1941 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.

Edited by
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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 their 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

performance which the parties intended and the delay is one for which tenant is solely responsible. Adolphson v. Hixon, 215M252, 9NW(2d)719. See Dun. Dig. 5368.

9. Negligence of landlord.

Liability of landlord to tenant who cut his hand on cracked porcelain handle of water faucet, held for jury. Fontaine v. J., 206M506, 289NW68. See Dun. Dig. 5368.

Where owner is sued in tort for result of negligently constructing a concealed trap on premises, evidence that some wrong of lessee rather than that of owner is cause of plaintiff's injury is admissible under a general denial, and an allegation that lessee had in lease assumed liability to indemnify lessor for any damage either to person or property due to demised premises, regardless of cause, was properly stricken. Murphy v. B., 206M537, 289 NW567. See Dun. Dig. 7574, 7578.

If negligence charged to lessor and owner of real estate amounts to construction of a concealed trap or pitfall which was known to him and is unknown to lessee, owner is liable for harm resulting to persons rightfully on premises, even though he was under no duty to make repairs. Id. See Dun. Dig. 6973.

Landlord is not liable for tenants' injuries from defective premises unless there is warranty or violation of covenant to repair, absent fraud and concealed dangers known to landlord and unknown to tenants. Mani v. E., 209M65, 295NW506. See Dun. Dig. 5369.

Owner and lessor of hotel premises who reserved no right of possession and control of hotel entrance was not liable for negligence of hotelkeeper in permitting presence of ice on foot mat in lobby entrance. Green v. E., 209M178, 295NW905. See Dun. Dig. 5369.

Whether or not a tenant is guilty of contributory negligence in descending by one of two regular stairways is a fact question where it does not appear that tenant knew that stairway she used was in fact dangerous. Heinman v. United Properties, 210M343, 298NW247. See Dun. Dig. 5369.

Whether landlord was guilty of negligence in maintaining a concrete step with crack in the middle with one side one-half inch higher than other, causing a tenant to lose high heel and fall, held for jury. Id.

A landlord is bound to exercise reasonable care to keep in repair a common stairway reserved for use of his tenants. Id.

Where premises are leased for a public or semi-public purpose, and lessor knows at time of leasing that a dangerous condition exists thereon which renders premises unsafe for use intended, lessor is liable for injuries sustained by patrons of such lessee who, upon invitation, express or implied, are admitted to such premises to make use thereof for particular purpose for which they were leased. Wood v. Prudential Ins. Co., 212 M551, 4NW(2d)617. See Dun. Dig. 5369.

General rule is that an owner who has surrendered possession to his tenant without an agreement to keep the premises in repair is not liable to his tenant or the latter's patrons or servants for injuries received on account of any disrepair or faulty construction not hidden. Id.

Where landlord undertakes to make repairs or improvements, he is liable for his negligence in making them, although he was under no obligation to do so. Id.

Number of persons entering premises leased for a public or semi-public purpose is not a determinative factor in determining liability of lessor to patrons of lessee, arising out of a dangerous condition existing on premises when leased. Id.

A change of floor level at entrance of a basement beauty shop held to present jury questions as to negligence of lessor and lessee of premises and contributory negligence of a patron. Id.

In action for injury to a child under theory of attractive nuisance in a partially vacated building, evidence held not to show the defendant as lessor had waived its right to a notice of termination of tenancy from month to month, or that such tenancy had terminated by abandonment or otherwise. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5369.

In some cases a lessor is liable for bodily harm caused to persons upon leased premises by a dangerous condition which comes into existence after lessee has taken possession, where lessor has agreed to keep premises in repair or where he has negligently attempted to make repairs, but there was no liability for an alleged attractive nuisance in form of a disconnected bar created and existing by lessee while moving into other premises. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d) 778, 11NCCA(NS)316. See Dun. Dig. 5369(40, 49), and 49 ALR1418.

It is the general rule that where a lease is silent with respect to the duty of making repairs the lessor is not subject to liability for bodily harm caused to persons upon the leased premises by any dangerous condition which comes into existence after the lessee has taken possession. Johnson v. Theo. Hamm Brewing Co., 213M 12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5369(39).

