

CHAPTER 558

PARTITION OF REAL ESTATE

558.01 ACTION FOR PARTITION OR SALE, WHO MAY BRING.

HISTORY. R.S. 1851 c. 75 s. 1; P.S. 1858 c. 65 s. 1; 1864 c. 35; G.S. 1866 c. 74 s. 1; G.S. 1878 c. 74 s. 1; G.S. 1894 s. 5770; 1897 c. 299; R.L. 1905 s. 4392; G.S. 1913 s. 8028; G.S. 1923 s. 9524; M.S. 1927 s. 9524.

The owners of land, after it had been sold in 1865 under a decree to foreclose a mortgage, and before the time to redeem had expired, conveyed $\frac{2}{25}$ ths of it to B, and $\frac{23}{25}$ ths to M. H took an assignment of the certificate of sale from the purchaser, and afterwards a conveyance of B's $\frac{2}{25}$ ths. M, who was in possession and built a house on the property, paid to H at the end of the first year after the sale, a back tax on it and one year's interest on the price at which the property had been sold at the foreclosure sale; at the end of the second year, paid him another year's interest; and at the end of the third year paid to the sheriff, to redeem from the sale, the whole of such price and one year's interest, of which money H received from the sheriff $\frac{23}{25}$ ths. In an action by H against M for partition, M appealed from a judgment directing that the land be sold, giving M leave to remove his building, and that the proceeds, after paying the costs and disbursements, be divided between the parties in accordance with their respective interests, on the ground that upon H's acquiring B's title, there was a merger of the equitable and the legal estates to the extent of the $\frac{2}{25}$ ths, and that he, M, acquired the purchaser's title by the redemption. Held, before the time to redeem expired, the estate of the purchaser was that of a mortgagee before foreclosure, an equitable estate or interest; the redemption annulled the sale, and defeated the purchaser's estate; H having acquired the purchaser's estate before he became a cotenant in the property, had the right to hold and enforce it for his own benefit; there was no merger of the two estates held by H. after the conveyance to him of the $\frac{2}{25}$ ths. H had the right as assignee of the purchaser to receive from M, being in possession, the back tax and the first two years' interest, and thereby waived no other right dependent on his ownership of the $\frac{2}{25}$ ths than that respecting possession. The amount necessary to redeem, $\frac{23}{25}$ ths, was what H had a right to require of M to pay, and what he had a right to receive from the sheriff. M need have paid the sheriff no more than that sum to redeem. The sheriff, in receiving money paid for redemption, acts as the officer of the law and not as the agent of the party. H was entitled to partition, and the judgment was proper. *Horton and wife v Maffitt and wife*, 14 M 289 (216).

Under Minnesota Statutes 1941, Chapter 558, relating to actions for partition of real property where lands, leased for a term of years and in the actual possession of the lessee, are owned by several persons as tenants in common both of the rents and of the reversion upon such estate for years, an action for partition can be maintained by one of such owners and tenants in common. *Cook v Webb*, 19 M 167 (129).

Where complaint in an action for partition alleged plaintiff and defendant were tenants in common, owners in fee simple of the land, that, with a statement of the proportions in which the parties held, would have been sufficient. Where the complaint went on to show how plaintiff acquired his title from which it appeared that he claimed under a deed from the city of St. Paul in proceedings to enforce an assessment for local improvements, and the only things in such proceedings alleged were the deed and the certificate of sale, and there was no allegation of rendition of judgment, since no sale could be made or deed executed without a judgment, and from the complaint no authority in the city or its treasurer to execute the deed or issue the certificate of sale appeared, the complaint did not state a cause of action. *Bell v Dangerfield*, 26 M 307, 3 NW 698.

In an action for partition, the whole matter of title, and of the rights of the parties in the premises sought to be partitioned, may be determined, and a partition ordered, whenever the plaintiff shows himself seized of the requisite title, whether the land is held or claimed adversely to him or not. *Bonham v Weymouth*, 39 M 92, 38 NW 805.

In an action of partition, non-resident defendants were served with the summons by publication only. For want of an answer, judgment was rendered, after which, it having been found that partition could not be made without great prejudice to the owners, the land was sold by a referee to the plaintiff, which sale was confirmed. Subsequently, defendants moved upon affidavits and proposed answers, that the court should vacate the judgment, and annul and set aside all proceedings subsequent thereto, averring that plaintiff's claim was based upon tax assignments on which the time for redemption had not expired. Plaintiff made no attempt to controvert the contents of the moving papers, but set forth by affidavit that the land had passed into the hands of bona fide purchasers, and claimed that the motion could not be granted until the purchasers were cited in and made parties thereto. Held, it was not necessary to make the alleged bona fide purchasers parties to said motion, nor need they be notified of its pendency. *Welch v Marks*, 39 M 481, 40 NW 611.

