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Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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CHAPTER 81
Arbitration and Award

9513. What may be submitted—Submission irrevocable.

District court may vacate an award if there is no evidence to sustain it. Borum v. M., 184M126, 238NW4. See Dun. Dig. 509.

Evidence held not to require finding that certain issues were voluntarily submitted for determination before arbitrators. McKay v. M., 187M521, 246NW12. See Dun. Dig. 487a.

An arbitration at common law eliminates certain questions which might be present if an award is result of statutory arbitration. Mueller v. C., 194M83, 259NW 798. See Dun. Dig. 499.

9515. Powers and duties of arbitrators—Filing of award.

Agreement to submit to arbitration, account between parties relating to a partnership and all other matters in difference between them, is too indefinite to show that dissolution of partnership, sale of assets thereof to one or other of partners, leasing by one to other of real property which was not partnership property, and an agreement by one partner not to compete in business with other, were matters within authority of arbitrators to determine. McKay v. M., 187M521, 246NW12. See Dun. Dig. 487a.

9517. Grounds of vacating award.

Where award of referees so links matters submitted to arbitration with matters not so submitted that they cannot be separated without prejudice to parties, court should not sustain a part of award and set aside other parts thereof. McKay v. M., 187M521, 246NW12. See Dun. Dig. 507.

Where a controversy between employer and employee is submitted to arbitrators for their decision upon two or more determinative issues, favorable decision of both of which for employee is essential to his cause of action, he cannot recover where decision of arbitrators ignores one of determinative issues so submitted. An award so unresponsive to submission is void. Mueller v. C., 194M 83, 259NW798. See Dun. Dig. 499.

Arbitration, particularly in disputes between employers and employees, is a favorite of law, and award, if any, will ordinarily be final. Id. See Dun. Dig. 488.

(5).

District court may vacate an award if there is no evidence to sustain it. Borum v. M., 184M126, 238NW4. See Dun. Dig. 509.

9519. Judgment—Contents and effect—Appeals.

Perjury as ground for setting aside award after entry of judgment. 20MinnLawRev428.

CHAPTER 82
Actions Relating to Real Property

ACTIONS FOR PARTITION

9524. Action for partition or sale, who may bring.

Partition is a statutory action but the proceeding is governed by equity principles. Kauffman v. E., 195M569, 263NW610. See Dun. Dig. 7333.

9527. Judgment for partition—Referees.

Smith v. W., 195M589, 263NW903; note under §9538.

Court must determine rights and interest of all parties to action in property to be partitioned, whether such interest consists of liens, taxes paid, advances or improvements made. Kauffman v. E., 195M569, 263NW610. See Dun. Dig. 7335.

9530. Confirmation of report—Final judgment.

Referee's report in partition proceedings is entitled to record without payment of taxes. Op. Atty. Gen. (373b-22), Apr. 10, 1937.

9532. Liens, how affected.

In action for partition of two separate farms valued respectively at $15,500 and $18,500, fact that plaintiff owned a mortgage on undivided half interest of defendant, did not require that there be a sale, and court should have made a division in kind, placing mortgage lien after proper adjustment upon farm set aside to defendant. Kauffman v. E., 195M569, 263NW610. See Dun. Dig. 7343.

9534. Compensation for equality.

Where supreme court reversed decree in partition ordering sale of two farms and determined that one farm must go to each of two parties, a new trial was unnecessary where trial court had made specific findings and values of farms, but referees might value farms and determine owelty. Kauffman v. E., 195M569, 264NW781. See Dun. Dig. 7345.

9537. Sale ordered, when.

Smith v. W., 195M589, 263NW903; note under §9538.

In determining whether there should be a sale, situation of parties and financial ability of either one of parties to purchase should be considered. Kauffman v. E., 195M569, 263NW610. See Dun. Dig. 7343.

Partition in kind is favored rather than a sale, and he who asks a sale has burden of proving that partition in kind cannot be made without great prejudice to owners. Id.

9538. Liens—New parties—No sale, when.

In partition proceedings, an objection under §9538 to a sale, on ground that liens exceed value of property proposed to be partitioned, must be made prior to order or judgment directing sale, as authorized by §§9527 and 9537. Smith v. W., 195M589, 263NW903. See Dun. Dig. 7343.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to the owners. Id.

9540. Sale of real property under action for partition—Notice.—The sale may be by public auction to the highest bidder for cash, upon published notice in the manner required for the sale of real property on execution. The notice shall state the terms of the sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or specific lien, the notice shall so state. The terms of sale shall be made known at the time thereof, and, if the premises consist of distinct farms or lots, they shall be sold separately. The court may, if it be for the best interests of the owners of said property, order such property sold by private sale. If a private sale be ordered the real estate shall be appraised by two or more disinterested persons under order of the court, which appraisal shall be filed before the confirmation of the sale by the court. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. The court may order sale of real estate for cash, part cash and a purchase money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. (As amended, Apr. 12, 1937, c. 190, §1.)

9542. Purchase by part owner, etc.

There was no error in permitting purchaser, who was an incumbrancer, to give a receipt for so much of proceeds of sale as belonged to her. Smith v. W., 195M 589, 263NW903. See Dun. Dig. 7343.

9544. Final judgment on confirming report.

Order of the court confirming a sale in partition sustained against objection that the price was inadequate. Grimm v. G., 190M474, 252NW231. See Dun. Dig. 7343(95).

