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.

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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Where lessee rescinded for fraud and brought action against lessor, plaintiff was not entitled to recover what he lost in operating the leased property because of fraud, and evidence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,

when gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. Kendrick v. City of St. Paul, 213M283, 6NW(2d)449. See Dun. Dig. 3045.

Validity and kind of an estate held by life long resident of Wisconsin under a will of a resident of Minnesota may be determined by law of Wisconsin where land which is greater portion of her holdings is situate, devise by its nature being an individual grant of land, and will accomplishing transfer under laws of Wisconsin. Ruppert's Will, 233Wis527, 290NW122.

A deed purporting to convey a contingent interest is a conveyance which cannot be recorded without payment of taxes. Op. Atty. Gen. (373B-9(f)), Aug. 11, 1941.

1½. Competency of parties.

Measure of grantor's capacity to execute an instrument is simply that he must have enough to understand in a reasonable manner nature and effect of what he is doing. Macklett v. Temple, 211M434, 1NW(2d)415. See Dun. Dig. 2657a.

Evidence held to sustain finding that plaintiff had sufficient mental capacity to execute a deed. Id.

Test of mental capacity applied in suits for appointment of guardians should also be applied in those to avoid deeds and wills. Parrish v. Peoples, 214M589, 9NW (2d)225. See Dun. Dig. 2657a.

If grantor or testator knows and understands the nature and effect of his act, he has sufficient capacity to enable him to dispose of his property. Id.

Trial court was not at liberty to disregard testimony of a banker that party to an action and grantor in a deed was not competent to transact business, the testimony not being controverted. Id.

Purchase price paid for land is proper to be considered upon question of competency of grantor to execute deed complained of. Id.

2. Contracts of sale.

In suit to rescind land contract evidence held insufficient to show mental incompetency of plaintiff's purchaser. Beck v. N., 206M125, 288NW217. See Dun. Dig. 10001a.

Under executory contract for conveyance of real estate, title remains in vendor as security for purchase price, vendee becoming equitable owner. First & American Nat. Bank of Duluth v. W., 207M537, 292NW770. See Dun. Dig. 10045.

Where property has been sold on contract for deed, vendee may recover payments made prior to cancellation of contract as for money had and received when such fraud has been practiced upon him in procurement of contract as would have entitled him to rescind. Gable v. N., 209M445, 296NW525. See Dun. Dig. 10098.

Rule of Sandwich Mfg. Co. v. Zellmer, 48M408, 51 NW379, that a grantor under a warranty deed is estopped by his covenants from asserting against his grantee a subsequently acquired title, with the consequence that such a title inures to benefit of grantee and his assigns, did not apply where basis of claimed right was a contract for deed which had been adjudicated cancelled. Ferch v. Hiller, 210M3, 297NW102. See Dun. Dig. 3182.

Rights of a vendee under a contract for deed may be determined in either an equitable action to remove a cloud or statutory action to determine adverse claim. Id. See Dun. Dig. 8029, 8031, 8043, 10092.

Trustees who contract subject to approval of district court do not make themselves personally liable upon contract for failure to secure such approval. Propp v. Johnson, 211M159, 300NW615. See Dun. Dig. 9928a.

Doubt as to whether a homestead exemption exists has been held to make a title unmarketable when there is a judgment on record against vendor, and a vendee is entitled to recover amount of such outstanding judgment following execution of contract. Service & Security v. St. Paul Federal Sav. & Loan Ass'n, 211M199, 300 NW811. See Dun. Dig. 10024.

A "marketable title" is one having for its primary purpose that of protecting vendee in executory contracts from burden of litigation which may be necessary to remove apparent or real defects in title, and is one free from reasonable doubt: one that a prudent person, with full knowledge of all facts, is willing to accept. City of North Mankato v. Carlstrom, 212M32, 2NW(2d)130. See Dun. Dig. 10024.

Generally, a deed will not be declared void for uncertainty in description if it is possible by reasonable rules of construction to ascertain from description, aided by extrinsic evidence, what property is intended to be conveyed. Id. See Dun. Dig. 2659a.

Where vendor has an option to cancel a contract for deed upon default by vendee, cancellation is a cumulative, not an exclusive, remedy, and if vendor does not exercise option he may pursue any other remedy. Kirk v. Welch, 212M300, 3NW(2d)426. See Dun. Dig. 10082.

Though an installment contract for a deed contained no acceleration clause, vendor on default had right to sue for breach of contract instead of proceeding to cancel contract. Id. See Dun. Dig. 10083.

Where through vendee's breach of contract to assume an existing mortgage property is lost by foreclosure of mortgage, vendor is entitled to judgment for amount of deferred payments. Id. See Dun. Dig. 10084.

In action against issuing bank by named payee on cashier's check issued for a special purpose and subject to a contract between payee and purchaser by which check was used as an earnest money deposit, and was to be returned to purchaser in event payee could not perform his contract, trial court was justified in interpleading purchaser of check and discharging bank as defendant. Deones v. Zeches, 212M260, 3NW(2d)432. See Dun. Dig. 879.

Under a contract for sale of land where vendee is entitled to possession or where he takes such possession, relationship between vendee and vendor is similar to that created by mortgage or conditional sale, beneficial interest being in vendee and the security interest in vendor. S. R. A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 9998.

Vendee under contract of sale of land entitled to possession and who takes possession may not use his vendor's immunity to taxation as a shield to avoid meeting his tax obligations as an owner, since it is his land that is being taxed, not that of his vendor. Id. See Dun. Dig. 10049.

Undisputed evidence held to show that vendee in land contract superseding a former contract and reducing the purchase price was not in default though taxes for a particular year remained unpaid. McReavy v. Zeimes, 215M239, 9NW(2d)924. See Dun. Dig. 10040.

Where vendor in land contract agreed to accept less than was due as a liquidated amount when vendee exchanged her equity for a farm, this agreement to except less than the sum due was a detriment to such vendor which would be a sufficient consideration for a deed of a half interest in the property which vendee took in exchange from a third person. Estrada v. Hanson, 215M 353, 10NW(2d)223. See Dun. Dig. 2659.

A register of deeds should not accept a contract for deed for record unless usual certificate as to payment of taxes is attached thereto. Op. Atty. Gen., (373B-9(e)), April 25, 1940.

As affecting purchase by school district of tax title lands, a tax title is not a good marketable title until title has been quieted by action, since a tax title is subject to many errors and mistakes, which might be raised at any time within 15 years by original owner. Op. Atty. Gen. (425c-12), Sept. 12, 1940.

2¼. Easements in general.

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. 2853a.

Whether creamery has acquired a prescriptive right or implied grant to drain waste from creamery upon land is unimportant where amount of drainage and extent of injuries are substantially greater than they were when such right or grant was acquired. Herrmann v. Larson, 214M46, 7NW(2d)330. See Dun. Dig. 121, 2853.

A grantee of an easement by implication may not materially increase the burden upon the servient estate. Id. See Dun. Dig. 2681, 2851.

Where creamery and a landowner agreed to laying of a tile drain by creamery to connect with landowner's drain and thereafter part of tile laid by creamery was torn up under its authority or consent, creamery waived any rights that may have arisen by virtue of the agreement to drain waste from creamery upon such land, as affecting nuisance and injunction and damages. Id. See Dun. Dig. 2853.

Under the doctrine of implied grant of easement, "apparent" does not necessarily mean "visible" but means that indicial of the easement, a careful inspection of which by a person ordinarily conversant with the subject would have disclosed the use, must be plainly visible, and an underground drainpipe, or sewer pipe, even though it is buried and invisible, connected with and forming the only means of draining waste from plumbing fixtures and appliances of a dwelling house, is apparent, because a plumber could see the fixtures and appliances and readily determine the location and course of the sewer drain. Romanchuk v. Plotkin, 215M156, 9 NW(2d)421. See Dun. Dig. 2681.

It has been said that three things are essential to create an easement by implication upon severance of unity of ownership: a separation of title; the use which gives rise to the easement shall have been so long continued and apparent as to show that it was intended to be permanent; the easement is necessary to the beneficial enjoyment of the land granted, but this court does not hold that all three are essential in all cases. Id.