The action for partition will not lie against, and the judgment and partition will not affect one who is a tenant for life of the whole property of which partition is sought. It will lie for a partition of the reversion, although the land be in possession, under an outstanding particular estate. *Smalley v Isaacson*, 40 M 450, 42 NW 352.

The provisions of what is commonly called the "occupying claimants law" apply to the action for partition. *Smalley v Isaacson*, 40 M 450, 42 NW 352.

R, the owner of a lot, mortgaged it to secure his debt. He afterward married J, and he and she executed a warranty deed of the lot to M, who executed a like deed of it to them. The mortgagee afterwards foreclosed his mortgage, and received the usual sheriff's certificate of sale. J duly redeemed the lot from the foreclosure sale, taking the certificate of redemption in her own name. She also paid taxes on the lot. The mortgage, the deeds, and the certificates were all duly recorded. Afterwards, R and J were divorced, and he conveyed his moiety to plaintiff by warranty deed. In an action by plaintiff against J for partition, as actual partition could not be without prejudice to the owners, judgment was ordered for a sale of the lot; that from the proceeds after paying expenses, one-half should be paid to J; that J had an equitable lien on plaintiff's half for one-half of the amount paid on the redemption, and interest thereon, and for one-half the amount paid for taxes; and that the lien be paid from plaintiff's share of the proceeds of the sale. *Fritz v Ramspott*, 76 M 489, 79 NW 520.

Where the interest of the tenant in dower or other life tenant extends to the whole of the land of which partition is sought, the action will not lie against the life tenant, nor can the judgment affect his estate; but, where the life estate extends only to a part of the land, an actual partition or sale thereof may be had, although it affects the life estate. *Hanson v Ingwaldson*, 77 M 533, 80 NW 702.

Plaintiff and defendant were equal tenants in common of real property used for brewery purposes. Plaintiff, through a lease, became the tenant of defendant as to defendant's undivided half of the property, carried on the business of brewing, and made repairs, improvements and alterations on the premises, paying for them himself. In an action for partition, plaintiff claimed defendant was liable for the repairs. Held, when one tenant in common has made necessary and needful repairs upon the common property, he can, in equity, compel contribution from his cotenant; but when the relation of landlord and tenant exists between such cotenants, the one in possession of the whole cannot, in an action for partition, charge his landlord for repairs made upon the property, in the absence of a special agreement that he shall be compensated therefor. *Schmidt v Constans*, 82 M 347, 85 NW 173.

The rules of pleading, practice, and evidence applicable to civil actions generally apply to an action for partition. A general allegation in a pleading of ownership of real property, in either a legal or equitable action, is sufficient to admit proof of any legal title held by the party so pleading. *McArthur v Clark*, 86 M 165, 90 NW 369.

MINNESOTA STATUTES 1945 ANNOTATIONS

Plaintiff's husband conveyed land he owned by warranty deed, but plaintiff did not join therein or consent thereto. Thereafter one of his grantees recovered and docketed a judgment against him for an amount exceeding the one-third value of the land, after which plaintiff was granted a divorce from her husband because of his adultery. He then had no real or personal property. Thereafter the land was conveyed to defendant. In actions by plaintiff for a partition of the land, neither the husband nor his judgment creditor was made a party to the action. Held, when the divorce was granted, under General Statutes 1894, Section 4808, plaintiff's contingent interest in the land became absolute, and she was then the owner in fee and entitled to the possession of an undivided one-third thereof, subject, in its just proportion with the other real estate, if any, to the payment of such debts of the husband as could not be paid from his personal property, and entitled to partition of the land; that the judgment was not a legal lien on such one-third interest. The right of the husband's creditors to subject such interest to the payment of its just proportion of their claims could not be enforced in these actions. *Keith v Mellenthin*, 92 M 527, 100 NW 366.

It appearing that the undivided one-third interest of the surviving husband, and the other undivided two-thirds interest of the real estate, could not be equitably divided, the probate court had jurisdiction, incidental to the administration and distribution of the estate, to cause the entire estate to be sold to pay specific legacies, if for the best interests of the estate. By this, the husband suffers no hardship. If the probate state were not applicable to enforce a sale of his one-third interest, the purchasers of the other two-thirds interest at a sale to provide for the legacies, could enforce a sale in partition proceedings in the district court. *Kelly v Slack*, 93 M 489, 101 NW 797.

Where plaintiff and defendant, owning certain lands, signed a contract by which defendant sold and conveyed to plaintiff an undivided one-third interest therein for \$10,000, which contract provided further that for the further consideration of \$1.00, the \$10,000, with interest, was to be a lien on the whole of the land until paid, in favor of plaintiff, it was held the right of partition may be waived or suspended for a limited period by agreement of the parties in interest; and that by contract in this case the parties in interest suspended that right for a period of five years. Demurrer to plaintiff's complaint for partition sustained. *Roberts v Wallace*, 100 M 359, 111 NW 289.