Sale to incumbrancer held not to result in a price so grossly inadequate as to require resale, and receipts from purchaser were in accordance with judgment and law. Smith v. W., 195M589, 263NW903. See Dun. Dig. 7343.

ACTIONS TO TRY TITLE

9556. Actions to determine adverse claims.

1. Nature and object of action.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 182M492, 234NW 675. See Dun. Dig. 15.

Defendants who allege title in themselves and ask judgment quieting it in them waive form of action, and

fact of possession or vacancy is unimportant. Union Central Life Ins. Co. v. P., 190M360, 251NW911. See Dun. Dig. 8044.

1½. Action to quiet title.

Jurisdiction of equity to quiet title to personalty. 16 MinnLawRev596.

Does an instrument void on its face constitute a cloud that equity will remove? 16MinnLawRev710.

3. Interests determined.

A recorded contract for sale of real property, which has been terminated by cancellation, is a cloud upon vendor's title. Union Central Life Ins. Co. v. P., 190M 360, 251NW911. See Dun. Dig. 8033, n. 75.

In action to determine adverse claims or equitable action to remove cloud from title, a defaulting defendant is not bound by pleading of other defendants that such defaulting defendant had assigned land contract executed by plaintiff to them and it cannot be said that controversy is moot as to such defendant. Id. 7563a.

5. Possession.

A plaintiff may maintain an equitable action to remove a cloud, though he is not in possession. Union Central Life Ins. Co. v. P., 190M360, 251NW911. See Dun. Dig. 8031.

In statutory action to determine adverse claims, fact of possession or vacancy is not jurisdictional, nor does it go to merits, and defendants who allege title in themselves and ask judgment quieting it in them waive form of action and fact of possession or vacancy is unimportant. Id. See Dun. Dig. 8044.

6. Complaint.

In action to determine adverse claims to real property, where plaintiff pleaded a judgment in a former action as a bar to defendants' claim of title through a deed, allegations in complaint in former action were sufficient to support action to quiet title and on authority of Mitchell v. McFarland, 47M535, 50NW610, and it was not necessary that complaint in former action allege that plaintiff was in possession of land or that it was vacant property. Whitney v. C., 199M312, 271NW589. See Dun. Dig. 8048.

7. Answer.

Answer, held not sham. 180M480, 231NW224.

In action to determine adverse claims or equitable action to remove cloud from title, a defaulting defendant is not bound by pleading of other defendants that such defaulting defendant had assigned land contract executed by plaintiff to them and it cannot be said that controversy is moot as to such defendant. Union Central Life Ins. Co. v. P., 190M360, 251NW911. See Dun. Dig. 7563a.

8. Reply.

Where in a legal action to determine adverse claims, the defendants assert a legal title, the plaintiffs may, in their reply, plead facts showing an equitable title that ought to prevail over defendants' legal title. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8052.

8¾. Evidence.

Parol evidence as to land intended to be included in mortgage. 181M115, 231NW790.

9. Judgment.

Value of land involved as affecting jurisdiction of federal court for purpose of removal from state court. 31F(2d)136.

Former judgment between the parties held not res adjudicata on possession. 173M242, 217NW337.

Equitable title of one who purchased fractional interest under deed mistakenly conveying smaller fractional interest and who improved land, held to prevail over legal title in action to determine adverse claims. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8042.

Where judgment is entered against a defendant by default, relief granted must be within allegations of complaint and within demand for relief. Union Central Life Ins. Co. v. P., 190M360, 251NW911. See Dun. Dig. 4996.

Possession necessary for plaintiff to show in action to determine adverse claims is actual as distinguished from constructive possession, but it may be possession in a tenant or vendee-owner. Id. See Dun. Dig. 8043.

Equitable relief may be granted in an action to determine adverse claims to real property, upon such terms and conditions as may be necessary to do justice. Engel v. S., 191M324, 254NW2. See Dun. Dig. 8058.

9556-1. Publication of summons legalized in certain cases.—In every action to quiet title to real estate heretofore completed, wherein the summons published was not subscribed by the plaintiff or his attorney, the publication of such summons, if the publication and form thereof otherwise conforms to law, is hereby validated and legalized and made effective to all intents and purposes. (Mar. 23, 1937, c. 83, §1.)

9556-2. Not to affect pending action.—Nothing herein contained shall affect any action or proceeding now pending or which shall be commenced within six months after passage hereof, in any of the courts of this state involving the validity of publication. (Mar. 23, 1937, c. 83, §2.)

9557. Unknown defendants.

When parties not named as defendants in an action to determine adverse claims are known to plaintiff at time of bringing action, such parties are not bound by the judgment as "persons unknown," and where such persons are known to plaintiff to have a possible interest, such interest is not barred, though their names do not appear on record. State Bank of Good Thunder v. B., 195M243, 262NW561. See Dun. Dig. 8046.

9563. Ejectment—Damages—Improvements.

Written promise by remaindermen to pay for improvements erected by life tenant, held to create a mere personal obligation and constituted no defense or counterclaim in ejectment. 180M151, 230NW634.

Remaindermen are not liable for improvements made by life tenant, and holding of trial court that there was consideration for the contract is affirmed by equally divided court. 180M151, 230NW634.

In a suit to recover for improvements made by plaintiff upon land of defendant, under an unenforceable oral contract for its conveyance to plaintiff, measure of damages is not cost or value of improvements, but enhancement in value of real estate because thereof. Lepak v. L., 195M24, 261NW484. See Dun. Dig. 10045.