The Isham case had no application in an action for injury to a child from alleged attractive nuisance inside partially vacated leased building because child gained access to building through a defective rear door, where evidence was not sufficient to establish that such door was defective at time of commencement of lease. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11 NCCA(NS)316. See Dun. Dig. 5370.

If an apparently vacant building in a village is an attractive nuisance to children if they can enter it and play with fixtures left therein, which might fall upon and hurt them, lessor of building would not be liable for injury to a child for condition of building making it an attractive nuisance which was caused by acts and omissions of lessee at a time when he was in possession of the building. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5370.

A landlord who retains possession of a hall and a stairway in a building for the common use of several tenants may be found guilty of negligence in failing to guard against the turning up of a strip of brass edging on a stairway installed to hold down floor covering, which was subject to such wear and tear by continual use as to cause it to turn up. Anderson v. Winkle, 213M 77, 5NW(2d)355. See Dun. Dig. 5369.

A possessor of property may acquire knowledge of defects while making repairs, and owner of a business building nailing down metal edging along rubberite on stairway three years before it turned up enough to catch a person using the stairway could be found to have had knowledge of defect causing injury. Id.

Whether a blind person who was being helped by a person in full possession of her faculties to descend a stairway after attending to some business in an office on the upper floor was guilty of contributory negligence in tripping over an upturned brass strip installed to hold down floor covering was a fact question for jury. Id.

A landlord who rents out parts of a building to various tenants, reserving halls and stairways for their common use, is a possessor of the parts reserved by him, as affecting liability for injury to third party. Id .

The rule that the possessor of premises must take notice of the operation of natural causes has been applied in cases involving metal and other materials. Id.

In action by employee of tenant in office building injured by glass when office door slammed, wherein jury had a view of the premises, and court permitted, over objection, testimony to effect that shortly after accident bank placed a door stop upon the door for purpose of informing jury of changed condition of premises, court should have clearly charged the jury to confine consideration of such testimony to the issue on which it was admitted and should have warned jury against drawing any conclusion of neglect of duty from the making of the repairs after the accident, but failure to so instruct was not reversible error in absence of a request or objection to its omission. Lunde v. Nat. City Bank, 213M 278, 6NW(2d)809. See Dun. Dig. 5369.

Evidence held to warrant finding that reasonable care would have disclosed to bank renting offices upstairs that door into an office had frequently blown shut with such force that glass in it had broken and that from these conditions it could reasonably be foreseen that injury to someone entitled to use the premises might result unless measures were taken to make the door secure, and it was not a defense that natural forces against which landlord should have guarded operated in this particular instance with unusual and sudden violence. Id.

Evidence of subsequent repairs is inadmissible as an admission of previous neglect of duty, but where landlord had requested that jury view premises, and this was permitted by the court at the end of the trial and with consent of plaintiff, it was proper to receive evidence of changed condition and that change was made after the accident on which suit was based. Id.

If bank renting out office rooms on second floor was negligent in failing to secure glass door so as to prevent it from slamming shut through action of the wind, such negligence was a proximate cause of injury to an employee of a lessee injured by glass breaking when door slammed due to a sudden gust of wind accompanying an approaching storm. Id.

A landlord is under a duty to maintain the premises under his supervision and control so that they will be reasonably safe for use by his tenant and those who come upon the premises by reason of the tenant's occupation. Id.

Fact that employee of tenant in office building was familiar with condition of glass door which was not secured so as to prevent it from slamming shut did not relieve landlord of duty to keep premises in a reasonably safe condition, no issue of contributory negligence being raised in the case. Id.

Repairs made to underground gasoline storage tank by an oil company continuously for a number of years, for the mutual benefit of oil company and lessee of tank could not be called gratuitous or casual as affecting liability of oil company to a third person injured as a result of defective maintenance. Fjellman v. Weller, 213M457, 7NW(2d)521. See Dun. Dig. 5369.

Although a landlord, in the absence of a covenant to that effect, is ordinarily not bound to repair or improve leased premises, yet, if he assumes to do so and performs the work so negligently as to cause an injury thereby, he is responsible. Id.