Where owner installs plumbing in a dwelling house and connects it with a sewer drain extending across adjoining property owned by him, upon a severance of title by a conveyance or by a mortgage and the foreclosure thereof, an implied easement to maintain the sewer across the part retained passes as an appurtenance to the property on which the dwelling house is situated. Id.

A practical interpretation by the parties that an easement exists supports an inference that the easement is one of legal right, as where owners of dominant estates

were permitted to continue to use a sewer running through the property of the servient estate, and the latter charged former for repairs and maintenance and former paid the damages. Id.

"Necessary" in the law of implied grant of easement does not mean indispensable, but reasonably necessary or convenient to beneficial use of the property. Id.

Where adjoining parcels of land are owned by one person, prior to a severance and while there is unity of title, the use is generally spoken of as a quasi-easement appurtenant to the dominant tenement. Id. See Dun. Dig. 2853.

Under the theory that a mortgage of real property conveys title, a use created after the giving of a mortgage does not give rise to an easement in favor of the mortgagee, but, under the lien theory, adopted in Minnesota, it does and passes to the purchaser at the foreclosure sale. Id. See Dun. Dig. 2853, 6215, 6223.

An easement obtained by implied grant is appurtenant to the estate granted to use the servient estate retained by the owner. Id. See Dun. Dig. 2853.

The doctrine of implied grant of easement is based upon the principle that where, during unity of title, the owner imposes an apparently permanent and obvious servitude on one tenement in favor of another, which at the time of severance of title is in use and is reasonably necessary for the fair enjoyment of the tenement to which such use is beneficial, then, upon a severance of ownership, a grant of the dominant tenement includes by implication the right to continue such use. Id. See Dun. Dig. 2681.

Reservation in a conveyance of right to travel a road "by foot or wagon" included the right to use the road by trucks hauling gravel. Giles v. Luker, 215M256, 9NW(2d) 716. See Dun. Dig. 2673, 2860.

Owner of a way created by grant is not limited to its use by himself in propria persona, since the way belongs to him as his property, and all persons having occasion, with his permission, may transact business with him by passing to and fro over the way. Id. See Dun. Dig. 2862.

The general rule is that a right of way arising by grant and not by prescription which is not restricted by the terms of the grant is available for the reasonable uses to which the dominant estate may be devoted. Id. See Dun. Dig. 2862a.

Injunction against interference with use of easement of way to haul gravel was conditioned on keeping way in repair, using at reasonable times and oiling to keep down dust. Id. See Dun. Dig. 2862a.

Where an easement of way was created by grant, without limitations, it may include every reasonable use to which the dominant estate may be devoted and is not limited to the purposes for which the dominant estate was used at the time the way was created. Id. See Dun. Dig. 2862a.

The right of the easement owner, and the right of the landowner, are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. Id. See Dun. Dig. 2862a.

Threat to stop gravel trucks which would use right of way over land of defendant, rendering it impossible for plaintiff to sell her gravel, would justify a court of equity in entertaining a suit for an injunction. Id. See Dun. Dig. 4471, 4476a.

2½. Party wall agreements.

Where a landowner by filling raises his land above adjoining land, he is not entitled to lateral support for the raised land from adjoining land, but, on the contrary, he is bound to keep soil used for filling from falling on adjoining land, and where he erects a retaining wall for that purpose, he must erect it entirely upon his own land, and adjoining landowner cannot be compelled to pay any part of the cost thereof. Sime v. Jensen, 213M476, 7NW (2d)325. See Dun. Dig. 7415a.

2¾. Options.

Until an option to purchase land is effectively exercised, it is a mere unilateral undertaking, and if time in which it is to be exercised expires before its terms and conditions are met with, it lapses. Ferch v. H., 209M124, 295NW504. See Dun. Dig. 10016.

Whether performance by an optionee to purchase land has been made or tendered is a question of fact. Id.

3. Assignment.

Evidence held to sustain finding that assignment by plaintiff-vendor of a contract for deed to real estate was given to defendant's assignor as security for payment of a debt and that debt had been paid to defendant in a settlement made with him and that he was therefore no longer entitled to rights of vendor in property. Bishop v. L., 207M330, 291NW297. See Dun. Dig. 10013.

Where vendor assigned land contract and notes of vendee to a bank as security for a loan, one purchasing land contract and note from bank receiver long after maturity took them subject to any defense between vendor and bank, and took them subject to pledge. Id. See Dun. Dig. 10013.

Where plaintiffs, grantors of land transferred, covenanted with their grantors to assume and to pay latters' own personal indebtedness for balances for certain improvements thereon, sold the land under executory contract of sale binding the vendees to assume and pay the balances, and then conveyed land to defendants "subject" to such balances and assigned to defendants their interest as vendors under the contract for deed without an agreement on part of latter to assume and pay the balances, defendants are not personally liable under the deed or the assignment of contract, and plaintiffs' covenants to pay balances did not run with land to that effect, and fact that balances were part of consideration for deed and for assignment of contract for deed was immaterial, and a release, as between them, of the vendees under the contract for deed by the defendants, as assignees thereof, from liability to pay such balances, which the vendees had agreed to pay under the contract, did not render defendants liable to plaintiffs as vendors, in quasi contract for payment of the same. Pelser v. Gingold, 214M281, 8NW(2d)36. See Dun. Dig. 6289, 10013.

Where there was both a deed and an assignment of a contract for deed, legal effect was to transfer to grantee and assignees, not only the legal title, held by grantors subject to rights of vendees under contract for deed, but also all grantors' rights, as vendors under the contract, including their right to the purchase money, an equitable lien on the land therefor, and a personal obligation of the vendee in the contract to pay personal indebtedness to a third person, and assignor ceased to have any further rights in the land or under the contract. Id. See Dun. Dig. 10013.

An assignment by vendor of executory contract for a deed transfers to the assignee all the assignor's rights thereunder. Id. See Dun. Dig. 10013.

4. Rescission and cancellation.

Purchaser of house and lot ratified any misrepresentations or fraud by long delay in seeking redress, and was not entitled to rescind contract. Beck v. N., 206M125, 288 NW217. See Dun. Dig. 10097.

One who seeks to set aside a deed has burden of proving facts justifying it. Macklett v. Temple, 211M434, 1 NW(2d)415. See Dun. Dig. 1201a.

In action to set aside a deed, evidence held to sustain finding that there was no fraud, duress, or undue influence. Id. See Dun. Dig. 2661b.

5. Deeds.

Rights of parties to vest at time of delivery of deed. Longcor v. C., 206M627, 289NW570. See Dun. Dig. 2662.

Provision in deed making gift of an auditorium to a city on condition that income be used for benefit of auditorium only was valid. Id. See Dun. Dig. 2676.

Where a deed contains an unqualified reference to a monument as location of a boundary, line thereof passes through center of monument. Holtz v. Beighley, 211M153, 300NW445. See Dun. Dig. 1061.

A deed duly witnessed and acknowledged is proof that whatever title grantor had and purported to convey vests in grantee upon delivery of deed without any further testimony as to mental condition of grantor. Macklett v. Temple, 211M434, 1NW(2d)415. See Dun. Dig. 2657a.

Title to bed of a meandered nonnavigable lake passes by a deed conveying shoreland unless a contrary intention appears. Schmidt v. Marschel, 211M539, 2NW(2d) 121. See Dun. Dig. 1067.

Title to accretions and relictions may be transferred separately from the upland to which they are attached. Id. See Dun. Dig. 6953, 6954.

Evidence held sufficiently clear and convincing to justify finding that small tract of land, occupied by a creamery under a lease at time of sale, was omitted from deed through mutual mistake of parties. Becker v. Campbell, 211M609, 2NW(2d)129. See Dun. Dig. 10021.

A surveyor's stake was a sufficient point of commencement of description of land in a deed as against objection that it was not a "permanent monument", where its exact location could not be determined several generations later. City of North Mankato v. Carlstrom, 212M32, 2NW(2d)130. See Dun. Dig. 2659a.

Even where a description in a deed is doubtful, court will keep in mind position of contracting parties and conditions under which they acted and interpret language in light of these circumstances. Id.

Generally, a deed will not be declared void for uncertainty in description if it is possible by reasonable rules of construction to ascertain from description, aided by extrinsic evidence, what property is intended to be conveyed. Id.