Under and pursuant to a contract made at the time of the construction of a building, plaintiff was in possession of the second floor, fitted up for a printing and law office. Defendant was in possession of the first floor, made suitable for a bank and abstract office. In an action for partition of the property, alleging that it could not be divided, plaintiff asked that the contract be canceled, the property sold, and that the proceeds be divided between plaintiff and defendant. Defendant claimed plaintiff was not entitled to partition because the contract agreement constituted a partition voluntarily made by the parties themselves, and that if it did not, the rights given to each party to use a particular portion hereof for the purpose and manner specified, constituted a waiver of the right to enforce partition. Held, cotenants may make any agreement they choose in respect to the use by each other of the common property, but such agreements do not constitute a partition of the property, unless they provide or contemplate that title to particular portions thereof shall vest in the respective coowners in severalty. The contract did not vest either party with title in severalty to any portion of the premises, and did not constitute a partition. A cotenant has the right to compel a partition or sale, unless such right has been suspended or waived by some agreement in respect to the property made by himself or by one through whom he claims. Such right may be suspended for a limited time by express agreement, or by acquiring the property for, or devoting it to, some purpose which will be defeated by a partition; but such right is not suspended by the existence of an interest in the property, or of a right to occupy or use it, which may continue and be given effect notwithstanding the partition. The respective rights of occupancy under the contract could exist after partition the same as before, and plaintiff could compel a partition, but that such partition would be subject to such rights of occupancy. *Hunt v Meeker Co. Abstract & L. Co.* 128 M 207, 150 NW 798.

Where one of the defendants, the owner of an undivided third in a certain tract of land, conveyed to plaintiff by deed the absolute right for a period of five years to take and remove therefrom all the sand he might wish and find use for,

together with the absolute right of entry for such purpose, it was held that plaintiff did not have "an estate of inheritance * * * or for years" enabling him to maintain an action of partition. *Bowe v Cole*, 129 M 276, 152 NW 534.

Plaintiff and defendant purchased on contract, and were the equitable owners of a farm, worth \$47,000, consisting of 397 acres, 370 of which were in one tract, and on which were buildings worth \$7,000 to \$9,000, and 27 acres about a mile away. The lands were operated as one farm. At the end of the year \$19,000 of the purchase price, with interest, was due. In an action for partition, held, the statute prefers a partition of lands in kind to a sale of them and a division of the proceeds; but taking into consideration the difficulty of making an equal division, the court's finding that the lands were so situated that partition thereof could not be had without great prejudice to the owners and that a sale should be had, was sustained. *Keyser v Hage*, 143 M 447, 174 NW 311.

One W died intestate owning a farm of 102 acres on which he, his wife, and four children resided. In an action brought by one of his daughters for partition of the farm, the court, finding it not feasible to divide the farm according to their respective interests, directed that it be sold subject to the life estate of the widow in the homestead 80 acres. Plaintiffs appealed from the court's refusal to include the life estate of the widow in the sale, claiming that the homestead included all the buildings, almost all of the improved land, was so located that the land not included in it was divided into two separate tracts, one of 12 acres on one side, and the other of ten acres on another side, and that their location, size and character was such that they could not be sold to advantage apart from the homestead, that the only persons who would be likely to bid the full value of the property at a sale were those who desired it for immediate use, and that such persons would not bid at a sale made subject to the life estate. Held, it is the fact of cotenancy which gives the right of partition; plaintiffs were not cotenants in the life estate; plaintiffs' rights were subject to the rights of the widow and they were not entitled to have the homestead sold for immediate use by the purchaser; that it might be of advantage to them to have the life estate sold with the remainder was not a sufficient reason for dispossessing the widow of her estate in severalty against her will; and affirmed the court's order. *Heintz v Wilhelm*, 151 M 195, 186 NW 305.

At common law a cotenant could not compel a partition of the land, unless he was entitled to the present possession of it as a cotenant, and hence he could not enforce a partition where his estate was subject to a life estate, as the life tenant was entitled to possession. Our statute has changed this rule. Under it a cotenant in the remainder may compel partition, although the life tenant is in possession of the property; but where there is a life estate in the whole of the property and a partition is made at the instance of the owner of an undivided interest in the remainder, it must be made subject to such life estate. *Heintz v Wilhelm*, 151 M 195, 186 NW 305.

Where one cotenant farms a tract of land without excluding the others, the crops so raised belong to him and he is not liable to his cotenants for rents and profits. Conceding plaintiff stood in a confidential relation to his weak-minded brother and sister, his cotenants of the farm upon which all made their home, the stock and personal property he used in the farming were his, and his operation of the farm under the circumstances did not withdraw from him his legal rights of nonliability for rents and profits. *Arnold v DeBooy*, 161 M 255, 201 NW 437.

