

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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CHAPTER 61

Powers

8107 to 8167. [Repealed.]

Repealed. Laws 1943, c. 322, §1.
Classification of some powers of appointment. 40 Mich. Law Rev. 337.

8167-101. Common law of powers is law of state—Exceptions.—The common law of powers is hereby declared to be the law in this state, except as modified by statute. (Act Apr. 6, 1943, c. 322, §2.)
[502.62]

8167-102. Donor may create power of appointment—How.—A donor may create a power of appointment only by an instrument executed with the same formalities as one which would pass title to the property covered by the power. (Act Apr. 6, 1943, c. 322, §3.)
[502.63]

8167-103. Donee may exercise power of appointment—How.—A donee may exercise a power of appointment only by an instrument executed with sufficient formalities to pass title to the property covered by the power. When a power of appointment is exercisable only by will, a donee may not exercise it by deed. When a power of appointment is exercisable by deed, a donee may exercise it by will. (Act Apr. 6, 1943, c. 322, §4.)
[502.64]

8167-104. Power is not void—When.—A power of appointment authorized to be exercised by an instrument which would not be sufficient to transfer title to the property covered by the power is not void, but its execution must conform to the provisions of this chapter. When the power of appointment directs that formalities in addition to those prescribed in this chapter be observed in the execution of the power, the direction may be disregarded. (Act Apr. 6, 1943, c. 322, §5.)
[502.65]

8167-105. Who may exercise power of appointment.—Any donee, except a minor, who would be capable of conveying the property covered by the power may exercise a power of appointment. (Act Apr. 6, 1943, c. 322, §6.)
[502.66]

8167-106. Power of appointment when vested in two or more.—When a power of appointment is vested in two or more persons, all must unite in its exercise; provided, if one or more of such persons die, become legally incapable of exercising the power, or renounce such power, the power may be exercised by the others. (Act Apr. 6, 1943, c. 322, §7.)
[502.67]

8167-107. Consents must be in writing.—When the consent of the donor, or of any other person is required by the donor for the exercise of a power of appointment, this consent must be in writing. To entitle the instrument exercising the power to be recorded, the signature of any person consenting must be acknowledged; and, if the consent be given in a separate instrument, that instrument must be attached to the instrument exercising the power. If any person whose consent is required dies or becomes legally incapable of consenting, the donee may exercise the power with the consent of the other persons whose consent is required. If there be no such person, the donee may exercise the power in the manner provided by section 4, unless the donor has manifested a contrary intent in the instrument creating the power. (Act Apr. 6, 1943, c. 322, §8.)
[502.68]

8167-108. Intent of power.—Unless a contrary intent is manifest in the instrument creating the power, the donee may appoint all of the property to one or more of the objects to the exclusion of the others. A direction to appointment "to," "among," or "between" two or more objects is not a sufficient manifestation of a contrary intent; provided, that when the donee is prevented from excluding any object by the instrument creating the power, each object must receive an equal share, unless the instrument creating the power manifests an intent that some other division may be made. (Act Apr. 6, 1943, c. 322, §9.)
[502.69]

8167-109. Powers of creditor of donee.—When a donee is authorized to appoint to himself all or part of the property covered by any power of appointment, a creditor of the donee may subject to his claim all property which the donee could then appoint to himself only to the extent that other property available for the payment of his claim is insufficient for such payment. When a donee has exercised such a power by deed, the rules relating to fraudulent conveyances shall apply as if the property transferred to the appointee had been owned by the donee. When a donee has exercised such a power by will in favor of a taker without value or a creditor, a creditor of the donee, or of his estate, may subject such property to the payment of his claim only to the extent that other property available for the payment of the claim is insufficient for such payment. (Act Apr. 6, 1943, c. 322, §10.)
[502.70]

8167-110. Effect of deed or will.—When the donee of a power of appointment makes a deed or a will purporting to transfer all of his property, the property covered by the power is included in such transfer unless it be shown that the donee did not so intend. (Act Apr. 6, 1943, c. 322, §11.)
[502.71]

8167-111. Conveyance.—A deed either creating or exercising a power of appointment over real property is a conveyance within the meaning of Mason's Minnesota Statutes of 1927, Section 8195. A will appointing real property is a devise within Mason's Supplement 1940, Section 8992-34. (Act Apr. 6, 1943, c. 322, §12.)
[502.72]