Description of property in a deed must be such as to identify it or afford means of identification, aided by extrinsic evidence. Id.

A warranty deed to a municipality from owner of lands condemned in eminent domain proceedings vests fee-simple title in municipality in trust for the public. Kendrick v. City of St. Paul, 213M283, 6NW(2d)449. See Dun. Dig. 2693.

Where a city condemns land and landowner on receipt of award for damages delivers a warranty deed to the city, effect of deed is to be determined by law of conveyancing and not by the law of condemnation, as against contention that such a deed is merely a receipt for damages. Id. See Dun. Dig. 6694.

Evidence held sufficient to support a finding of mutual mistake in omission of land from deed in action to reform. Czanstkowski v. Matter, 213M257, 6NW(2d) 629. See Dun. Dig. 8347.

Where there was both a deed and an assignment of a contract for deed, legal effect was to transfer to grantee and assignees, not only the legal title, held by grantors subject to rights of vendees under contract for deed, but also all grantors' rights, as vendors under the contract, including their right to the purchase money, an equitable lien on the land therefor, and a personal obligation of the vendee in the contract to pay personal

indebtedness to a third person, and assignor ceased to have any further rights in the land or under the contract. Pelser v. Gingold, 214M281, 8NW(2d)36. See Dun. Dig. 2693.

While a grantee of land is an assign of his grantor, his status is different from that of the assignee of an ordinary chose in action, for the reason that the grant purports to transfer not contractual rights or duties, but an estate in land made up of various rights and duties. Id.

Purchase price paid for land is proper to be considered upon question of competency of grantor to execute deed complained of. Parrish v. Peoples, 214M589, 9NW(2d)225. See Dun. Dig. 2657a.

Where a fence is in existence when an owner acquires ownership of contiguous parcels of real property and afterwards conveys a part thereof which includes land beyond the line of the fence, and where there is no adverse possession for the period of limitation or an agreement between the parties that the line is fixed by the fence with acts by the grantor in reliance thereon to his prejudice, there is no basis for claiming a practical location of the boundary line as of the line of the fence. Romanchuk v. Plotkin, 215M156, 9NW(2d)421. See Dun. Dig. 1083, 2659a.

Where owner of property conveys part of it, all privileges and appurtenances that are obviously incident and necessary to the fair enjoyment of the property granted substantially in the condition in which it is enjoyed by the grantor are included in the grant, under the rule that a grant is to be construed most strongly against the grantor. Id. See Dun. Dig. 2681.

A grant of land is to be construed most strongly against the grantor. Id. See Dun. Dig. 2686.

The day is past for adhering to technical or literal meaning of particular words in a deed or other contract against the plain intention of the parties as gathered from the entire instrument. Id. See Dun. Dig. 2686.

Rules of construction are mere aids in ascertaining the meaning of writings, whether they are statutes, contracts, deeds, or mortgages, and they are neither ironclad nor inflexible and yield to manifestation of contrary intention. Id. See Dun. Dig. 2686.

5½. Merger.

Right of assuming grantee to be subrogated to senior mortgage paid by him as against an unknown recorded junior mortgage. 24MinnLawRev121.

7. Condition subsequent.

Where land and personal property were transferred to a son subject to an agreement that son should support parents with provision that if a breach occurred during the lifetime of the father and mother, or the survivor of either of them, son should forthwith lose possession, control, and management of the property, and the title and possession should automatically revert to its former status, and there was no breach of duty while father was still alive, no cause of action could pass to representative of his estate as result of a subsequent breach, and whatever cause surviving widow might have should be conducted by her in her own name and right, which might involve rights and remedies of a third-party beneficiary, or possibly an action as for breach of contract. Moline v. Kotch, 213M326, 6NW(2d) 462. See Dun. Dig. 1896, 2677, 10083.

Permitting American Legion to construct a building on land of a village and lease of such building to American Legion Post for a reasonable time would constitute a "public purpose" within deed of land to village for public purposes only with right of reversion. Op. Atty. Gen., (469a-9), March 29, 1940.

A conveyance to a town "this town to maintain car tracks and wall gate, said land to revert to the party of the first part when ceased to be used by said town," constituted a condition subsequent, upon breach of which, coupled with re-entry, estate of town will be defeated, unless condition has become merely nominal, but such condition is directed toward a particular public use and not against succession of property to county upon dissolution of town, and there is no reverter resulting from failure to use the property unless there is a re-entry or an equivalent act before performance of condition as resumed. Op. Atty. Gen. (441B), Jan. 4, 1941.

Where land was conveyed to a town wherein grantee "agreed that the above described property shall be improved and kept improved, and that said grounds shall be used for a public park and picnic grounds only and for no other purpose whatsoever," property went to county upon dissolution of town by operation of law, including appurtenant rights, privileges and duties, and whether county could use property for uses other than as a public park or picnic grounds would depend upon whether there was a condition subsequent or language was intended to be merely directory, a question of fact to be determined from all circumstances. Id.

8. Consideration.

A deed to a son-in-law to prevent foreclosure of mortgage by another, grantee paying a like amount of taxes and reducing amount of mortgage as a part of transaction, was supported by a valuable and adequate consideration. Macklett v. Temple, 211M434, 1NW(2d)415. See Dun. Dig. 2659.

In action to set aside the conveyances from a decedent to her son, evidence held to sustain finding that forbearance to marry and forbearance from work and services performed in caring for decedent's property were not performed in consideration of various transfers to defendant from decedent, but for the purpose of usurping control of her property to the exclusion of his sister. Hafner v. Schmitz, 215M245, 9NW(2d)713. See Dun. Dig. 2659.

Where vendor in land contract agreed to accept less than was due as a liquidated amount when vendee exchanged her equity for a farm, this agreement to except less than the sum due was a detriment to such vendor which would be a sufficient consideration for a deed of a half interest in the property which vendee took in exchange from a third person. Estrada v. Hanson, 215 M353, 10NW(2d)223. See Dun. Dig. 10002.

Where vendee in contract for a deed exchanged her equity for a farm of a third person, fact that vendor relieved her of personal liability on the contract for a deed constituted consideration for conveyance of half of the farm to the vendor. Id.

Where vendee in contract for a deed desired to exchange her equity for a farm of a third person, agreement of vendor to reinstate vendee in her rights under the contract if third person should default within one year, and if there was no default, to pay vendee a certain monthly sum for several years, the agreement to pay such monthly sum did not evidence a gambling transaction or a "swindle". Id.

Providing for parents during their lifetime constituted adequate consideration for an agreement to convey or devise real property. Seitz v. Sitze, 215M452, 10 NW(2d)426. See Dun. Dig. 8789a(21), 10002.

9. Delivery of goods.

Delivering a deed to a third party is delivery to the grantee only when the grantor evinces an intention presently and unconditionally to part with all control of it, and that it shall take effect according to its terms. Slawik v. L., 207M137, 290NW228. See Dun. Dig. 2666.

Delivery of a deed is essential to a transfer of title, essential elements of which are surrender of control by grantor, together with an intent to convey title thereby. Id. See Dun. Dig. 2662.

In litigation involving question of sale of land and delivery of deed by mother to daughter, claimed to have been paid for by withdrawal by mother of purchase price from joint bank account standing in name of mother and daughter, court properly gave the parties wide range in receiving testimony touching source and origin of joint bank account, and financial and other dealings between mother and daughter. Cloutier v. C., 208M453, 294NW457. See Dun. Dig. 2664.

A delivery valid in law does not necessarily mean a manual handing of deed by grantor to grantee, but it may be delivered and received by an agent of either party to the deed without reservation of right to grantor to recall it, or grantor may make the delivery by causing deed to be recorded without it first coming into hands of grantee. Id.

If there had been such delivery of a deed as passed title, title cannot revert to grantor by destruction of the deed by the grantee or by anyone else. Id. See Dun. Dig. 2662.

Where, in order to effect a transfer of title from a husband alone to himself and wife as joint tenants, deeds were drawn through a conduit and deed by conduit of title was executed prior to deed from husband and wife to conduit but as a part of same transaction, evidence compelled a finding that deed from conduit to husband and wife as joint tenants was placed in hands of agent of conduit to be delivered after receipt of deed to latter from husband and wife, and that conduit's deed was effectual to convey title to them jointly. Baar v. Baar, 210M384, 298NW455. See Dun. Dig. 2666, 2687.