Sustained judgment setting off to the plaintiff and the defendant equal portions in area of an 80-acre tract of land owned by them as tenants in common, the portion set off to each party being proportionate in value to such party's contribution to the whole, that set-off to the defendant being the portion which he had improved. *Brandin v Swenson*, 163 M 506, 204 NW 468.

The rule of law that when a permanent improvement has been made by one cotenant with the consent of the other, he is entitled to reimbursement and on partition is to be protected, does not apply when the cotenants are husband and wife, and there is no express agreement for such reimbursement. When such relation exists there is no implied contract for such reimbursement. *Leach v Leach*, 167 M 489, 209 NW 636.

Partition of lands in kind instead of by sale is preferred. And the burden is on the one demanding a sale to prove that partition in kind cannot be made with-

MINNESOTA STATUTES 1945 ANNOTATIONS

558.02 PARTITION OF REAL ESTATE

3700

out great prejudice to all the owners. *Pigeon R. Lbr. v McDougall*, 169 M 83, 210 NW 850.

The sole owner of a life estate cannot maintain an action in partition against the owner of the remainder. Such actions can be maintained only where the plaintiff is a cotenant with others. *Rekovsky v Glisczinski*, 170 M 303, 212 NW 595.

Partition is by statutory action, but the proceeding is governed by equity principles. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

In action for partition or sale of farm where there were involved 15 different interests which greatly varied in extent and value, division in kind was impossible, and the trial court did not abuse its discretion in determining that a sale was necessary. *Hoverson v Hoverson*, 216 M 228, 12 NW(2d) 502.

Owelry should be decreed with caution and should not be decreed except when necessary to make an equitable and fair division. *Hoverson v Hoverson*, 216 M 228, 12 NW(2d) 502.

The statute prefers a division in specie, and neither a burdening of one share with owelry or a sale of the whole should be permitted except when equitably necessary. *Hoverson v Hoverson*, 216 M 228, 12 NW(2d) 502.

558.02 SUMMONS; SERVICE.

HISTORY. R.S. 1851 c. 75 ss. 2, 7; P.S. 1858 c. 65 ss. 2, 7; G.S. 1866 c. 74 ss. 2, 4; G.S. 1878 c. 74 ss. 2, 4; G.S. 1894 ss. 5771, 5773; R.L. 1905 s. 4393; G.S. 1913 s. 8029; G.S. 1923 s. 9525; M.S. 1927 s. 9525.

In an action for partition, the summons was addressed "to the above named defendants". The names of the defendants were before stated in the title of the case. Defendants moved the court to set aside the summons on the ground that it was not addressed, by name, to all owners and lien-holders who were known, and generally to all persons unknown having or claiming any interest in the property. Held, the statute only requires the summons to be addressed to those having or claiming an interest in the property. It appearing from the complaint that defendants were the only persons, except the plaintiffs, having or claiming an interest in the property, it was only necessary to address the summons to them. *Martin v Parker*, 14 M 13 (1).

Service by the publication and mailing of a summons in a partition suit, naming as party and addressee "Albert Guilfuss, Assignee", and "Albert B. Guilfuss", constituted due process of law conferring jurisdiction to render a judgment binding upon Albert B. Guilfuss, Assignee, with respect to his lien upon or interest in the land, he not having appeared. *Grannis v Ordean*, 234 US 390.

Right of mortgagee of undivided interest as affected by a partition to which he was not a party. 24 MLR 708.

558.03 COMPLAINT.

HISTORY. R.S. 1851 c. 75 s. 3; P.S. 1858 c. 65 s. 3; G.S. 1866 c. 74 s. 3; G.S. 1878 c. 74 s. 3; G.S. 1894 s. 5772; R.L. 1905 s. 4394; G.S. 1913 s. 8030; G.S. 1923 s. 9526; M.S. 1927 s. 9526.

Where it appeared in the complaint that defendants were the only persons, except the plaintiffs, interested in the property, it was not necessary that the summons should be addressed "generally to all persons unknown, having or claiming an interest in the property". *Martin v Parker*, 14 M 13 (1).

Where complaint in an action for partition alleged plaintiff and defendant were tenants in common, owners in fee simple of the land, that with a statement of the proportions in which the parties held, would have been sufficient; but where the complaint went on to show how plaintiff acquired his title from which it appeared that he claimed under a deed from the city of St. Paul in proceedings to enforce an assessment for local improvements, and the only things in such proceedings alleged were the deed and the certificate of sale, and there was no allegation of rendition of judgment, since no sale could be made or deed executed without a judgment, and from the complaint no authority in the city or its treasurer to execute the deed or issue the certificate of sale appeared, the complaint did not state a cause of action. *Bell v Dangerfield*, 26 M 307, 3 NW 698.