8167-112. Right of alienation suspended—When.—The period during which the absolute right of alienation may be suspended by any instrument in execution of a power is to be computed from the time of the creation of the power and not from the date of the instrument, except that in the case of a general power presently exercisable, the period is to be computed from the date of the instrument. (Act Apr. 6, 1943, c. 322, §13.)
[502.73]

8167-113. Advancements.—Every estate or interest given to a descendent of the donee by the exercise of a power is an advancement to such descendent to the same extent that a gift of property owned by the donee would be an advancement. (Act Apr. 6, 1943, c. 322, §14.)
[502.74]

8167-114. Power passes to assignee.—Under a general assignment for the benefit of creditors, a power of appointment in the assignor by which he is authorized to appoint the property to himself passes to the assignee. (Act Apr. 6, 1943, c. 322, §15.)
[502.75]

8167-115. Power of revocation.—When the grantor in a conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned. (Act Apr. 6, 1943, c. 322, §16.) [502.76]

8167-116. Power if part of security.—When a power to sell lands is given to the grantee in a mortgage, or other conveyance intended to secure the payment of money, the power is a part of the security and vests in, and may be executed by, any person who

becomes entitled to the money so secured to be paid. (Act Apr. 6, 1943, c. 322, §17.) [502.77]

8167-117. Absolute power of disposition.—Where an absolute power of disposition is given to a grantee or devisee of real or personal property and no reversion, remainder, or gift in default of the property undisposed of by the grantee or devisee is expressed in the instrument creating the power, the grantee or devisee is the absolute owner of the property. (Act Apr. 6, 1943, c. 322, §18.) [502.78]

CHAPTER 62

Landlords and Tenants

8186. Distress for rent.

1. The relation in general.

Record held not to support contention of undisclosed principal in lease. *S. T. McKnight Co. v. Central Hanover Bank & Trust Co.*, (CCA8), 120F(2d)310.

By accepting a regular operator's contract and acquiescing in suspension of rental provisions in order to regain possession of oil station in possession of bankrupt, under agreement with trustee, lessor waived any standing in state court in an action for an accounting to challenge validity of new arrangement because not approved by federal court. *Range Ice & Fuel Co. v. B.*, 209M260, 296NW407. See Dun. Dig. 5409.

One occupying premises under an oral lease without any agreement as to length of term and paying rent the first day of each month is a tenant from month to month. *Johnson v. Theo. Hamm Brewing Co.*, 213M12, 4NW(2d) 778, 11NCCA(NS)316. See Dun. Dig. 5375(79).

In action by conditional vendor of furniture to a tenant against landlord for conversion, evidence held sufficient to sustain finding that landlord caused furniture to be removed from house after it had been abandoned there by tenant and that he was guilty of conversion. *Borg & Powers Furniture Co. v. Reiling*, 213M539, 7NW(2d)310. See Dun. Dig. 5372.

A tenancy from year to year, except as to statutory requirements of notice to quit, is substantially a tenancy at will. *State Bank of Loretto v. Dixon*, 214M9, 7NW(2d)351. See Dun. Dig. 5378.

Though will specifically prohibited subletting or occupancy of certain rooms in testator's dwelling during absence of daughter of testator, only effect of entry and continued occupancy of room by a third person with consent of guardian of daughter was to create a tenancy at will under the rule that such tenancies arise by implication of law where one enters under a void lease. *Martin v. Smith*, 214M9, 7NW(2d)481. See Dun. Dig. 5377.

2. Abandonment.

Where tenant of farm disappeared and left farm in care of his hired man, and in the meantime landlord died leaving the land to children of the tenant, fact that owners were minors and tenant's father did not terminate the tenancy so long as hired man cared for the property, as affecting question whether mortgagee of crops could enter and take possession of them. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 5374a.

Where tenant on farm disappeared leaving hired man to care for crops, there was no abandonment of the tenancy or a termination of it until the premises were later abandoned by the hired man, as affecting title to crops and right of mortgagee thereof to take possession. *Id.*

3. Assignments and subleases.

Assignment of lease by trustees, who were under no contractual liability to lessor to carry out covenants of lease, was valid to terminate their liability as assignees of lease, notwithstanding that assignment was made to a person of no financial responsibility who had no intention to carry out lease. *S. T. McKnight Co. v. Central Hanover Bank & Trust Co.*, (CCA8), 120F(2d)310.