9565. Occupying claimant.

One who, through mistake as to the boundary participated in by the adjoining owner, builds a house on the land of such other, remains the owner thereof. 171 M318, 214NW59.

9566. Pleadings—Trial—Verdict.

3. Evidence.

Fraud in obtaining signature of wife to deed. 173M 51, 216NW311.

9. Survey.

If the description in the verdict in ejectment and judgment was not sufficiently definite or certain, the trial court indicated that on application a survey and plat would be ordered to make it so. Deacon v. H., 182M540, 235NW23. See Dun. Dig. 2905.

In ejectment plaintiff relying upon tax proceedings for title held not to have shown that lot included property along lake shore or that plat should be reformed to include such property. Rahn v. W., 190M508, 252NW432. See Dun. Dig. 9486.

9569. May remove crops.

176M37, 222NW292.

9572. Mortgagee not entitled to possession.

An assignment of rents, contained in a real estate mortgage, for the purpose of paying taxes and insurance on the property in case of the failure of the mortgagor or his grantees to pay the same, is held valid, following Cullen v. Minnesota L. & T. Co., 60M6, 61NW818. 178M 150, 226NW406.

The assignee of the rents was entitled to recover same from a tenant of one who acquired title to the property subject to the assignment. 178M150, 226NW406.

Mortgagor is entitled to rents and profits prior to foreclosure, and until the period of redemption has expired after foreclosure, and on the foreclosure of a second mortgage any right of the second mortgagee to have rents applied on the prior liens terminated, and the mortgagor was entitled to the rents and profits during the period of redemption. 179M571, 229NW874.

This section does not deprive mortgagee of former recourse to equitable remedy of a receivership to protect security. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6456(38).

After foreclosure of mortgage on instalment, mortgage and all its covenants, including that to pay taxes, remain in full force and mortgagee is entitled under assignment of rents as part of security to collect rents to apply upon delinquent taxes, even those accrued at time of foreclosure for instalment. Peterson v. M., 189M98, 248 NW667. See Dun. Dig. 6227n, 26.

Provision of real estate mortgage assigning rents to mortgagee to reimburse him if he is compelled to pay taxes, maintain insurance, and make necessary repairs on mortgaged property, held valid. Mutual Ben. Life Ins. Co. v. C., 190M144, 251NW129. See Dun. Dig. 6230.

A mortgage of land is no longer a conveyance, but creates only a mere lien or security. Hatlestad v. M., 197M640, 268NW665. See Dun. Dig. 6145.

9573. Conveyance by mortgagor to mortgagee.

Craig v. B., 191M42, 254NW440.

Notwithstanding this section equity may scan a conveyance by mortgagor to mortgagee, and if the transaction is fair it will be given effect as a conveyance. 179 M73, 228NW340.

A building contract, warranty deed, and a contract for deed held a conditional sale, not an equitable mortgage. Westberg v. W., 185M313, 241NW315. See Dun. Dig. 6153.

There is no longer a presumption that a transfer by a mortgagor to his mortgagees is given as further security or as a new form of security, and a mortgagor may eliminate his title by conveying directly to mortgagee.

McKinley v. S., 188M325, 247NW389. See Dun. Dig. 6150, 6166, 6250.

Evidence held to show conveyance to plaintiff and contract by him and wife to reconvey was equitable mortgage. Jeddeloh v. A., 188M404, 247NW512. See Dun. Dig. 6154, 6157.

There no longer is a presumption that a conveyance between a mortgagor and a mortgagee is intended as further security, yet equity will scan such a transaction with jealous care to see that no unconscionable advantage is taken of the mortgagor. O'Connor v. S., 190M177, 251NW180. See Dun. Dig. 6146.

If mortgagee (a) oppressed mortgagor or took undue advantage of him, (b) if mortgagee paid an inadequate consideration for conveyance, or (c) if parties orally agreed that such a conveyance was to be merely additional security for mortgage indebtedness, equity will decree that an absolute deed from a mortgagor to a mortgagee and a contract for deed back is additional security merely. Id. See Dun. Dig. 6146.

Mortgagee, by merely advising mortgagor of his intention forthwith to foreclose, did no more than state that he would insist upon his legal right, and did not thereby so oppress mortgagor as to render an absolute deed from him to the mortgagee and a contract for deed back ineffective according to their terms. Id. See Dun. Dig. 6146.

9574. Action to declare mortgage—Limitation.

Craig v. B., 191M42, 254NW440.

9576. Notice to terminate contract of sale—Etc.

Laws 1931, c. 173, legalizes proceedings under this section where mortgage registration tax has not been paid.

1. In general.

Where contract terminated, unpaid installments cannot be recovered. 176M601, 224NW157.

Having procured judgment for cancellation of contract, vendor could not proceed for specific performance. 177M79, 224NW464.

One borrowing money and giving deed and taking back a contract of sale enters into a "mortgage" which cannot be cancelled. Sanderson v. E., 182M256, 234NW 450. See Dun. Dig. 6154, 10091.

Certain timber permits *costrued as being conditioned* upon the payment for the timber on the date therein specified for payment, and not to give the grantee the right thereafter to enter upon the land and remove the timber without making payment therefor. Northern Lumber Co. v. L., 182M89, 233NW593. See Dun. Dig. 10091(18).

After a cancellation, nothing remains of the contract upon which the remedy of rescission can operate. Olive v. T., 182M327, 234NW466. See Dun. Dig. 10091.

