

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. 1866, c. 75, § 8; G. S. 1878, c. 75, § 14.)

See Reed v. Lammel, 40 Minn. 397, 42 N. W. Rep. 202.

§ 5849. Occupying claimants to be compensated for improvements, when.

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, c. 55, § 1; G. S. 1878, c. 75, § 15.)

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 § 1603, 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, 37 Minn. 157, 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.

In an action merely to test the validity of a tax title held by the defendant in possession, the value of the latter's improvements is not assessable. Sanborn v. Mueller, 38 Minn. 27, 35 N. W. Rep. 666.

The provisions of the occupying claimant's act (§ 5849 et seq.) apply to the action for partition. Smalley v. Isaacson, 40 Minn. 450, 42 N. W. Rep. 352.

A tenant for life is not entitled to the benefit of the act. Id.

A certificate of the county auditor assigning the right of the state to lands bid in at the sale is an "official deed." Pfefferle v. Wieland (Minn.) 56 N. W. Rep. 824.

See Ogden v. Ball, 38 Minn. 237, 36 N. W. Rep. 344; Id., 40 Minn. 94, 41 N. W. Rep. 453; Jewell v. Truhn, cited in note to § 5552; Windom v. Schuppel, 39 Minn. 35, 38, 38 N. W. Rep. 757.

§ 5850. Same—Pleadings—Trial—Verdict, etc.

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, c. 55, § 2; G. S. 1878, c. 75, § 16.)

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.

Order of proof in an action to determine adverse claims, where the answer is a counterclaim in ejectment, and the plaintiff in reply claims for improvements. Mueller v. Jackson, 39 Minn. 431, 40 N. W. Rep. 565.

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

§ 5851. Same—Compensation to be paid occupant before issue of execution.

Should claimant succeed in the action, execution for possession shall not issue, except as herein provided, unless, within one year from 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, c. 55, § 3; G. S. 1878, c. 75, § 17; as amended 1889, c. 190, § 1.)

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, 34 Minn. 372.

The sum to be paid does not bear interest. Taylor v. Slingerland, 39 Minn. 470, 40 N. W. Rep. 575.

Laws 1889, c. 190, extending the time from one year "from the rendition of the verdict or finding" to one year "from the rendition of the judgment on the verdict or finding," in so far as it is retroactive, is invalid. Flynn v. Lemieux, 46 Minn. 458, 49 N. W. Rep. 238; Craig v. Dunn, 47 Minn. 59, 49 N. W. Rep. 396.

The failure of the landowner to pay the value of the improvements within one year after the verdict or findings not only barred his remedy, but extinguished his right to the property, the title to which thereafter vested in the occupant, though no judgment was entered. Id.

§ 5852. Same—Occupant to 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 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, c. 55, § 4; G. S. 1878, c. 75, § 18; as amended 1889, c. 190, § 1.)

A bona fide occupant may elect to be paid the value of his improvements as a condition of recovery of possession by the true owner, unless the latter prove that he had no notice, actual or constructive, of the possession of the former, in time to assert his claim before the improvements were made. Jewell v. Truhn, 38 Minn. 433, 38 N. W. Rep. 106.

See Flynn v. Lemieux and Craig v. Dunn, cited in note to last section.

See, also, Smalley v. Isaacson, 40 Minn. 450, 453, 42 N. W. Rep. 352.

§ 5853. "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, c. 55, § 5; G. S. 1878, c. 75, § 19.)

§ 5854. Occupant may remove his 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, c. 55, § 6; G. S. 1878, c. 75, § 20.)

§ 5855. Same—Foregoing provisions apply to what actions.

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, c. 55, § 7; G. S. 1878, c. 75, § 21.)

See Smalley v. Isaacson, 40 Minn. 450, 453, 42 N. W. Rep. 352.

§ 5856. Same—Allowance 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, c. 55, § 8; G. S. 1878, c. 75, § 22.)

§ 5857. Same—Good faith of occupant presumed, when.

When occupant holds as heir or devisee, or as grantee, either immediate or remote, of any person who is a nonresident of this state, the good faith of the original taker shall be presumed.

(1873, c. 55, § 9; G. S. 1878, c. 75, § 23.)

§ 5858. Same—When occupant is not in actual possession —When he is plaintiff.

All the provisions of this act shall apply to cases where occupant is not, as well as where he is, in actual possession, and also to cases where the action is brought by the occupant himself to determine an adverse claim.

(1873, c. 55, § 10; G. S. 1878, c. 75, § 24.)

See Smalley v. Isaacson, 40 Minn. 450, 453, 42 N. W. Rep. 352.

1878, c. 77, §§ 1, 2; G. S. 1878, c. 75, §§ 25, 26; repealed 1881, Ex. S. c. 51.

§ 5859. Court may grant order for survey of property.

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. 1866, c. 75, § 9; G. S. 1878, c. 75, § 27.)

§ 5860. 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. 1866, c. 75, § 10; G. S. 1878, c. 75, § 28.)