The words "subject to all the terms and conditions of said lease" are words of qualification and not of contract and do not impose contractual liability on an assignee to a lessor to carry out covenants of a lease. *Id.*

Assignee was bound to lessor by privity of estate only and obligated to perform covenants of lease only while in possession of premises. *Id.*

Evidence held not to establish an acceptance of rent by lessor following a sub-letting in violation of lease. *Geo. Benz & Sons v. H.*, 208M396, 294NW412. See Dun. Dig. 5406.

Evidence held sufficient to sustain finding that there was a sub-letting in violation of a lease. *Id.*

Payment of gross earnings tax by an express company does not cover property of a lessee under a 99-year lease who in turn leases the property to the express company. *State v. Fawkes*, 210M587, 299NW666. See Dun. Dig. 9570a.

A judgment in favor of hotel guest against owner of the building and the lessee jointly is not *res judicata* of a question of liability between defendants or right to contribution growing out of the violation of building code respecting construction and maintenance of two handrails on stairs. *Judd v. Landin*, 211M465, 1NW(2d) 861. See Dun. Dig. 5369.

Where both owners of hotel and their lessee contributed directly to injury of person using stairway by violating building code requiring two handrails, they were jointly and severally liable, though there was no conspiracy or joint concert of action. *Id.*

Reservation in the lease of right to collect rent, to reenter in case of default, and to enter and make repairs made agreement a sublease and not an assignment of lease, as affecting liability of lessee as "owner" for violation of the building code. *Id.* See Dun. Dig. 5406, 5408.

3½. Rents and royalties.

A decision that plaintiff is entitled to recover for unpaid room rent is within issues raised by pleadings where complaint states a cause of action for unpaid room rent and answer alleges payment by conveyance of certain real estate and other defenses relating to performance of lease by plaintiff. *Doyle v. S.*, 206M56, 288NW152. See Dun. Dig. 5477.

Where owner of two lots constructed two apartment buildings and entered into an agreement with owner of a third lot whereby owner of lots 1 and 2 would supply apartment to janitor free of charge, and owner of third lot agreed to provide space for a central heating plant and to pay one-third of cost of heating plant, its maintenance, one-third of fuel bill, and one-third of janitor's wages, owner of lots 1 and 2 to pay two-thirds of such expense, and owner of lots 1 and 2 constructed an apartment for janitor and his family on lot 1 and janitors lived there many years free of charge, and lots 1 and 2 were sold to separate parties who had full knowledge of the arrangement, the owner of lot 1 was not entitled to recover of owner of lot 2 any part of rental value of janitor's apartment. *Huhn v. R.*, 208M128, 293NW138. See Dun. Dig. 9957.

3¾. Taxes and assessments.

Tax and assessment provision of lease should be read in its entirety and in light of conduct of parties in respect to it. *S. T. McKnight Co. v. Central Hanover Bank & Trust Co.*, (CCA8), 120F(2d)310.

5. Crops, rights as to.

Fructus industriales are regarded as personalty, whether separated from the soil or not, and a tenant, as owner of crops, may remove them even after entry of a judgment in ejectment against him. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 2508.

In the absence of contract or statute, a landlord has no lien for rent on the crops grown on leasehold. *Id.* See Dun. Dig. 5419a-5436b.

6. Eviction.

Where state condemns land for a highway, owner of a house upon the land under an oral lease or a license terminable at will by owner of land is not entitled to any damages where he is permitted to remove his house, and owner of land is only entitled to damages equal to value of land itself. *State v. Riley*, 213M448, 7NW(2d)770. See Dun. Dig. 5414.

7. Improvements.

Absence of probate proceedings in estate of owner of a leasehold interest did not bar sole heir from asserting her rights to such interest, including right to remove building constructed by lessee, she having been accepted as a tenant in place of original lessee. *Justen v. O.*, 209 M327, 296NW169. See Dun. Dig. 5402.

Where owner of real property agrees with his tenant to construct a barn thereon and tenant undertakes to arrange for the performance of the promise by procuring a building contractor to do the work, the owner is not liable to the tenant for damages resulting from delay in doing the work caused by the arrangement made through the tenant, because the tenant has received the