In an unlawful detainer action, there was no default justifying a notice of cancellation. Mattson v. G., 183M 580, 237NW588. See Dun. Dig. 10091.

Vendor upon cancellation of executory land contract recovers the land and can retain payments made, but cannot recover for installments not paid. Hoyt v. K., 184M154, 238NW41. See Dun. Dig. 10091(51).

A vendor and owner of farm land, on cancelling an executory contract for its sale and conveyance, is entitled to possession of the land and growing crops. Roehrs v. T., 185M154, 240NW111. See Dun. Dig. 10091 (49).

A vendor, in a contract for deed, whose interest has been sold at sheriff's sale, may, before the expiration of the time for redemption, terminate the contract by serving the statutory 30 days' notice upon the defaulting vendee; it not being necessary to serve the notice upon the purchaser at the sheriff's sale. W. T. Bailey Lumber Co. v. H., 185M251, 240NW666. See Dun. Dig. 3540, 6398, 10091.

A judgment against the vendee for an unpaid installment on a contract for deed will be canceled and discharged of record where contract is canceled for a default in subsequent installment. Des Moines Joint-Stock Land Bank v. W., 185M476, 241NW592. See Dun. Dig. 10091(51).

Evidence held to show that vendors lawfully and by proper procedure cancelled land contract by notice, as against claim of confidential relationship and agreement to execute new contract. Peterson v. S., 188M272, 247 NW6. See Dun. Dig. 10091.

Where mortgagor to state deeded land to it and took contract back and later conveyed property to another, contract was valid and could be terminated on 30 days' notice. McKinley v. S., 188M325, 247NW389. See Dun. Dig. 6150, 6166, 10091.

Evidence of default in form of testimony in regard to book entries, held sufficient to go to jury as against any objections made by defendant. Gruenberg v. S., 188 M568, 248NW724. See Dun. Dig. 10091.

Acceptance of installment held not waiver of proceeding to terminate contract for default in falling to pay mortgage. Swanson v. M., 189M158, 248NW727. See Dun. Dig. 10091.

Evidence held to support finding that vendors did not agree to extend time or waive default. Id.

Laws 1927, c. 222, §2, does not apply where contract has been voluntarily surrendered as distinguished from canceled pursuant to statutory procedure for so doing. Craig v. B., 191M42, 254NW440. See Dun. Dig. 10091.

A deed of real estate absolute in form, followed by grantee's contract to resell to one of grantors, having properly been found to have been security for a debt, and so a mortgage, this section has no application. Stipe v. J., 192M504, 257NW99. See Dun. Dig. 10091.

Under brokerage contract providing that real estate agent would receive certain commission for execution of a contract for a deed and a certain amount as commission in event monthly payments specified were made and a large payment on a certain date, agent was entitled to full compensation where monthly payments were not made as specified and large payment was not made on date provided, being later paid by assignee of vendee, vendors making no attempt to cancel contract on account of default. Stevens v. D., 193M146, 258NW147. See Dun. Dig. 1147, 1827.

Judgment for vendor in unlawful detainer was res judicata in action to recover purchase money paid on theory that vendor repudiated contract for deed. Herreid v. D., 193M618, 259NW189. See Dun. Dig. 5161, 5162, 5163.

Complaint held to state facts sufficient to constitute a cause of action for cancellation of land contract for default in payment of installment. Madsen v. P., 194M 418, 260NW510. See Dun. Dig. 10091.

2. Notice to terminate.

A vendee of real estate who acquiesces in a statutory cancellation by notice of his contract, and surrenders possession accordingly, is estopped from thereafter questioning the validity of the notice on technical grounds. Olive v. T., 182M327, 234NW466. See Dun. Dig. 10091.

An executory contract of sale of real property gives the vendee the equitable title in fee. The proceeding for forfeiture is in the nature of a strict foreclosure of the vendee's interest, and no right of redemption survives the 30 days' notice. Minn. Bldg. & Loan Ass'n v. C., 182 M452, 234NW872. See Dun. Dig. 10091.

A contract in the form of an executory contract of sale, if made to secure a loan, is a mortgage. If a mortgage, the vendee's title can be extinguished only by foreclosure and the lapse of the statutory period of redemption. Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW 872. See Dun. Dig. 6152, 10091.

A building and loan association organized under §7748 et seq., including the amendments of 1919 and 1925, cannot make a loan in the form of an executory contract of sale and have a forfeiture or strict foreclosure on 30 days' notice pursuant to Gen. Stat. 1923, §9576. Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872. See Dun. Dig. 10091.

Notice of cancellation of contract served upon vendee one day before discharged as sane by decree of probate court, was valid, there being no guardian and vendee being on parole. McKinley v. S., 188M325, 247NW389. See Dun. Dig. 4519, 4531, 10091.

A recorded contract for sale of real property, which has been terminated by cancellation, is a cloud upon vendor's title. Union Central Life Ins. Co. v. P., 190M 360, 251NW911. See Dun. Dig. 8033, n. 75.

Where executory contract is, in fact, mortgage, building and loan association, except in cases specified in §7757, as amended, has no right to cancel by giving 30 days' notice. Op. Atty. Gen., Mar. 6, 1933.

Notice of cancellation served less than 30 days before passage of Laws 1933, c. 422, was ineffective to terminate contract without court order. Op. Atty. Gen., May 15, 1933.

Register of deeds is not required to record contract for deed which is not properly witnessed nor acknowledged, though attached by attorney to notice of cancellation of contract and other documents in connection therewith. Op. Atty. Gen., July 17, 1933.