§ 5861. Mortgagee not 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. 1866, c. 75, § 11; G. S. 1878, c. 75, § 29.)

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.

This section held not to apply to a railroad mortgage. Seibert v. Minneapolis & St. L. Ry. Co., 52 Minn. 246, 53 N. W. Rep. 1151.

See Rogers v. Benton, 39 Minn. 39, 43, 38 N. W. Rep. 765; Lowell v. Doe, 44 Minn. 144, 146, 46 N. W. Rep. 297.

§ 5862. Trespass after execution sale — Action by purchaser.

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. 1866, c. 75, § 12; G. S. 1878, c. 75, § 30.)

§ 5863. Conveyance of real estate by tenant pending ejectment suit, etc.

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

(G. S. 1866, c. 75, § 13; G. S. 1878, c. 75, § 31.)

§ 5864. District court may pass title to land by judgment.

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. 1866, c. 75, § 14; G. S. 1878, c. 75, § 32.)

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.

See Gowen v. Conlow, 51 Minn. 213, 53 N. W. Rep. 365.

§ 5865. Action by landlord equivalent to demand and re-entry—Tenant, how restored to possession.

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. 1866, c. 75, § 15; G. S. 1878, c. 75, § 33.)

§ 5845 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 nonpayment of rent. Whitaker v. McClung, 14 Minn. 170, (Gil. 131.)

See Byrane v. Rogers, 8 Minn. 231, (Gil. 247;) Radley v. O'Leary, 36 Minn. 173, 30 N. W. Rep. 457; Woodcock v. Carlson, 41 Minn. 542, 545, 43 N. W. Rep. 479.

§ 5866. Notices of lis pendens—Filing, record and effect—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. 1866, c. 75, § 16, as amended 1869, c. 75, § 1; G. S. 1878, c. 75, § 34.)

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 § 5344; Conkey v. Dike, 17 Minn. 457, (Gil. 434;) Windom v. Schuppel, 39 Minn. 35, 38 N. W. Rep. 757.

§ 5867. Notice of no personal claim on defendant.

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. 1866, c. 75, § 17; G. S. 1878, c. 75, § 35.)

§ 5868. Tenant of all or a portion of demised premises liable for rent.

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. 1866, c. 75, § 18; G. S. 1878, c. 75, § 36.)

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

§ 5869. Same—Action to recover rent—Evidence.

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. 1866, c. 75, § 19; G. S. 1878, c. 75, § 37.)

§ 5870. Limitation of two preceding sections.

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. 1866, c. 75, § 20; G. S. 1878, c. 75, § 38.)

§ 5871. 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; G. S. 1878, v. 2, c. 75, § 38a.)

Before this enactment, in accordance with the common-law rule, a covenant in a lease of land was not terminated by destruction of the buildings by fire. Lanpher v. Glenn, 37 Minn. 4, 33 N. W. Rep. 10.

Under this section, when a building becomes untenantable, the lease is merely terminable at the tenant's option; he may continue the tenancy if he elects, as by occupying and paying rent after the building is repaired. Boston Block Co. v. Buffington, 39 Minn. 385, 40 N. W. Rep. 361.

To relieve himself from liability for future rent, the lessee must surrender the premises. Roach v. Peterson, 47 Minn. 291, 50 N. W. Rep. 80.

He must elect within a reasonable time. Roach v. Peterson, 47 Minn. 462, 50 N. W. Rep. 601.

This section does not apply to the failure of the landlord to furnish steam heat and elevator service, as stipulated. Minneapolis Co-operative Co. v. Williamson, 51 Minn. 53, 52 N. W. Rep. 986.

The burden of proving destruction or injury is on the tenant. Wampler v. Weinmann (Minn.) 57 N. W. Rep. 157.

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.

§ 5872. Distress for rent abolished.

That the remedy by distress for rent is hereby abolished.

(1877, c. 140, § 1; G. S. 1878, c. 75, § 39.)

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.

§ 5873. Estates at will, how determined—Notice to quit.

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. 1866, c. 75, § 21; G. S. 1878, c. 75, § 40.)

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, 37 Minn. 459, 35 N. W Rep. 267.

Tenancy from year to year exists in this state as at common law, except so far as the length of notice to terminate has been changed by this section, which applies to such a tenancy. (Overruling Smith v. Bell, 44 Minn. 524, 47 N. W Rep. 263.) Hunter v. Frost, 47 Minn. 1, 49 N. W. Rep. 327.

This section changes only the length of notice. Notice, in case of a tenancy from year to year, must terminate at the end of a year. Id.

In case of a tenancy from month to month, without any limitation as to the time

when the estate is to be determined, either party is entitled to notice. Finch v. Moore, 50 Minn. 116, 52 N. W. Rep. 384. The notice must terminate with some month, counting from the beginning of the tenancy. Grace v. Michaud, 50 Minn. 139, 52 N. W. Rep. 390.