A deed does not take effect until delivery in accordance with grantor's instructions. Id. See Dun. Dig. 2662.

Delivery of a deed to third party for benefit of grantee is sufficient. Larkin v. McCabe, 211M11, 299NW649. See Dun. Dig. 2666.

In action to cancel assignments and conveyances made by decedent to her son, evidence held to sustain finding that there was no delivery of the instruments, in that transfers were considered mere revocable gifts which grantor and assignor could recall at any time. Hafner v. Schmitz, 215M245, 9NW(2d)713. See Dun. Dig. 2664.

10. Return without record.

If mother merely handed daughter a deed to read with no present intention to pass title to daughter, there was no legal delivery, nor was there such delivery if daughter refused to accept it, indicating such intention by destroying the deed, but if mother delivered deed with intention to pass title, and daughter accepted it, mother could not by forcibly or otherwise repossessing herself of the deed, reacquire title. Cloutier v. C., 208M453, 294NW 457. See Dun. Dig. 2664.

That grantee in unrecorded deed returned by him to grantor thought that he had a claim against grantor's estate for unpaid portion of the purchase price of the land, which was originally conveyed by grantee to grantor, and purported to enforce it during probate held not inconsistent with ownership upon which a subsequent grantee relied in accepting a deed with the knowledge of the prior deed. Froslee v. Sonju, 209M522, 297 NW1. See Dun. Dig. 3189, 3209.

Return of unrecorded deed delivered unconditionally does not operate to revest title in grantor, and unless by words or conduct grantee has estopped himself from asserting title he will prevail in action to determine adverse claims against a subsequent grantee who first

recorded but who had knowledge of the fact at time he accepted his deed. Id. See Dun. Dig. 2669.

11. Undue influence.

Undue influence invalidates a deed where it operates to deprive one of his free agency by substituting for his will that of another. Macklett v. Temple, 211M434, 1NW (2d)415. See Dun. Dig. 2661b.

Declarations made more than five years after execution of conveyance were inadmissible as immaterial in so far as establishing either undue influence or mental capacity at time of conveyance. Larson v. Dahlstrom, 214M304, 8NW(2d)48, 146ALR245. See Dun. Dig. 2657a, 2661b.

In action to cancel a deed executed by one subsequently adjudged incompetent plaintiff had burden of proving undue influence. Parrish v. Peoples, 214M589, 9NW(2d)225. See Dun. Dig. 2661b, 9950a.

In action to set aside a conveyance from decedent to her son, fact indicating a confidential relationship, an opportunity for the grantee to take advantage of the grantor, and an inclination to do so, clearly evidenced by previous attempts, warranted a finding of undue influence. Hafner v. Schmitz, 215M245, 9NW(2d)713. See Dun. Dig. 2661b.

Whether or not decedent had competent and independent advice when executing a deed of land after having made a will devising the property to others is a matter to be considered by the trial court, but absence of such advice was not conclusive against the validity of the transaction, where there is sufficient evidence to sustain a finding that no undue influence was exercised upon the decedent. Bentson v. Ellenstein, 215M376, 10NW(2d)282. See Dun. Dig. 2661b.

The evidentiary inference of undue influence in connection with the making of a gift, arising from confidential relations, does not shift the burden of proof. Id.

12. Duress.

Generally speaking, duress may be said to exist whenever one, by unlawful act of another, is induced to make a contract or perform some other act under circumstances which deprive him of exercise of free will. Macklett v. Temple, 211M434, 1NW(2d)415. See Dun. Dig. 2661b.

13. False representations.

Representation as to what property cost is a representation of fact and not opinion. Beck v. N., 206M125, 288NW217. See Dun. Dig. 10058a.

Value of property such as a house and lot which have no market value like property sold on stock or commodity exchanges, where a market value can be ascertained as of any date or hour, is not the subject of actionable misrepresentation. Id. See Dun. Dig. 10060.

Statement that a farm is a "money maker" is not a statement of fact. Rother v. H., 208M405, 294NW644. See Dun. Dig. 10058a.

In action for damages for fraud evidence held insufficient to establish falsity of statement in advertisement farm was a "money maker." Id. See Dun. Dig. 10062.

If there is a misrepresentation, but purchaser, instead of relying upon it, makes an independent examination and acts upon result thereof without regard to misrepresentations, there is no cause of action for damages. Id. See Dun. Dig. 10067.

Where it is reasonably clear that parties are not dealing at arm's length and, because of relations of parties and peculiar circumstances of case, a false representation as to value and a reliance thereon had produced a palpable fraud, strict rule that representations of value are mere expressions of opinion and trade talk yields to justice of case and resolves the representation to one of fact. Gable v. N., 209M445, 296NW525. See Dun. Dig. 10060.

Statement by vendor of a farm in respect to future of a well could not be understood as more than a mere opinion, but statement that there never had been any trouble with well, was a representation of a past fact which, if false, would be actionable even though representation was not known to vendor to be false when made. Forsberg v. Baker, 211M59, 300NW371. See Dun. Dig. 10062.

14. Fraud.

As affecting representation that house was "well built and in good condition", there was no error in excluding testimony offered that old or used lumber entered into construction, matter of being well built or in good condition being readily ascertainable fact for inspection which was thoroughly made. Beck v. N., 206M125, 288NW 217. See Dun. Dig. 10067b.

In action for damages in fraud in sale of farm and stock, trial court should not allow jury to consider whether plaintiff relied upon statement that 15 cows brought in $200 per month, plaintiff being acquainted with cattle and with agricultural conditions. Rother v. H., 208M405, 294NW644. See Dun. Dig. 10067.

If vendor of land told purchaser that land was sandy, purchaser suing for damages for fraud could not rely on farm advertisement that soil was black. Id.

In action for damages for fraud in sale of land, plaintiff is entitled to inquire on question of ratification whether defendant ever offered to return purchase price after learning agents made misrepresentations, but counsel should so phrase question that it will not convey that there was a legal duty save to avoid a ratification under the rule that a principal ratified by asserting a right to the fruits of the agents' act when the action was brought. Id. See Dun. Dig. 10067b.

Admissibility of tax assessment on question of value of farm in an action for damages for fraud in sale. Id. See Dun. Dig. 10067b.

Findings held to support judgment dismissing action to establish that deceased had obtained title to certain lands by tort or fraud and held such title as trustee ex maleficio. Moe v. O., 208M496, 296NW512. See Dun. Dig. 2661b.

Vendee who had paid $1,000 on a farm and paid balance of purchase price when threatened with a forfeiture of contract by vendor serving a notice of cancellation of contract after discovering falsity of representation regarding a well may recover damages. Forsberg v. Baker, 211M59, 300NW371. See Dun. Dig. 10100.

In action to cancel a deed, evidence held to sustain finding that defendants were not guilty of fraud in falsely and fraudulently making representations as to value and quantity of property conveyed. Parrish v. Peoples, 214M589, 9NW(2d)225. See Dun. Dig. 2661b, 3839.

A general charge of fraud without alleging material facts constituting the fraud was unavailing in an action to cancel a deed. Id. See Dun. Dig. 3836.

14½. Forgery.

In action to set aside a deed as forgery, no reversible error was present where counsel failed to request an instruction that evidence must be clear and convincing and expressed satisfaction with a charge that burden of proving forgery may be satisfied by a fair preponderance of evidence. Amland v. G., 208M596, 296NW170. See Dun. Dig. 2661a.

In action to set aside a deed as forgery it was a question of fact for jury under special interrogatory whether there had been a forgery. Id.

Acknowledgment is only prima facie evidence and can be assaulted by one claiming deed was forged. Id. See Dun. Dig. 78.

On conflicting evidence, finding that deed was not a forgery was sustained. Dempsey v. Allen, 210M395, 298NW 570. See Dun. Dig. 2661a.

15. Mortgages.

Mortgagee in possession, see §9572.

Mortgage assignment legalization. Laws 1943, c. 444.