In an action by a third person against landlord for injuries received when building collapsed, whether defendant had knowledge of defect in building and such defect, and not overloading by tenant, caused the collapse held for jury. Murphy v. Barlow Realty Co., 214M64, 7NW (2d)684. See Dun. Dig. 5369.

Rule that a lessor is not liable to a tenant or his invitees in absence of a covenant by the lessor to keep

premises in repair is subject to the exception that where there is a hidden danger or trap the lessor has a duty to disclose it to tenant. Id.

Even though negligence of tenant contributed to collapse of a building to the injury of a third person, landlord would not be relieved from liability if its negligence with respect to its knowledge of a defect in building and that it was a trap was a contributory factor and a proximate cause. Id.

10. Repairs.

Decree that trustees restore leased property and remedy waste afforded complete remedy and relief to owner so far as waste or any other unsafe or unlawful condition was concerned. S. T. McKnight Co. v. Central Hanover Bank & Trust Co., (CCA8), 120F(2d)310.

Oral promise of landlord to keep faucets in repair made at time of leasing apartment and later were supported by a consideration. Fontaine v. J., 206M506, 289NW68. See Dun. Dig. 5397.

A landlord is under no duty to make repairs under a lease containing provisions that he shall not be liable for repairs, or that tenants take premises as they are. Geo. Benz & Sons v. H., 208M118, 293NW133. See Dun. Dig. 5397.

Measure of damages to a tenant for breach of landlord's covenant to replace an appliance in a leased building is diminished rental value of building by reason of failure to replace. Id.

Owner of hotel building was bound to comply with requirements of two handrails on wide stairway and could not evade that duty by leasing building, and lessee was liable also and could not shift duty and liability to a sublessee. Judd v. Landin, 211M465, 1NW(2d)861. See Dun. Dig. 5369.

Where a lease authorizes entry by a landlord for purpose of making repairs even though there is no covenant or obligation on his part to make repairs, he is responsible for failure to repair, since reason for suspending his obligation to do so is gone. Fjellman v. Weller, 213M457, 7NW(2d)521. See Dun. Dig. 5369, 5397.

11. Rescission by lessee.

Where lessee rescinded for fraud and brought action against lessor, plaintiff was not entitled to recover what he lost in operating the leased property because of fraud, and evidence concerning value of plaintiff's services while operating property was inadmissible. Hatch v. Kulick, 211M309, 1NW(2d)359. See Dun. Dig. 1810, 5417.

Whether there was unreasonable delay in rescinding an oil station lease for fraud of lessor in inducing contract, held for jury. Id. See Dun. Dig. 1196, 5417.

On rescission of a lease after occupying premises for a time, measure of recovery is difference between reasonable value of use of premises and what lessee paid for such use during his occupancy. Id. See Dun. Dig. 1203, 1810, 5417.

12½. Termination of lease.

In order to obtain forfeiture of lease and rent reduction agreement it was incumbent on lessor to inform lessees of some particular things that lessees were required to perform and to give them ten full days to comply with some plain, clear and proper demand. S. T. McKnight Co. v. Central Hanover Bank & Trust Co., (CCA 8), 120F(2d)310.

Verbal arrangement made two months after expiration of written lease held to be an extension of prior written agreement, including right of lessee to remove any building constructed by him. Justen v. O., 209M327, 296NW 169. See Dun. Dig. 5413.

In action for accounting involving a claim for rentals under a lease of oil station, evidence held to support finding that lease and rental agreement were cancelled and that lessor took operation of station on a commission basis without payment of rental by prior lessee. Range Ice & Fuel Co. v. B., 209M260, 296NW407. See Dun. Dig. 5407.

In action for injury to a child under theory of attractive nuisance in a partially vacated building, evidence held not to show the defendant as lessor had waived his right to a notice of termination of tenancy from month to month, or that such tenancy had terminated by abandonment or otherwise. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5447.

14. Use and occupation.

Provision that "lessee is going to erect a building for a vegetable stand on property" in a clause giving lessee right to remove any building constructed by him at end of lease constituted no restriction whatever as to use of premises. Justen v. O., 209M327, 296NW169. See Dun. Dig. 5391.