MINNESOTA STATUTES 1945 ANNOTATIONS

3701

PARTITION OF REAL ESTATE 558.04

The rules of pleading, practice, and evidence applicable to civil actions generally apply to an action for partition. Where the complaint in an action for partition alleged, in general terms, plaintiff's ownership of an undivided portion of the land sought to be partitioned, and defendants' interest therein, and defendants answered (a) by general denial, and (b) alleging in general terms that defendants were the owners of the property, it was held that evidence of title by adverse possession was admissible under the answer. The effect of such evidence was more than to effect a bar to plaintiff's right of action, for it established a legal title in defendants, and was competent under the general allegation of ownership. *McArthur v Clark*, 86 M 165, 90 NW 369.

A complaint alleging that the premises could not be divided, except at a great loss and disadvantage to all parties interested, was equivalent to stating that the property was so situated that partition could not be made without great prejudice to the owners, as provided by Minnesota Statutes 1941, Section 558.14, and the complaint was sufficient. *Hennes v Huston*, 93 M 334, 101 NW 1133.

Under the statute the complaint must set forth the interest of all persons in the property whether by way of ownership or lien. *Schoonmaker v St. P. Title & T. Co.* 152 M 94, 188 NW 223.

An interlocutory judgment in a suit for partition, which determined that the land was subject to the lien of a judgment in favor of one of the defendants, estops a codefendant from questioning the validity of the judgment in a subsequent action involving the title to the same land in which the defendants, or those in privity, are adverse parties. *Schoonmaker v St. P. Title & T. Co.* 152 M 94, 188 NW 223.

558.04 JUDGMENT FOR PARTITION; REFEREES.

HISTORY. G.S. 1866 c. 74 ss. 5, 6; G.S. 1878 c. 74 ss. 5, 6; 1887 c. 38; G.S. 1894 ss. 5774, 5775; R.L. 1905 s. 4395; G.S. 1913 s. 8031; G.S. 1923 s. 9527; M.S. 1927 s. 9527.

In an action for partition, defendant denied in his answer that plaintiff owned any part of the premises, alleged he owned the whole, and claimed that the issue of adverse claim of title could not be tried in an action for partition. Held, in an action for partition, the whole matter of title, and of the rights of the parties in the premises sought to be partitioned, may be determined, and a partition ordered whenever the plaintiff shows himself seized of the requisite title, whether the land is held or claimed adversely to him or not. *Bonham v Weymouth*, 39 M 92, 38 NW 805.

In an action for partition, the judgment provided in Minnesota Statutes 1941, Section 558.07, is the final judgment, and upon an appeal from it, the judgment provided in section 558.04 is open to review. *Dobberstein v Murphy*, 44 M 526, 47 NW 171.

Where under and pursuant to a contract made at the time of the construction of a building, plaintiff was in possession of the second floor thereof fitted up for a printing and law office, and defendant of the first floor, made suitable for a bank and abstract office, the parties were cotenants in the title, but were not cotenants in the respective rights of occupancy given them individually by the contract. Such individual rights could exist after a sale had been made in partition proceedings. Therefore plaintiff could compel partition by a division of the land, if practicable, or if impracticable, by a sale thereof; but partition must be made subject to the rights of occupancy conferred by contract. *Hunt v Meeker Co. Abstract & L. Co.* 128 M 207, 150 NW 798.

One P, and one B, predecessors in interest respectively of plaintiff and defendant, entered into a contract under which P sold an undivided half interest in a lot he owned to B. The two parties erected a two-story brick building on the lot, the second floor of which was fitted up for a printing and law office for P, and the first floor was made suitable for a bank and abstract office for B. Each paid one-half the cost except that B alone paid for a bank vault constructed in the basement and first floor. P paid a yearly rental of \$280.00. B paid a yearly rental of \$360.00, out of which was deducted taxes, insurance, and repairs. Held, where a permanent improvement has been erected by one cotenant with the consent of the other, the court, in a case of partition where a division is practicable,

may award that portion of the land upon which the improvement is to the one who erected it, without taking its value into consideration, provided no injustice results to the other cotenant; but if a division cannot be had and a sale is necessary, the court may determine in what amount the present value of the whole is enhanced by reason of such improvement, and direct that out of the proceeds of the sale the amount so determined be paid to the cotenant who made the improvement. The relation of landlord and tenant did not exist between the predecessors in interest so as to preclude defendant from making a claim for the enhanced value given the property by reason of the vault thereon erected by its predecessor. From the undisputed facts, division could not be had without serious prejudice to the parties and a sale was required. *Hunt v Meeker Co. Abstract & L. Co.* 135 M 134, 160 NW 496.

Kaufman v Eckhardt, 195 M 569, 263 NW 610, 264 NW 781. See note under section 558.01.