A tenancy at will from month to month, rent payable monthly, can only be terminated by one month's notice. Eastman v. Vetter (Minn.) 58 N. W. Rep. 989. Notice by the tenant that he surrenders possession on the day of the notice will not terminate the tenancy on the expiration of one month from date. Id.

§ 5874. Rights of aliens as to real estate.

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. 1866, c. 75, § 22; G. S. 1878, c. 75, § 41.)

§ 5875. Same—Not applicable to Anoka county.

That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention 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, or such as may be held as security for indebtedness heretofore or hereafter created. Provided, that the prohibition of this section shall not apply in cases where 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. Provided further that the provisions of this act shall not be construed to prevent any person or persons not citizens of the United States, or corporations not created [by] or under the laws of the United States, or of some state or territory thereof, from holding or acquiring lots or parcels of land not exceeding six lots of fifty feet frontage by three hundred feet in depth each, or in lieu thereof, a parcel or tract of land of equal size, within and forming a part of the platted portion of any incorporated city in this state, and lands heretofore acquired by or deeded to any such person, persons or corporations, [not exceeding the quantity aforesaid,] may be owned and held the same as though acquired by or deeded to citizens of the United States. Provided further, that the provisions of this act shall not apply to lands in Anoka county, Minnesota.

(1887, c. 204, § 1; G. S. 1878, v. 2, c. 75, § 41a; as amended 1889, c. 113, § 1; Id. c. 117, § 1; Id. c. 129, § 1.)

Laws 1889, c. 113, approved April 22, 1889, amends Laws 1887, c. 204, so that the foregoing section shall read as above, excepting the words printed in brackets, down to the last proviso. Laws 1887, c. 204, was amended by Laws 1889, c. 129, approved March 7, 1889, by adding to the section the third proviso including the words enclosed in brackets.

§ 5876. Corporations in which aliens are stockholders.

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.

(1887, c. 204, § 2; G. S. 1878, v. 2, c. 75, § 41b; as amended 1889, c. 113, § 2.)

§ 5877. Corporations—Power to hold 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; G. S. 1878, v. 2, c. 75, § 41c; as amended 1889, c. 129, § 3.)

§ 5878. 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. Provided, however, that no such forfeiture shall be made unless the action to enforce such forfeiture shall be brought within three years after such real estate has been acquired by such alien or corporation, and provided, further, that no title to real estate standing in the name of a citizen of the United States, or any one who has declared his intention of becoming such a citizen, shall be liable to forfeiture by reason of the alienage of any former owner or person interested therein. Provided, further, that none of the provisions of this act shall be construed to apply to lands acquired, held or obtained by process of law in the collection of debts or by any procedure for the enforcement of any lien or claim thereon, whether created by mortgage or otherwise.

(1887, c. 204, § 4; G. S. 1878, v. 2, c. 75, § 41d; as amended 1889, c. 129, § 4.)

§ 5879. Reversioners, etc., may sue for injury to inheritance.

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. 1866, c. 75, § 23; G. S. 1878, c. 75, § 42.)

§ 5880. Action by joint tenant, etc., against cotenant.

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. 1866, c. 75, § 24; G. S. 1878, c. 75, § 43.)

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.

§ 5881. "Nuisance" defined—Action to abate or enjoin.

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. 1866, c. 75, § 25; G. S. 1878, c. 75, § 44.)

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., 38 Minn. 516, 24 N. W. Rep. 255.

See Grant v. Schmidt, cited in note to § 5410; Harrington v. St. Paul, etc., R. Co., cited in note to § 2642; Sloggy v. Dilworth, 38 Minn. 179, 36 N. W. Rep. 451; Byrne v. Minneapolis & St. L. Ry. Co., 38 Minn. 212, 36 N. W. Rep. 339; Village of Pine City v. Munch, 42 Minn. 342, 44 N. W. Rep. 197.

§ 5882. Action for waste—Rule of damages, etc.

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. 1866, c. 75, § 26; G. S. 1878, c. 75, § 45.)

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.)

See Bauer v. Knoble, 51 Minn. 358, 53 N. W. Rep. 805.

§ 5883. Same—Judgment of forfeiture, etc.

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. 1866, c. 75, § 27; G. S. 1878, c. 75, § 46.)

§ 5884. Wilful trespass—Treble damages.

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. 1866, c. 75, § 28; G. S. 1878, c. 75, § 47.)

See Tait v. Thomas, 22 Minn. 537.

§ 5885. 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. 1866, c. 75, § 29; G. S. 1878, c. 75, § 48.)

§ 5886. Cutting timber for highways, etc.—Damages.

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. 1866, c. 75, § 30; G. S. 1878, c. 75, § 49.)

§ 5887. Treble damages for forcible eviction.

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. 1866, c. 75, § 31; G. S. 1878, c. 75, § 50.)

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.

§ 5888. Treble damages for forcible entry or detention.

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. 1866, c. 75, § 32; G. S. 1878, c. 75, § 51.)