Doctrine of mortgage in possession, derived from common-law conception of a mortgage as a conveyance transferring right to possession from grantor to grantee, has been adopted notwithstanding that under our law a mortgage creates merely a lien enforceable by foreclosure. Lemon v. Dworsky, 210M112, 297NW329. See Dun. Dig. 6237.

A mortgagee in possession is entitled to rents and profits and cannot be dispossessed by mortgagor or persons in privity with him until his mortgage is satisfied. Id. See Dun. Dig. 6230, 6240.

Mortgagees who obtained possession of mortgaged property with consent of mortgagor were mortgagees in possession. Id. See notes under §9572. See Dun Dig. 6238.

Where defendant purchased school land, making only part payment, and then sold part of land to plaintiff who paid in full therefor, and placed assignment of state contract in escrow to be delivered to plaintiff at end of two years if a good and sufficient deed had not then been delivered, and plaintiff obtained the assignment and paid all obligations due by defendant to the state, assignment of state contract and subsequent delivery thereof could not be considered a mortgage with appendant right to redeem, though assignment of state auditor's certificate was "security for" delivery of promised adequate deed. Saxton v. Campbell, 210M29, 297NW348. See Dun. Dig. 6151.

Whether a conveyance, absolute in form, is a mortgage in fact, is matter of intention, and determinative intention is that of both parties and not one. Id. See Dun. Dig. 6154.

Any claim that mortgagee might have had against mortgagor for unpaid taxes terminated with foreclosure and purchase of land by mortgagee for full amount of mortgage debt. Pulsifer v. Paxton, 212M68, 2NW(2d)427. See Dun. Dig. 6369.

A mortgage upon real estate, while in form a conveyance of an estate or interest in land, is in its purpose and effect a mere lien or security, a chattel, or thing in action. S. R. A., Inc., 213M487, 7NW(2d)484. See Dun. Dig. 6145.

Under the theory that a mortgage of real property conveys title, a use created after the giving of a mortgage does not give rise to an easement in favor of the mortgage, but, under the lien theory, adopted in Minnesota, it does and passes to the purchaser at the foreclosure sale. Romanchuk v. Plotkin, 215M156, 9NW(2d)421. See Dun. Dig. 2853, 6215, 6223.

Rules of construction are mere aids in ascertaining the meaning of writings, whether they are statutes, contracts, deeds, or mortgages, and they are neither ironclad nor inflexible and yield to manifestation of contrary intention. Id. See Dun. Dig. 6145.

Description in mortgage controls as against fence or other structure on land at the date of its execution. Id. See Dun. Dig. 6173.

Where a mortgage on real estate creates a lien, the execution of the mortgage does not effect a severance of title, but the foreclosure of the mortgage does. Id. See Dun. Dig. 6215, 6223.

Prior to and after foreclosure, until the contrary appears, the possession of a mortgagor is presumed to be amicable and in subordination to mortgage. Id. See Dun. Dig. 6215.

16. Assumption.

Where grantees assume and agree to pay an encumbrance, their liability accrues when they fail to pay encumbrance as it falls due, and from that time statute of limitations runs. Johnson v. F., 207M61, 289NW835. See Dun. Dig. 6300.

A grantee of a mortgagor takes subject to right of a mortgagee in possession to retain possession and apply rent upon indebtedness. Lemon v. Dworsky, 210M112, 297 NW329. See Dun. Dig. 6217, 6242.

In action against debtors and their grantees, evidence held not to establish that grantees assumed or agreed in writing to guarantee payment of debt to plaintiff. Blodgett v. Hollo, 210M298, 298NW249. See Dun. Dig. 7238.

Failure of vendee to perform her contractual obligation to assume a mortgage, whereby property is lost to parties by foreclosure of mortgage, is a breach of contract for which an action by vendor to recover damages may be maintained, notwithstanding an agreement on vendor's part to join, at vendee's request, in any renewal or extension of mortgage, where vendee made no such request. Kirk v. Welch, 212M300, 3NW(2d)426. See Dun. Dig. 10083.

An agreement by a vendee to assume an existing mortgage on property sold without express agreement that he also agrees to pay the same is one to pay the mortgage debt, and not one of indemnity. Id. See Dun. Dig. 6294.

Where plaintiffs, grantors or land transferred, covenanted with their grantors to assume and to pay latters' own personal indebtedness for balances for certain improvements thereon, sold the land under executory contract of sale binding the vendees to assume and pay the balances, and then conveyed land to defendants "subject" to suuch balances and assigned to defendants their interest as vendors under the contract for deed without an agreement on part of latter to assume and pay the balances, defendants are not personally liable under the deed or the assignment of contract, and plaintiffs' covenants to pay balances did not run with land to that effect, and fact that balances were part of consideration for deed and for assignment of contract for deed was immaterial, and a release, as between them, of the vendees under the contract for deed by the defendants, as assignees thereof, from liability to pay such balances, which the vendees had agreed to pay under the contract, did not render defendants liable to plaintiffs, as vendors, in quasi contract for payment of the same. Pelser v. Gingold, 214M281, 8NW(2d)36. See Dun. Dig. 6289.

Where a mortgage constitutes part of consideration, a conveyance of land by mortgagor does not impose personal liability on purchaser, unless he agrees to assume and pay the mortgage. Id.

A grantee is personally liable for payment of a mortgage on the land transferred only where he agrees to assume and to pay it, but not where he takes subject to it. Id.

Where land is sold for an agreed price and grantee retains a part of the purchase price for purpose of paying encumbrances or liens, grantee is personally liable for payment of the encumbrances or liens to extent of amount retained, under the theory that a duty in the nature of a trust is created, and failure to pay encumbrances is a failure to pay part of consideration. Id.

17. Consideration.

Evidence held to sustain a finding that deed was supported by a sufficient consideration, though there was evidence that the land conveyed was worth considerably more than the price for which it was sold. Parrish v. Peoples, 214M589, 9NW(2d)225. See Dun. Dig. 2659.

18. Estoppel.

One owning an interest in land may lose title by equitable estoppel, as where instead of letting land go by foreclosure he consents to taking over of land by another who relies upon his words and conduct and pays taxes and makes improvements and takes care of mortgage. Thom v. T., 208M461, 294NW461. See Dun. Dig. 3207.

One who by his renunciation or disclaimer of title to property has induced another to believe and act thereon to his prejudice is estopped to assert such title. Id.

To be estopped from asserting title to land, one must have led another by words or conduct to believe that former had no interest in property, and other must have relied upon misleading words or conduct in such manner as to change his position for the worse. Froslee v. Sonju, 209M522, 297NW1. See Dun. Dig. 3209.

Vendee under a contract for deed which has been duly cancelled is not entitled to invoke estoppel against grantee of his vendor to a subsequently acquired title for lack of any right against him under the contract. Ferch v. Hiller, 210M3, 297NW102. See Dun. Dig. 3182.

While at one time the courts hesitated to apply doctrine of estoppel so as to give or divest an estate or interest in land, as being opposed to letter of the statute of frauds, yet it is now well settled that a person may by his conduct estop himself from asserting himself from asserting his title to real property, as well as to personalty. Albachten v. Bradley, 212M359, 3NW(2d)783. See Dun. Dig. 3209.

A village amending its franchise to a service corporation operating sewer and water facilities at the insistence of one about to make a loan to the service corporation for improvement and extension of systems, so as to show that any title which village might acquire to be property under the provisions of the franchise would be subject to the mortgage, was barred by laches and estoppel from questioning the legality of the mortgage. Country Club District Service Co. v. Village of Edina, 214M26, 8NW (2d)321. See Dun. Dig. 6207a.

A minor may be estopped by the acts and conduct of the ancestor through whom he claims title. Seitz v. Sitze, 215M452, 10NW(2d)426. See Dun. Dig. 3212, 4449, 8852a, 8885.

19. Mistake.

Evidence held sufficiently clear and convincing to justify finding that small tract of land, occupied by a creamery under a lease at time of sale, was omitted from deed through mutual mistake of parties. Becker v. Campbell, 211M609, 2NW(2d)129. See Dun. Dig. 10021.

Evidence held sufficient to support a finding of mutual mistake in omission of land from deed in action to reform. Czanstkowski v. Matter, 213M257, 6NW(2d)629. See Dun. Dig. 2659a.