Where the property sought to be partitioned was a four-family apartment house in which plaintiff and defendant each owned an undivided one-half interest, and defendant occupied one of the apartments and claimed her undivided interest as a homestead; held, that one of the cotenants claiming homestead exemption in her undivided interest does not prevent a sale of the property which cannot be divided without great prejudice to the owners. *Smith v Wright*, 195 M 589, 263 NW 903.

Parties to a partition action who, until final judgment, have contended that there should be a sale of the premises rather than a division in kind, will not be permitted on appeal to reverse their attitude and claim that sale should not have been ordered. *Burke v Burke*, 209 M 386, 297 NW 340.

The order for sale is reviewable on appeal from the final judgment. *Burke v Burke*, 209 M 386, 297 NW 340.

Appeals in partition proceedings. 26 MLR 218.

558.05 DISPUTE BETWEEN DEFENDANTS NO DEFENSE.

HISTORY. G.S. 1866 c. 74 s. 5; G.S. 1878 c. 74 s. 5; 1887 c. 38; G.S. 1894 s. 5774; R.L. 1905 s. 4396; G.S. 1913 s. 8032; G.S. 1923 s. 9528; M.S. 1927 s. 9528.

Plaintiff may be allowed judgment in a suit for partition allotting him the share he is entitled to without waiting for a determination of the conflicting claims of owners of other undivided interests. The court, by its judgment, may cause the portions or shares in dispute to be allotted to the defendants claiming such undivided shares, without determining their respective rights thereto. *Howe v Spalding*, 50 M 157, 52 NW 527.

An interlocutory judgment in a suit for partition, which determined that the land was subject to the lien of a judgment in favor of one of the defendants, estops a codefendant from questioning the validity of the judgment in a subsequent action involving the title to the same land in which the defendants or those in privity are adverse parties. *Schoonmaker v St. P. Title & T. Co.* 152 M 98, 188 NW 224.

558.06 DUTY OF REFEREES; REPORT; EXPENSES.

HISTORY. R.S. 1851 c. 75 ss. 9, 10, 13; P.S. 1858 c. 65 ss. 9, 10, 13; G.S. 1866 c. 74 ss. 7, 11; G.S. 1878 c. 74 ss. 7, 11; G.S. 1894 ss. 5776, 5780; R.L. 1905 s. 4397; G.S. 1913 s. 8033; G.S. 1923 s. 9529; M.S. 1927 s. 9529.

Where objection to a division was that the portion allotted to appellant contained more than its due proportion of undesirable land, or otherwise expressed that it was not of as good average quality per acre as portions assigned to respondent, but appellant admitted as to the relative values of the several tracts, the portion allotted to her was of a value equal to, or slightly in excess of what she was entitled to; held, this statute does not require that each of the portions shall be of the same average quality per acre. All that it means is that quality and quantity shall both be taken into consideration in making the division, so that justice may be done to all of the parties by allotting to them portions of equal value. *La Motte v Mohr*, 78 M 127, 80 NW 850.

Where three referees are appointed by the court to make a partition of real estate, a partition reported and concurred in by two of them is valid and binding, if approved by the court. *Robbins v Hobart*, 133 M 49, 157 NW 908.

The statute does not require the referees to make findings of evidentiary facts. *Robbins v Hobart*, 133 M 49, 157 NW 908.

The report has the force and effect of a verdict, and where it has been approved by the trial court, it will not be set aside on the ground that the referees erred in judgment unless manifestly inequitable. *Robbins v Hobart*, 133 M 49, 157 NW 908.

Where partition is to be made, the court must determine the rights and interests of all parties to the action in the property to be partitioned, whether such interests consist of liens, taxes paid, advances, or improvements made. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

558.07 CONFIRMATION OF REPORT; FINAL JUDGMENT.

HISTORY. R.S. 1851 c. 75 s. 11; P.S. 1858 c. 65 s. 11; G.S. 1866 c. 74 s. 8; G.S. 1878 c. 74 s. 8; G.S. 1894 s. 5777; R.L. 1905 s. 4398; G.S. 1913 s. 8034; G.S. 1923 s. 9530; M.S. 1927 s. 9530.

Where lands, leased for a term of years and in the actual possession of the lessee, are owned by several persons as tenants in common both of the rents and of the reversion upon such estate for years, an action for partition can be maintained by one of such owners and tenants in common. *Cook v Webb*, 19 M 167 (129).

In an action of partition, non-resident defendants were served with the summons by publication only. For want of an answer, judgment was rendered, after which, it having been found that partition could not be made without great prejudice to the owners, the land was sold by a referee to the plaintiff, which sale was confirmed. Subsequently defendants moved, upon affidavits and proposed answers, that the court should vacate the judgment, and annul and set aside all proceedings subsequent thereto, averring that plaintiff's claim was based upon tax assignments on which the time for redemption had not expired. Plaintiff made no attempt to controvert the contents of the moving papers, but set forth by affidavit that the land had passed into the hands of bona fide purchasers, and claimed that the motion could not be granted until the purchasers were cited in and made parties thereto. Held, it was not necessary to make the alleged bona fide purchasers parties to said motion, nor need they be notified of its pendency. *Welch v Marks*, 39 M 481, 40 NW 611.