3. Exclusiveness of remedy.

Statute suspending remedy of vendor to terminate land contract by notice did not prevent equity action to cancel such contract. Madsen v. P., 194M418, 260NW510. See Dun. Dig. 10091.

4. Action for damages.

Cancellation of contract under this section precludes subsequent suit for damages for false representations inducing contract. 181M169, 231NW826.

If vendee wrongfully remains in possession and harvests crops, the measure of the vendor's damage is the value thereof, plus the value of the use of the land during the period of the vendee's subsequent wrongful possession. Roehrs v. T., 185M154, 240NW111. See Dun. Dig. 2567, 10091.

Measure of vendor's damages where vendee wrongfully remains in possession after cancellation of executory contract. 16MinnLawRev725.

9576-1. Cancellation of contracts suspended.—Cancellation of contracts for deed made prior to April 21, 1933, pursuant to Mason's Minnesota Statutes of 1927, Section 9576, and the acts amendatory thereof and supplemental thereto are hereby suspended from and after the passage of this act upon the conditions hereinafter provided. (Act Apr. 21, 1933, c. 422, §1; Mar. 26, 1935, c. 68, §1; Mar. 2, 1937, c. 58, §1.)

Preamble to act.
Whereas, there exists in the State of Minnesota a public economic emergency of such force and effect as to seriously interfere with the ordinary performance of contracts; and
Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth has created an emergency of such nature that justifies and validates legislation for the extension of the time of performance by vendees of contracts for the conveyance of real property; and
Whereas, the welfare of the people demands that the State, pursuant to its police power, interfere for a limited time with a literal enforcement of the law regarding contracts for deed. Now, Therefore—
Statute suspending remedy of vendor to terminate land contract by notice did not prevent equity action to cancel such contract. Madsen v. P., 194M418, 260NW510. See Dun. Dig. 10091.

Service of notice of cancellation less than 30 days before passage of this act was ineffective to terminate contract without a court order. Op. Atty. Gen., May 15, 1933.

Laws 1935, c. 68, suspending foreclosure of contracts of deed, does not apply to state lands sold under certificate of sale. Op. Atty. Gen. (415m), May 25, 1935.

9576-2. Notices not to be effective.—No notice to terminate any contract for the conveyance of real estate or any interest therein for a breach of condition contained in such contract shall be effectual to divest title and/or possession to the vendee or those claiming under him, or to reinvest title and/or possession in the vendee of those claiming under him, during the emergency herein declared except as hereinafter provided.

When default is made in the conditions of any contract for the conveyance of real estate, or any interest therein, whereby the vendor has a right to terminate the same, he may do so by serving upon the purchaser, his personal representatives or assigns, either within or without the state, a notice specifying the conditions in which default has been made, and stating that at a time specified, not less than 40 days after the service of said notice, he will apply to said court for an order adjudging said contract terminated, unless prior thereto the purchaser, his personal representatives or assigns, shall comply with and perform the conditions then in default and pay the costs of service. Such notice must be given notwithstanding any provisions in the contract to the contrary and shall be served within the state in the same manner as a summons in the district court, and if served without the state, in the manner provided in Mason's Minnesota Statutes of 1927, Section 9234.

Provided, however, that if service is made under Section 9234, and the premises described in the contract are actually occupied, then in addition thereto, and within 10 days after service on the vendee, a copy of such notice shall be served upon the person in possession of said premises; and provided further, that in case of such service by publication as herein provided, the said notice shall specify the conditions in which default has been made and stating that at a specified time, not less than 90 days after the first publication of said notice, he will apply to said court for an order adjudging said contract terminated, unless prior thereto the purchaser, his personal representatives or assigns, shall comply with and perform the conditions then in default and pay the costs of service.

If within the time mentioned in said notice within which the vendee, his personal representatives or assigns must perform the conditions in default, the vendee complies with such conditions and pays the costs of service, the contract shall remain in full force and effect; but if the vendee fails or neglects to perform the conditions in default within the time mentioned in said notice for such performance and to pay the costs of service, and fails to serve written objections to the termination of such contract upon the vendor, within 15 days after service of notice on the vendee, the court shall, upon motion of the vendor, and proof of service of said notice, and in the absence of any appearance upon behalf of the vendee, make its order adjudging such contract terminated and said contract shall, thereupon forthwith, be and become finally terminated.

The vendee may, within 15 days after the service of said notice, serve upon the vendor, or his attorney, written objections to the making of any order adjudging the contract terminated and any legal or equitable defenses claimed by him; and if it shall be made to appear to the court upon the application and hearing for an order adjudging the termination of said contract, that the vendee has, in addition to the payment of taxes, insurance and interest, if any, made and paid for valuable improvements upon the premises, or paid upon the contract price of the premises whether to the vendor or to the owner of any incumbrance subject to which the contract was made, or which the contract provides that the vendee, his successors or assigns shall pay, or to both, a sum or sums equal to a substantial part of the original contract price and that the vendor's interest is reasonably secure, the court may, on taking into consideration the reasonable value of the income of such property, or, if the property have no income, then the reasonable rental value thereof, the efforts and ability of the vendee to pay, and all the facts and circumstances of the case, by order and upon such terms and conditions as to it appear just and equitable, extend the time in which the vendee may perform the conditions of the contract in default, not to exceed one year from the date of the service of notice of termination on the vendee and in no event beyond March 1st, 1939.