15. Breach of contract.

Where farm landlord agreed to buy steers and furnish free pasture, tenant to feed them through winter and receive as compensation for his work one-half of what cattle brought on market after deducting their original weight, and landlord repudiated and breached his contract and refused to sell steers in the fall of the next year, tenant was entitled to stop his performance, treat contract as at an end, and sue for reasonable value of his services. Stark v. Magnuson, 212M167, 2NW(2d)814. See Dun. Dig. 5484, 10369.

16. Condemnation of land.

In action to apportion an award in gross made in a highway condemnation proceeding for taking part of a strip of land subject to a lease and an option to purchase, evidence justified a finding of waiver of a provision in lease for payment of taxes by lessees, where no separation of small leased tract from larger holding was ever made for tax purposes and no right of reentry for default of lessees was ever asserted, and lessees were entitled to share in award. Hockman v. Lindgren, 212M 321, 3NW(2d)492. See Dun. Dig. 3099.

8189. Person in possession liable for rent—Evidence.

In the absence of contract or statute, a landlord has no lien for rent on the crops grown on leasehold. State Bank of Loretto v. Dixon, 214M39, 7NW(2d)351. See Dun. Dig. 5419a-5436b.

Where guardian without authority and contrary to provisions of will sublet rooms and some years later rooms were vacated, guardian could not in a tort action of trespass recover rental value of rooms as mesne profits, for an action for mesne profits likewise springs from a trespass, an entry vi et armis upon premises and a tortious holding, and there was no trespass. Martin v. Smith, 214M9, 7NW(2d)481. See Dun. Dig. 9695.

Mesne profits are a sum recovered for value or benefit which a person in wrongful possession has derived from his wrongful occupation of land between time when he acquired wrongful possession and time when possession was taken from him. Id.

8191. Estate at will, how determined—Notice.

½. In general.

Assuming that a tenant from month to month who leaves the premises, without intention of returning, "abandons" the premises, though he may not have actually removed his property therefrom, there was no abandonment during period that tenant and his agent frequently used the building and had definite intentions of removing personal property. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5374a.

Neither lessor nor lessee can terminate a tenancy from month to month absent agreement so to do except by one month's notice directed to the end of the month, and a notice on July 31 of intent to terminate in the middle of September would not become effective until the last day of September. Johnson v. Theo. Hamm Brewing Co., 213 M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5440, 5441, 5443, 5444.

1. When no default in rent.

A tenancy from year to year can only be terminated by statutory three months' notice to quit, terminating with the year, and it is not determined by death of either lessor or lessee. State Bank of Loretto v. Dixon, 214M 39, 7NW(2d)351. See Dun. Dig. 5378.

3. Mode of service.

Owner of house on land of another under a license is entitled to notice, actual or constructive, of revocation of license, as affecting his right to a reasonable time to remove his building. State v. Riley, 213M448, 7NW(2d) 770. See Dun. Dig. 5576.

4. Waiver of notice.

In action for injury to a child under theory of attractive nuisance in a partially vacated building, evidence held not to show the defendant as lessor had waived its right to a notice of termination of tenancy from month to month, or that such tenancy had terminated by abandonment or otherwise. Johnson v. Theo. Hamm Brewing Co., 213M12, 4NW(2d)778, 11NCCA(NS)316. See Dun. Dig. 5447.

A lessor may waive its right to a notice from lessee from month to month of his intention to quit premises and may accept a return of possession at any time. Id.

CHAPTER 63

Conveyances of Real Estate

8195. Terms defined—Mortgages, etc., included.

Powers of appointment. Laws 1943, c. 322.

1. In general.

A license is not an estate but a permission giving licensee a personal legal privilege enjoyable on land of another, and it is destroyed by an attempted transfer if licensor so elects, and is revocable at licensor's will, and normally payment of consideration does not render it irrevocable. Minnesota Valley Gun Club v. N., 207M126, 290NW222. See Dun. Dig. 5576.

The construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, garden being accessible to public at all times except at night,