The action for partition will not lie against, and the judgment and partition will not affect, the estate of one who is only tenant for life of the whole property of which partition is sought. It will lie for partition of the reversion, although the land be in possession, under an outstanding particular estate. Following *Cook v Webb*, 19 M 129 (167). *Smalley v Isaacson*, 40 M 450, 42 NW 352.

In an action for partition, the judgment provided in Minnesota Statutes 1941, Section 558.07, is the final judgment, and upon an appeal from it, the judgment provided in section 558.04 is open to review. *Dobberstein v Murphy*, 44 M 526, 47 NW 171.

Where property admitted by the pleadings to be of the value of \$8,000, on which there were mortgages aggregating \$2,700, was bid off by the plaintiff for \$2,000; held, the court did not abuse its discretion in refusing to confirm the sale and in ordering a re-sale thereof upon a judgment in an action for partition. *Johnson v Avery*, 56 M 12, 57 NW 218.

Real estate valued at not less than \$8,000 was sold at a partition sale for the sum of \$1,500. Held, the sale was for such a grossly inadequate price as to raise an inference of unfairness and the sale should be set aside. *Johnson v Avery*, 60 M 262, 62 NW 283.

Where the interest of the tenant in dower or other life tenant extends to the whole of the land of which partition is sought, the action will not lie against the life tenant, nor can the judgment affect his estate; but, where the life estate extends only to a part of the land, an actual partition or sale thereof may be had, although it affects the life estate. *Hanson v Ingwaldson*, 77 M 533, 80 NW 702.

MINNESOTA STATUTES 1945 ANNOTATIONS

558.08 PARTITION OF REAL ESTATE

3704

An interlocutory judgment in a suit for partition, which determined that the land was subject to the lien of a judgment in favor of one of the defendants, estops a codefendant from questioning the validity of the judgment in a subsequent action involving the title to the same land in which the defendants or those in privity are adverse parties. *Schoonmaker v St. P. Title & T. Co.* 152 M 94, 188 NW 223.

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

558.08 PERSONS NOT AFFECTED.

HISTORY. R.S. 1851 c. 75 s. 12; P.S. 1858 c. 65 s. 12; G.S. 1866 c. 74 s. 9; G.S. 1878 c. 74 s. 9; G.S. 1894 s. 5778; R.L. 1905 s. 4399; G.S. 1913 s. 8035; G.S. 1923 s. 9531; M.S. 1927 s. 9531.

This section embraces estates in severalty to the whole premises which are subject to partition; and such estates may, or may not, be in possession. *Cook v Webb*, 19 M 167 (129).

The action for partition will not lie against, and the judgment and partition will not affect, the estate of one who is only tenant for life of the whole property of which partition is sought. *Smalley v Isaacson*, 40 M 450, 42 NW 352.

Where the interest of the tenant in dower, or other life tenant, extends to the whole of the land of which partition is sought, the action will not lie against the life tenant, nor can the judgment affect his estate; but, where the life estate extends only to a part of the land, an actual partition or sale thereof may be had, although it affects the life tenant. *Hanson v Ingwaldson*, 77 M 533, 80 NW 702.

Where there is an estate in severalty for life or years in the property to be partitioned, the partition, whether in kind or by sale, should be made subject to such estate, unless it be clearly shown that a due regard for the interest of all parties requires that the precedent estate be included therein. *Heintz v Wilhelm*, 151 M 195, 186 NW 305.

558.09 LIENS, HOW AFFECTED.

HISTORY. R.S. 1851 c. 75 s. 5; P.S. 1858 c. 65 s. 5; G.S. 1866 c. 74 s. 10; G.S. 1878 c. 74 s. 10; G.S. 1894 s. 5779; R.L. 1905 s. 4400; G.S. 1913 s. 8036; G.S. 1923 s. 9532; M.S. 1927 s. 9532.

Plaintiff and defendant were the owners in common of two improved farms, one of the value of \$15,500, and the other of the value of \$18,500. Each owner an undivided one-half thereof. Defendant mortgaged his undivided interest in both farms to a bank from which plaintiff acquired the mortgage and became its owner. In an action for partition, held, there was nothing in the situation to prevent a partition in kind without great prejudice to the owners; the shifting of the mortgage lien onto the farm allotted to defendant was provided for by Minnesota Statutes 1941, Section 558.09; and that there should be a partition in kind. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

Right of mortgagee of undivided interest as affected by a partition to which he was not a party. 24 MLR 708.