In case the vendee, in addition to taxes, insurance and interest, has paid upon the total contract price and/or for improvements upon the real estate an amount equal to or exceeding 30 per cent of the value of the real estate, or has made substantial improvements thereon, in cost or value at the time of hearing equal to or exceeding 30 per cent of the value of the real estate, a showing of such facts shall be prima facie evidence that substantial improvements have been made or substantial payments made.

If the vendee shall fail to perform the conditions in default, or any of them, as required and directed by the court to be performed, said contract shall forthwith be and become terminated and the vendor may thereupon apply to the court for an order adjudging said contract terminated, on giving at least 10 days' written notice of such application to the vendee, served in the manner herein provided for service of the notice of application for an order terminating the contract. If it shall be made to appear to the court, upon a hearing on said application, that the vendee has defaulted in performing such conditions, the court shall make an order declaring said contract terminated and said contract shall thereupon forthwith be and become finally terminated. (Act Apr. 21, 1935, c. 422, §2; Mar. 26, 1935, c. 68, §2; Apr. 23, 1935, c. 240, §1; Mar. 2, 1937, c. 58, §2.)

Filing and serving of notice to cancel contract for deed does not constitute cancellation of contract where proceedings are dismissed before completion thereof, contract remaining in force until terminated by proper order of court. Killmer v. N., 196M420, 265NW293. See Dun. Dig. 10091.

Denial of application for further extension was proper where affidavit of defendant simply stated financial situation to be such that it was impossible to make payment required by contract. Prudential Ins. Co. v. D., 196M 594, 265NW809. See Dun. Dig. 6392.

Trial court did not err in consolidating action for cancellation of contract brought by appellant and actions to enjoin cancellation proceedings and for specific performance brought by respondents, and in granting specific performance. Schultz v. U., 199M131, 271NW249. See Dun. Dig. 8788, 10091.

9576-3. Order to be recorded.—A copy of any order of the court made pursuant to this act may be recorded with the register of deeds of the county wherein the real estate is situated. (Act Apr. 21, 1933, c. 422, §3; Mar. 26, 1935, c. 68, §3; Mar. 2, 1937, c. 58, §3.)

9576-4. Application of act.—The provisions of this act shall not apply to leaseholds. This act shall ap-

ply only to contracts for deed made prior to April 21, 1933 but shall not apply to contracts made prior to the passage of this act which shall hereinafter be renewed or extended for a period ending more than one year after the passage of this act; neither shall this act apply in any way which would allow a stay, postponement or extension to such time that any right might be adversely affected by a statute of limitation. The provisions of this act shall all apply to proceedings for cancellation of contracts for deed wherein the district court has previously granted one or more extensions of time for the performance of the conditions in default, including proceedings where the extended period has expired but no final court order has been made adjudging such contract terminated, pursuant to Laws 1933, Chapter 422 and Chapter 68, Laws 1935, and shall also apply to actions and proceedings now pending or hereafter commenced under said acts.

Upon the application of either party prior to the expiration of the extended period, as proviedd in this act, and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms in such manner as the changed circumstances and conditions may require. (Act Apr. 21, 1933, c. 422, §4; Mar. 26, 1935, c. 68, §4; Apr. 23, 1935, c. 240, §2; Mar. 2, 1937, c. 58, §4.)

When, under act of 1933, a final order canceling contract has not been made before act of 1935 took effect, a notice of extension under latter is effective if served prior to May 1, 1935, though not filed until next day. Prudential Ins. Co. v. D., 196M594, 265NW809. See Dun. Dig. 6392.

9576-5. Trial or hearing.—The trial of any action, hearing or proceeding mentioned in this act shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during the vacation of the court. (Act Apr. 21, 1933, c. 422, §5; Mar. 26, 1935, c. 68, §5; Mar. 2, 1937, c. 58, §5.)

9576-6. Termination of emergency.—The emergency herein declared to exist shall be deemed to be terminated whenever the governor of this state shall by proclamation declare that the emergency is at an end or whenever in fact the emergency shall have terminated and this Act shall remain in effect no longer than March 1st, 1939. (Act Apr. 21, 1933, c. 422, §6; Mar. 26, 1935, c. 68, §6; Mar. 2, 1937, c. 58, §6.)

9576–7. Definitions.—The terms "vendor" and "vendee" shall be construed to include the plural and the survivor or survivors, the heirs, executors, administrators, assigns, or successors thereof. (Act Mar. 26, 1935, c. 68, §7; Mar. 2, 1937, c. 58, §7.)

MISCELLANEOUS ACTIONS

9579. Action against cotenant.

Property belonging to heirs cannot be considered a homestead where only one of heirs resides thereon. Op. Atty. Gen. (232d), June 6, 1935.

9580. Nuisance defined—Action.

See notes under St. Peter City Charter, Appendix No. 3, post.

Village ordinance prohibiting the keeping of dog kennels without reference to whether such kennels created a nuisance held invalid. 173M61, 216NW535.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

The findings do not show that the obstruction of the water was of such character as to constitute a nuisance. Pahl v. L., 182M118, 233NW836. See Dun. Dig. 7240(52).

Finding that stove factory was a nuisance sustained. Heller v. A., 182M286, 234NW316. See Dun. Dig. 7255.

Record sustains a finding that the district in which a funeral home is proposed to be established is not strictly residential, and that such establishment is not a nuisance. O'Malley v. M., 182M294, 234NW323. See Dun. Dig. 6525, 7255.