Where in an action to reform deed on ground of mutual mistake in omitting certain land there is evidence which would have justified trial court in finding that the mistake was established by clear and convincing proof and that a third-party purchaser from the vendor took title to the omitted property with full knowledge of the grantee's claims of title, it was error to dismiss action. Id. See Dun. Dig. 8335, 10048.

Where landowner sold land in parcels to several persons and dispute arose as to boundary between the parcels, holder of old mortgage on land could not be prejudiced by a determination in a suit to reform, for the worst that could happen to her security would be that she might be compelled to sell the land on foreclosure in inverse order of alienation. Id. See Dun. Dig. 8335.

24. Covenants and conditions.

Finding of laches was sustained where, with full knowledge of violation of restriction on use of property for purpose other than as a place of residence, plaintiff failed to institute injunction proceedings until almost 2 years after completion of construction of buildings violating restriction. Cantieny v. B., 209M407, 296NW491. See Dun. Dig. 2393.

Restriction on use of property "for any purpose other than as a place of residence" is violated by erection and operation of ten tourist cabins on a 50-foot lot as a cabin camp for transient guests. Id.

Whenever land is developed under a general plan, reasonably restrictive covenants which appear in deeds to all lots sold are enforcible alike by vendor and by vendee and by their successors in title. Id.

A covenant is said to run with land when it touches or concerns the land granted or demised, and, generally speaking, a covenant touches or concerns the land if it is such as to benefit the grantor or the lessor, or the grantee or lessee, as the case may be, and must concern the occupation or enjoyment of the land granted or demised and the liability to perform it, and the right to take advantage of it must pass to the assignee. Pelser v. Gingold, 214M281, 8NW(2d)36. See Dun. Dig. 2390.

A covenant by a grantee of land to pay a certain sum to a stranger does not run with the land. Id. See Dun. Dig. 2397, 6293.

A deed of land to a township stating that grantee agrees that property be improved and kept for public park and picnic grounds only did not call for a reversion since there was no defeasance clause. Op. Atty. Gen. (441b), July 28, 1942.

Though deed to town for use as dock purposes provided for a reversion when land ceased to be used "by said town", the dock property was a public utility which passed to county on dissolution of town, provided county continued to maintain dock. Op. Atty. Gen. (441b), July 29, 1942.

8196. Conveyances by husband and wife, etc.

Laws 1943, c. 26, legalizes conveyances of real property heretofore made by married person directly to spouse.

Curative act. Laws 1943, c. 418.

Legalizing powers of attorney. Laws 1943, c. 443.

An instrument in the form of a mortgage in which the owner's spouse does not join can be registered under certain conditions when ordered by district court. Finnegan v. G., 207M480, 292NW22. See Dun. Dig. 8280.

8196-1. Same—Certain powers of attorney legalized.—Whenever a husband has given his wife a power of attorney to convey lands in this state and such wife conveys said lands by deed, naming herself as grantor and as a married person to whom her husband has given power to convey, and said power of attorney and deed have been of record in the office of the register of deeds of the county wherein such land is situated prior to 1916, said power of attorney and deed shall in all respects be deemed valid, and such conveyance shall operate as a conveyance by said wife for herself and as attorney in fact for her husband. (Act Apr. 14, 1943, c. 443, §1.)

8196-2. Same—Not to affect pending actions.—Nothing in this act shall apply to any pending action or to any action commenced within sixty days from the passage of this act. (Act Apr. 14, 1943, c. 443, §2.)

8199-2. Husband and wife—Certain conveyances legalized.—All conveyances of real property heretofor made in which a married man or married woman has conveyed real property directly to his or her spouse, or the husband has conveyed to his spouse and children and the children in turn have re-conveyed an interest to said spouse and mother, or a husband executed and acknowledged a deed in this state, and his wife executed such deed in a foreign country but did not acknowledge such deed or have the acknowledgment certified, shall be legal and valid, and the records of such conveyances heretofore actually recorded, and if not recorded, the register of deeds is hereby authorized to record the same in the proper county on or before September 1, 1943, shall be in all respects valid and legal; such conveyances and records thereof shall have the same force and effect in all respects as conveyances of title and for the purpose of notice, evidence or otherwise, as may be provided by law in regard to conveyances and their records in other cases. Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state. (Act Apr. 13, 1943, c. 418, §1.)

8204. Warranty and quitclaim deeds—Forms.

Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. First & American Nat. Bank v. H., 208M295, 293NW585. See Dun. Dig. 2693.

Rule of Sandwich Mfg. Co. v. Zellmer, 48M408, 51 NW379, that a grantor under a warranty deed is estopped by his covenants from asserting against his grantee a subsequently acquired title, with the consequence that such a title inures to benefit of grantee and his assigns, did not apply where basis of claimed right was a contract for deed which had been adjudicated cancelled. Ferch v. Hiller, 210M3, 297NW102. See Dun. Dig. 3182.

If quitclaim deed is executed and delivered in contemplation by parties of receipt of title by grantor, justice requires that after-acquired title pass. Baar v. Baar, 210M 384, 298NW455. See Dun. Dig. 2697.

Grantee in quitclaim deed can claim no more or better title than that possessed by grantor. Flowers v. Germann, 211M412, 1NW(2d)424. See Dun. Dig. 2696.

8204-1. Uniform conveyancing blanks commission authorized.

Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. First & American Nat. Bank v. H., 208M295, 293NW585. See Dun. Dig. 2693.

8204-4. Fees for recording.

Legislature did not intend to impose additional 25 per cent on affidavits and other instruments not prescribed or approved by uniform conveyancing blank commission. Op. Atty. Gen. (373B-10), Oct. 22, 1940.

Fees for recording deeds of master in chancery and trust deeds securing issuance of coupon bonds are 10 cents per folio, and there can be no additional fee of 25%, since there is no approved form for such instrument. Op. Atty. Gen. (373b-10-e), Oct. 27, 1943.

8205. No covenants implied—Adverse holding.

Where plaintiffs, grantors of land transferred, covenanted with their grantors to assume and to pay latters' own personal indebtedness for balances for certain improvements thereon, sold the land under executory contract of sale binding the vendees to assume and pay the balances, and then conveyed land to defendants "subject" to such balances and assigned to defendants their interest as vendors under the contract for deed without an agreement on part of latter to assume and pay the balances, defendants are not personally liable under the deed or the assignment of contract, and plaintiffs' covenants to pay balances did not run with land to that effect, and fact that balances were part of consideration for deed and for assignment of contract for deed was immaterial, and a release, as between them, of the vendees under the contract for deed by the defendants, as assignees thereof, from liability to pay such balances, which the vendees had agreed to pay under the contract, did not render defendants liable to plaintiffs, as vendors, in quasi contract for payment of the same. Pelser v. Gingold, 214M281, 8NW(2d)36. See Dun. Dig. 2397, 6289.

8211. Grantor to make known incumbrance.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

8213. Conveyances, how executed.

Women joining a religious order could change their names to "Sister Susanna" and Sister Margareta" and use such names as witnesses upon a conveyance. Op. Atty. Gen. (373b-7), Apr. 2, 1942.

A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-a), Dec. 15, 1943.

8216. Conveyances not acknowledged, etc.

An unacknowledged instrument relating to conveyance of land, such as a power of attorney, may be proven by the subscribing witnesses, but where there are no subscribing witnesses, but only a certificate that it was subscribed and sworn to, the instrument is not entitled to record. Op. Atty. Gen. (373b-9-a), June 14, 1943.

8217. Requisites to entitle to record.

Conveyances in German language are not entitled to record, and if recorded do not give notice to public, and public money may not be spent to translate them, and such conveyances may not be recorded even if a translation is included therewith. Op. Atty. Gen. (107B-13), Jan. 8, 1942.

A conveyance of land by state auditor with an acknowledgment omitting customary statement of venue preceding acknowledgment should be recorded when presented to a register of deeds, but in order to avoid any question as to validity of conveyances an appropriate curative act is suggested. Op. Atty. Gen. (24D) (320F), Jan. 24, 1942.