Odors suffered by farmer from sewage dumped into stream by city and canning company constituted a nuisance. Johnson v. C., 188M451, 247NW572. See Dun. Dig. 7244.

A nuisance does not rest upon degree of care but rather upon danger, indecency, or offensiveness existing or resulting even with best of care. Id. See Dun. Dig. 7248.

Owner of dwelling is not estopped to restrain maintenance of funeral home in vicinity of his residence by fact that she sought to sell her own residence to defendant for purpose of funeral home. Gunderson v. A., 190M245, 251NW515. See Dun. Dig. 3217, n. 7.

Under doctrine of Sheehan v. Flynn, 59Minn436, 61NW 462, 26LRA632, surface water is regarded as a common enemy which a landowner may, within reason, appropriate to his own use or may expel from his land as he chooses. Bush v. C., 191M591, 255NW256. See Dun. Dig. 10161, 10165.

Statute has no effect against state or its officers and agents engaged in a lawful undertaking under its sovereign authority. Nelson v. M., 192M180, 256NW96. See Dun. Dig. 8831.

Contractor constructing bridge for highway department was an agency of the state and was not liable as for a private nuisance for damage to adjoining property as a result of necessary blasting, not being guilty of negligence nor trespass. Id. See Dun. Dig. 8831, 8846b.

In face of a finding that damage to the plaintiff is due to backing up of waters of river and that no more water is discharged upon his property than would be if a bridge were constructed instead of a culvert, we cannot disturb court's conclusions favorable to village and denying plaintiff relief on account of the overflow of banks of a tributary of that stream which he claims that defendant has wrongfully obstructed. Nichols v. V., 192M 510, 257NW82. See Dun. Dig. 7253.

Section 5015-4 giving railroad and warehouse commission authority to require auto transportation company to maintain suitable depots, does not oust a city or village of jurisdiction to enjoin maintenance of a depot if it constitutes a nuisance. Village of Wadena v. F., 194 M146, 260NW221. See Dun. Dig. 6752.

A truck warehouse and depot, located in Wadena, Minn., a block and a half from main business street and within a block of a public garage, a similar truck depot, a large warehouse, a furniture store and undertaking parlor, and on street running directly from railroad depot to main business street, is not a nuisance, either public or private. Id. See Dun. Dig. 7244.

It is only when obstruction becomes inconsistent with public use of a street that it becomes a nuisance. Heidemann v. C., 195M611, 264NW212. See 1310½. See Dun. Dig. 7240.

A city has power of eminent domain in requiring necessary rights to empty sewerage into lake outside corporate limits subject to laws respecting nuisances and health regulations. Op. Atty. Gen., June 20, 1933.

Whether or not city may declare keeping of bees a public nuisance is a question for judicial determination in each particular case. Op. Atty. Gen. (59a-32), May 23, 1934.

Injunction may be brought against places selling liquor illegally. Op. Atty. Gen. (494b-21), Apr. 30, 1936.

Keeping of cows within village limits is not a nuisance per se. Op. Atty. Gen. (477b-20), July 31, 1936.

Prohibiting the keeping of turkey ranches within a small village, but permitting families to have a few chickens or turkeys for their own use, would be valid if turkey ranches were in fact a nuisance. Op. Atty. Gen. (477b-20), Nov. 5, 1936.

Nuisances maintained by tenants by throwing of refuse on property forfeited to state for delinquent taxes may not be abated in proceedings against the state or tax commission, but may be corrected by criminal or civil proceedings against tenants. Op. Atty. Gen. (133b-2), May 22, 1937.

Village may enact ordinance prohibiting undertaking establishment in purely residential district. Op. Atty. Gen. (477b-20), June 21, 1937.

9581. Fence, etc., when nuisance.

174M457, 219NW770.

9584. Waste pending year for redemption—Injunction.

It is waste for a mortgagor in possession following foreclosure sale not to use current rents to the extent reasonably needed to keep the property tenantable. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6459.

Waste will ordinarily not be enjoined unless of such character that it may so impair the value of the property as to render it insufficient or of doubtful sufficiency as security for the debt. Gardner v. W., 185M147, 240 NW351. See Dun. Dig. 6459.

9584-1. Cultivation of lands sold under mortgage foreclosures or execution—petitions.—Where any mortgage upon farm lands has been foreclosed or farm lands have been sold upon execution and the period of redemption shall expire between April 15th and October 1st of any year and it is made to appear to the Court that said lands may not be farmed or

cultivated during said year, the mortgagor, or the owner in possession of the mortgaged premises or any one claiming under such mortgagor, or any one liable for the mortgage debt at the time of the making of the application, may apply to the District Court of the County wherein such foreclosure proceedings were held, or are pending, by filing in said Court, a verified petition setting forth the claims of the applicant of his interest in said land or in the crops that may be raised thereon in the year in which said period of redemption expires and setting forth that said land can not be farmed or cultivated during said year except under order of the Court and that he is unable to redeem said lands at the time the year for redemption will expire, and offering to farm and cultivate said land during said year upon such terms as the Court shall find to be just and equitable. (Apr. 24, 1937, c. 408, §1.)