A defect in an acknowledgment, or even entire omission of an acknowledgment, does not vitiate a conveyance, but merely disqualifies it for recording purposes. Op. Atty. Gen. (320F), Jan. 24, 1942.

Women joining a religious order could change their names to "Sister Susanna" and "Sister Margareta" and use such names as witnesses upon a conveyance. Op. Atty. Gen. (373b-7), Apr. 2, 1942.

Whether valid or not, a properly witnessed and acknowledged trust mortgage to a county in another state for the benefit of public welfare board of that state, federal government and county in providing old-age assistance, is entitled to record, but is not exempt from mortgage registry tax, amount of which is to be determined upon such information as is available. Op. Atty. Gen. (373b-11), Feb. 9, 1943.

A deed executed in another state, witnessed, and acknowledged before a notary public of that state, with his seal impressed thereon, is entitled to record without further authentication. Op. Atty. Gen. (373b-9-a), Dec. 15, 1943.

8225. Record deemed notice—Exception.

Recitals in instruments affecting title to real estate do not constitute notice under certain conditions. Laws 1941, c. 192.

1. Instrument must be "properly" recorded.

Conveyances in German language are not entitled to record, and if recorded do not give notice to public, and public money may not be spent to translate them, and such conveyances may not be recorded even if a translation is included therewith. Op. Atty. Gen. (107B-13), Jan. 8, 1942.

8225-3. Certain recitals not to constitute notice of contract for conveyance.—Where any instrument affecting the title to real estate in this state recites the existence of a contract for conveyance affecting such real property, or some part thereof, and the instrument containing such recital was recorded prior to 1910, in the office of the register of deeds of the county wherein said real property or some part thereof is situated, and no action or proceeding has been taken upon such contract for conveyance, and the time for performing the conditions contained in such contract expired prior to 1925, then such recital may be disregarded and shall not constitute notice of said contract for conveyance, either actual or constructive, to any subsequent purchaser or encumberer of said real property or any part thereof. (Act Apr. 10, 1941, c. 192, §1.)
[507.331]

8225-4. Same—Pending actions not affected.—Nothing contained in this act shall affect actions now pending or commenced within six months after the passage of this act in any court of this state. (Act Apr. 10, 1941, c. 192, §2.)

8225-5. Recitals in written instruments not to constitute notice in certain cases.—Where an instrument affecting the title to real property in this State recites the existence of a mortgage against said real property or some part thereof, where the instrument containing such recital either was recorded prior to 1921 in the Office of the Register of Deeds of the county where said real property or some part thereof is situated or was filed prior to said date in a judicial proceeding affecting said real property or some part thereof in the district court or probate court of such county, and where the time of the maturity of the whole of the debt secured by said mortgage is not clearly stated in said recital, then such recital may be disregarded and shall not constitute notice of said mortgage, either actual or constructive, to any subsequent purchaser or incumbrancer of said real property or any part thereof. (Act Mar. 26, 1943, c. 180, §1.)
[507.332]

8225-6. Not to affect pending actions.—Nothing contained in this act shall affect actions now pending or commenced within six months after the passage of this act, in any court of this state. (Act Mar. 26, 1943, c. 180, §2.)
[507.332]

8226. Recording act—Unrecorded conveyance void.

1. In general.

If an erroneous tax deed has been recorded, the commissioner of taxation has no power to correct the error, the only remedy being through court proceedings or a curative act of the legislature. Op. Atty. Gen., (410b), July 11, 1941.

7. Who protected.

A grantee in an unrecorded deed allowing land to be assessed in name of grantor and delinquent taxes thereon to go to judgment and sale, and who leased land to a party who was made a party to registration proceedings, lease not being recorded, cannot complain that applicant for registration and his attorney failed to use diligence in discovering that he held a deed to the property. Application of Rees, 211M103, 300NW396. See Dun. Dig. 8302.

9. Good faith—Notice.

Return of unrecorded deed delivered unconditionally does not operate to revest title in grantor, and unless by words or conduct grantee has estopped himself from asserting title he will prevail in action to determine adverse claims against a subsequent grantee who first recorded but who had knowledge of the fact at time he accepted his deed. Forslee v. Sonju, 209M522, 297NW1. See Dun. Dig. 2669.

One purchasing real estate of which another than vendor is in actual possession is bound to make inquiries of occupants and ascertain nature and extent of their interests, and legal presumption is that he will make these inquiries, and he is estopped to deny that he made them. Flowers v. Germann, 211M412, 1NW(2d)424. See Dun. Dig. 10075.

Possession of an area likely exceeding that covered by deed constituted notice to purchaser of adjoining property of claim of right to a complete equitable title to entire tract possessed, there being a mutual mistake in respect to boundary as between respective grantors and parties to action. Id.

Rights of bona fide purchasers at execution sale. 24 MinnLawRev805.

8229-4a. Certain conveyances to spouses legalized.—All conveyances of real property heretofore made in which a married man or married woman has conveyed real property directly to his or her spouse, are hereby declared to be legal and valid and the records of such conveyances heretofore actually recorded and if not recorded, the register of deeds is hereby authorized to record the same on or before September 1, 1943, in the office of the register of deeds of the proper county, shall be valid and legal. Such conveyances and the records thereof shall have the same force and effect in all respects as conveyances of title and for the purpose of notice, evidence, or otherwise as may be provided by law in regard to conveyance and their records in other cases. The provisions of this act shall not apply to any action or proceeding now pending in any courts of this state. (Act Feb. 10, 1943, c. 26, §1.)

8229-11. Conveyances legalized.—All conveyances of real property within this State made prior to December 29, 1926, in which a married man conveyed real property direct to his wife, are hereby declared to be legal and valid, and all such conveyances heretofore actually recorded in the office of the proper Register of Deeds are declared legal and valid, and such conveyances and the record thereof shall have the same force and effect in all respects for the purposes of notice, evidence and otherwise as may be provided by law with respect to conveyances in other cases. This act shall not apply to any action or proceeding now pending in any of the courts of this state, or to any action which shall be commenced within six months after the passage of this act. (Act Apr. 21, 1941, c. 343, §1.)
[647.52]

8229-12. Assignments of mortgages legalized.—Any assignment of a mortgage made to the estate of a deceased person or to such estate and a person or persons when such assignment was recorded in the office of the register of deeds of the county where the land described in the mortgage was located before 1900 is hereby validated and legalized and shall be construed as an assignment to the representative of such deceased person. (Act Apr. 14, 1943, c. 444, §1.)

8229-13. Same—Conveyance of property legalized.—When a mortgage assigned as described in Section 1 hereof was foreclosed by the assignee thereof and such representative was the grantee named in the sheriff's certificate made in such foreclosure, any conveyance of the land described in such mortgage or a part thereof in which the grantor is described as such representative is hereby legalized and validated as a conveyance of the representative notwithstanding that such representative was not licensed to sell such real estate and the sale was not confirmed by a probate court, or notwithstanding that there was no authority of a probate court for such sale. (Act Apr. 14, 1943, c. 444, §2.)

8229-14. Same—Construction.—As used in this act, the singular shall include the plural. (Act Apr. 14, 1943, c. 444, §3.)

8229-15. Same—Not to apply to pending actions.—This Act shall not apply to any action pending in any court of this state, or to any action which may be commenced within 90 days after passage of this act. (Act Apr. 14, 1943, c. 444, §4.)

8234. Mortgages, how discharged of record.

Where mortgagee taking possession contracted, in event of foreclosure, either to buy property for full amount of debt or to release any deficiency judgment procured pursuant to foreclosure, and on foreclosure purchased for less than debts, subject to accrued taxes, mortgagor was entitled to rentals collected by mortgagee during period of redemption, and they could not be applied either on accrued taxes or upon indebtedness, though there was no deficiency judgment, contract wiping out entire debt on foreclosure. Wagner v. B., 206M 118, 288NW1. See Dun. Dig. 6219.

Right of assuming grantee to be subrogated to senior mortgage paid by him as against an unknown recorded junior mortgage. 24MinnLawRev121.

COMMON LAW
DECISIONS RELATING TO REAL ESTATE BROKERS IN GENERAL

1. Representation of principal in general—misrepresentations and fraud of broker.

A contract appointing one "sole agent to sell" real estate for owners, without more, does not deprive owners of right themselves to sell, without liability for commission, to a purchaser not procured by agent. Keller Corp. v. C., 207M336, 291NW515. See Dun. Dig. 1141.