9584-2. Service of notice of petition—hearing.—Such petition and notice of motion for hearing thereon shall be served as now provided for the service of a summons in a civil action upon the mortgagee or execution creditor if he is the owner of the Sheriff Certificate of Sale of record and upon each creditor of the mortgagor holding a lien of record upon the mortgaged premises; if said Certificate has been transferred of record, then upon the owner of the Sheriff Certificate of Redemption or execution sale appearing of record. If the owner of record is the original mortgagee or the execution creditor, then service may be made by registered mail upon such mortgagee or execution creditor or upon his attorney foreclosing said mortgage or the attorney whose name appears on the execution as attorney for the execution creditor in the case of an execution sale.

The hearing upon said motion shall be not less than 10 days nor more than 20 days after the service of such notice of motion. (Apr. 24, 1937, c. 408, §2.)

9584-3. District Court to have jurisdiction.—When service has been made as provided in the previous section of such notice and petition before the time for redemption has expired, the District Court of the County in which said lands are situated shall have jurisdiction and equitable power to provide for the cultivation of said lands during said year as herein provided upon such terms as the Court shall find to be just and equitable, and prevent irreparable loss to the parties interested. (Apr. 24, 1937, c. 408, §3.)

9584-4. Court to determine fair rental value.—Upon such hearing, if the Court shall find that the allegations of the petition are true and that said lands may not be farmed or cultivated during the year in which the period of redemption expires, the Court shall determine the fair rental value of said premises from the time the period of redemption expires until the 1st day of October in said year assuming that said land is farmed in a good and husbandlike manner and shall determine what rent or share shall be paid to the holder of the Sheriff Certificate of foreclosure sale or execution sale during said extended period and shall provide for the giving of security by the applicant or tenant for the payment of such rents or share of the crops or income from said lands, and the Court may require the parties to execute a lease or leases to carry out the order of the court, the lease by its terms to expire on October 1, of the year in which made; but the tenant shall have a reasonable time thereafter to remove from the land his crops grown thereon and other articles of personal property owned by him. (Apr. 24, 1937, c. 408, §4.)

9584-5. Court may grant certain rights—Plowing.—The Court may further grant to the owner of the Sheriff Certificate of Redemption or Certificate of Execution Sale, the right to plow upon said premises after the crops have been removed or should have been removed from said premises. (Apr. 24, 1937, c. 408, §5.)

9584-6. Application of act.—This act shall not be construed as extending the period of redemption but as granting relief in equity to the interested parties and to prevent irreparable loss and to fully compensate the owner of the Sheriff Certificate for the use and occupation of the lands granted pursuant to this act. (Apr. 24, 1937, c. 408, §6.)

9585. Trespass—Treble damages.

Verdict for $350 held not excessive for cutting of trees. Hansen v. M., 182M321, 234NW462. See Dun. Dig. 2597, 9696(33).

9590. Action to determine boundary lines.

Establishment of center of section of land. 172M333, 215NW426.

In action to determine boundary line between city lots, evidence held to show that plaintiffs were estopped to deny ownership of land upon which building existed. Lobnitz v. F., 186M292, 243NW62. See Dun. Dig. 1083.

Testimony of county highway engineer and surveyor acquainted with locality and reputed corners and quarter corners of section involved, held sufficient to admit his survey in evidence, and upon which court could find true boundary line between farms of plaintiff and defendants. Lenzmeier v. E., 199M10, 270NW677. See Dun. Dig. 1081.

Evidence held not such as to warrant a finding that owners of two farms had ever established a boundary line by practical location, nor that defendants by adverse occupation had acquired title to any of plaintiff's land. Id. See Dun. Dig. 1083.

Words "about," "approximately," and "more or less," in connection with courses and distances, may be disregarded if not controlled or explained by monuments, boundaries, and other expressions of intention, and may be given meaning and effect when so controlled and explained. Ingelson v. O., 199M422, 272NW270. See Dun. Dig. 1060.

In division of dried-up bed of meandered lake, if parties cannot agree, action in district court to determine boundary lines is only remedy. Op. Atty. Gen., May 16, 1932.

9591. Pleadings—Additional parties.

Title by adverse possession may be proved under a general allegation of ownership. 171M488, 214NW283.

9592. Judgment—Landmarks.

Action contemplates the settlement of title and a judgment is res adjudicata in a subsequent action in ejectment. 171M488, 214NW283.

In a suit to establish a boundary line, evidence conclusively shows an estoppel in pais in favor of defendants. Liedberach v. P., 199M554, 273NW77. See Dun. Dig. 1083.

CHAPTER 83

Foreclosure of Mortgages

BY ADVERTISEMENT

9602. Limitation.

½. In general.

After foreclosure sale remedy on mortgage as a security is exhausted and assignment in mortgage of rents to pay taxes was terminated. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6465.

After foreclosure sale rights of parties are determined exclusively by statute. Gardner v. W., 185M147, 240NW 351. See Dun. Dig. 6371.

Purchaser at mortgage sale is not entitled to rents accruing during the period allowed for redemption to pay taxes subject to which he bid in the property, though the mortgage expressly assigned rents to pay taxes. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6371.

1. Foreclosure in general.

The measure of a mortgagor's damage for a premature foreclosure is not the value of the property in excess of the debt but only the value of the use to the extent that the mortgagor has been deprived thereof by the wrong done. Bowen v. B., 185M35, 239NW774. See Dun. Dig. 6476.

Mortgagor of real estate has an equity of redemption which may not be terminated except by foreclosure or by lawful surrender of equity of redemption. Stipe v. J., 192M504, 257NW99. See Dun. Dig. 6215.

Court of equity could order mortgage foreclosure set aside, provided mortgagor executed renewal notes and