An agent is guilty of fraud where he induces his principal to sign an instrument transferring title to property to himself by a false representation relied on by principal that instrument transfers title to an intended purchaser, notwithstanding fact that principal had an opportunity to read instrument before signing it and to determine fact to be otherwise than as represented. Doyen v. Bauer, 211M140, 300NW451. See Dun. Dig. 1143.

Where an agent authorized to sell land himself becomes purchaser without principal's consent, he is guilty of fraud as a matter of law whether he purchases directly or indirectly. Id. See Dun. Dig. 195, 200, 1144.

2. Compensation.

6. ——Actions.

In action by a realtor to recover commission wherein it appeared plaintiff procured a purchaser for two lots,

for a price and on terms agreeable to defendant, and defendant signed and delivered to plaintiff an earnest money contract of sale, it was error to strike evidence tending to show that contract of sale was signed and delivered upon condition that it should not become a contract unless and until effective consent of daughter of defendant was procured. Gustafson v. Elmgren, 211M 82, 300NW203. See Dun. Dig. 1140.

Where cause was predicated upon claim that defendant "fraudulently conspired to defraud" plaintiff of his broker's commission in a real estate transaction, a tort, and under the evidence there appeared to be no issue to decide other than whether or not plaintiff was procuring cause of sale, and also whether or not he was employed by one of the defendants as his agent, verdict was properly directed for defendant. Tapper v. Pliam, 212M295, 3 NW(2d)500. See Dun. Dig. 1161, 7674.

CHAPTER 64

Plats

8236. Platting of land—Donations.

An estoppel against a city arises where there has been a long-continued nonuser by city of a dedicated street and where private parties, in good faith and in belief that city's use has been abandoned, have made valuable and permanent improvements without objection from city, with its knowledge and encouraged by making of permanent improvements by issuing building permits to those in possession, so that to reclaim land without compensation will result in great damage to those in possession. City of Rochester v. North Side Corp., 211M276, 1NW(2d)361. See Dun. Dig. 6620, 6620a.

Continuous and open use for more than 15 years indicate an acceptance by public of a dedication of an alleyway. Dickinson v. Ruble, 211M373, 1NW(2d)373. See Dun. Dig. 2647.

A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. Op. Atty. Gen., (377a-3), Oct. 14, 1939.

8237. Survey and plat—Monument—Rivers, etc.

Practical location of a boundary line can be established only in one of three ways: acquiescence for sufficient length of time to bar right of entry under statute of limitations; express agreement between parties claiming land on both sides and acquiescence therein afterwards; or party whose rights are to be barred must, with knowledge of true line, have silently looked on while other party encroached upon it, and subjected himself to expense which he would not have done had line been in dispute. Dunkel v. Roth, 211M194, 300NW610. See Dun. Dig. 1083.

Since effect of a practical location of a boundary line is to divest owner of his property, evidence establishing such location should be clear, positive, and unequivocal. Id.

8238. Dedication—Certification—Approval—Etc.

Intention to create exception from vendor's general undertaking to convey free from incumbrances cannot be presumed from fact that there is a dedication then of record, since, as against vendor, purchaser is entitled to rely upon vendor's general undertaking and is not bound to take notice of the recordation. Miller v. S., (AppDC), 113F(2d)748.

A dedicator cannot attach any conditions or limitations inconsistent with legal character of dedication, or which are against public policy, or which take property designated from control of public authorities, and dedication will take effect regardless of such conditions which will be construed void. Kuehn v. V., 207M518, 292NW187. See Dun. Dig. 2626.

An individual dedicating a road to a township could not withhold from municipality sovereign power incident to public use of road, and could not reserve exclusive right to maintain a water supply system along the road. Id. See Dun. Dig. 2626.

A dedication of a street to the use of the public will be liberally construed and will not be limited to the particular activity for which the street was used at the time of the dedication. Krebs, 213M344, 6NW(2d)803. See Dun. Dig. 2626.

An owner of a platted area who installed improvements such as water and sewer system at his own expense and, to induce purchase of lots in the area, represented to buyers that no assessments therefor would be imposed because the purchase price of the lots included payment of the improvements, cannot thereafter claim full ownership of the improvements, and, to the extent of the payments made by lot buyers, improvements became property of the community, and its rights may be asserted by the local unit of government. Country Club District Service Co. v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 2652.

Fact that county approved plat does not make it liable for maintenance of dedicated highways. Op. Atty. Gen. (377b-10h), July 29, 1940.

Lands dedicated to municipality as a park by a plat cannot be leased to a township for use as a site for a warehouse for road and other machinery, nor can it be sold. Op. Atty. Gen., (469a-9), June 9, 1941.

In subdividing trust fund lands into small parcels or lots, Commissioner of Conservation has authority to dedicate streets and alleys to public. Op. Atty. Gen., (700d-26), July 25, 1941.

A plat indicating a street as an outer boundary indicated a dedication to the public of that street. Op. Atty. Gen. (396C-4), Aug. 29, 1941.

Where land was forfeited to state for nonpayment of taxes and was sold by state as tax forfeited land and a state deed issued, and purchaser from state secured a quitclaim deed from fee owner before forfeiture, which deed was filed, there is a merger in the purchaser of title obtained by state and title of owner before forfeiture, and if former owner had good title, new owner is now "owner" within meaning of this section, and holds title free from all tax liens except such as may have attached for taxes levied after his purchase of land from state. Op. Atty. Gen. (18D), Mar. 18, 1942.

Town is under no duty to improve and maintain streets in platted areas outside incorporated village or city until they have been accepted by town authority. Op. Atty. Gen. (377b-10h), July 29, 1942.

8239. Certain plats corrected and legalized.

There is no statute providing specifically for correction of errors in plats made under Mason's St. 1927, §2219, and auditor may insist upon owner filing a correct and proper plat. Op. Atty. Gen., (18d), Apr. 22, 1941.

8239-6. Correction of errors in recorded plats.

Laws 1943, c. 261, provides that where the plat of any village or city is incorrect in the description of property, the village or city council may within 60 days after the passage of this act file a correct plat.

8244. Notice by publication and service upon mayor, village president; etc.

Proceedings for vacation of any street or alley in any plat validated when such proceedings are in all respects properly taken and conducted, except that posted notice was not given. Not applicable to pending proceedings. Act Mar. 6, 1941, c. 46.

Where county condemning land entered into settlement agreement under which it paid cash and agreed to vacate another street abutting on property and give landowner 20 feet thereof, and landowner went into possession of strip of land, contention of land owner that he was rightfully in possession under claim of title and that no cause of action accrued against county in his favor for breach of its contract to vacate until his possession was disturbed by township authorities was without merit, since he did not acquire any title from county as it had no title to convey, and county could not even vacate street. Parsons v. T., 209M129, 295NW907. See Dun. Dig. 8467.

In proceeding to vacate a street in a township giving access to a lake, question for consideration is whether street is useless, not whether some other street is more useful, for the purpose for which it was laid out, and it is not enough to show that street is not presently used. Krebs, 213M344, 6NW(2d)803. See Dun. Dig. 6623(a).

Before a street can be vacated it must appear that no public interest will be served by continuing it and that vacation thereof will be beneficial to the public interests. Id.

Courts will be careful to preserve the rights of the public in a proceeding under this section to vacate a street. Id.

Proceedings for vacation of street and alley constituting part of a plat in a township should be under this section and not by petition before town board. Op. Atty. Gen. (377A-15), Oct. 3, 1941.

Gun Club owning lots in platted part of incorporated village, in order to remove lots from village to avoid heavy taxes, should have plat vacated insofar as it covers land in question, and then apply for detachment upon petition and special election of voters. Op. Atty. Gen. (484E-2), Mar. 9, 1942.

Procedures which may be taken where city sold tract of land to a can company, part of which is acreage and part platted, and effect upon classification for taxation and vacation of street, stated. Op. Atty. Gen. (18D), Mar. 26, 1942.

Statute providing for vacation proceedings in district court is applicable to plats and streets in villages op-