558.10 COSTS APPORTIONED.

HISTORY. R.S. 1851 c. 75 s. 54; P.S. 1858 c. 65 s. 54; G.S. 1866 c. 74 s. 46; 1874 c. 63 s. 1; G.S. 1878 c. 74 s. 46; G.S. 1894 s. 5815; R.L. 1905 s. 4401; G.S. 1913 s. 8037; G.S. 1923 s. 9533; M.S. 1927 s. 9533.

Where a partition of real property is the principal object of the action, and the final judgment results in benefits to all parties concerned, the court may, in its discretion, under Minnesota Statutes 1941, Section 558.10, make a reasonable allowance to plaintiffs for necessary attorney's fees; but in cases where the action is in fact an adversary one, and the real contest is as to the title to the property, no allowance for such attorney's services ought to be made. *Brown v Radebaugh*, 84 M 346, 87 NW 915.

In an action to compel partition of real estate, defendant denied plaintiff's right to enforce such partition, and the trial court sustained defendant's conten-

tion; in an appeal by plaintiff, the trial court was reversed. Plaintiff taxed the costs of the appeal, and caused judgment to be entered therefor, an execution to be issued upon the judgment, and a levy to be made thereunder. Defendant then moved for a vacation of such levy, upon the ground that the costs in partition proceedings should be apportioned between the parties, or paid out of the proceeds of the property. The motion was denied because the costs in controversy were incurred in an adversary proceeding to determine whether plaintiff possessed the right to enforce a partition, and were not expenses of making the partition, within meaning of Minnesota Statutes 1941, Section 558.10. *Hunt v Meeker Co. Abstract & L. Co.* 128 M 539, 151 NW 1102.

Costs and disbursements in partition suits may, under Minnesota Statutes 1941, Section 558.10, be apportioned between the parties in the district court; and no error was committed against plaintiff by an equal apportionment. This rule is not applicable in an appeal to the supreme court, as an appeal is necessarily an adversary proceeding. *Hunt v Meeker Co. Abstract & L. Co.* 135 M 134, 160 NW 496.

It is for the trial court to determine and apportion the costs of the partition. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

558.11 COMPENSATION BECAUSE OF INEQUALITY.

HISTORY. R.S. 1851 c. 75 s. 49; P.S. 1858 c. 65 s. 49; G.S. 1866 c. 74 s. 41; G.S. 1878 c. 74 s. 41; G.S. 1894 s. 5810; R.L. 1905 s. 4402; G.S. 1913 s. 8038; G.S. 1923 s. 9534; M.S. 1927 s. 9534.

In a cross-complaint in an action for partition, filed pursuant to a stipulation, defendant asked "that the decree to be entered herein adjust the taxes on the land * * * so that each owner shall bear his proper share of the taxes." The amended complaint asked the same relief. Held, the pleading was sufficient to authorize a determination of the taxes. *Getchell v Freeman*, 136 M 476, 162 NW 463.

In an action for partition, the referees recommended a division of the property among the owners and an award of compensation to make equality; their report was confirmed. In an appeal from the final judgment, held, under Minnesota Statutes 1941, Section 558.11 and 558.12, the court may decree owelty to equalize partition though the coowner receiving the larger share does not consent that his interest be charged with its payment. *Hoerr v Hoerr*, 140 M 223, 165 NW 472, 167 NW 735.

Plaintiff and defendant were owners in common, each owning an undivided one-half of two farms, of the values of \$15,500 and \$18,500. Plaintiff held mortgage on defendant's undivided interest in both farms. In an action for partition, held, there was no valid reason why partition in kind could not be made. There could be allotted to the defendant the \$15,500 farm, and to the plaintiff the \$18,500 farm, and credited on plaintiff's mortgage the \$1,500 owelty which he would otherwise have to pay to equalize partition; or, the defendant could be allotted the more valuable farm and be required to pay the owelty. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

Where it was suggested that the referees might value the two farms and determine the owelty, held, by Minnesota Statutes 1941, Section 558.11, it is left for the court to determine what compensation shall be made by one party to another to equalize the partition. *Kauffman v Eckhardt*, 195 M 574, 263 NW 610, 264 NW 781.

Minnesota law of constructive trusts and analogous equitable remedies. 25 MLR 682.

558.12 PROPERTY NOT CAPABLE OF DIVISION MAY BE SET OFF; OCCUPANCY ASSIGNED.

HISTORY. G.S. 1866 c. 74 s. 14; G.S. 1878 c. 74 s. 14; G.S. 1894 s. 5783; R.L. 1905 s. 4403; G.S. 1913 s. 8039; G.S. 1923 s. 9535; M.S. 1927 s. 9535.

Under Minnesota Statutes 1941, Sections 558.11 and 558.12, the court may decree owelty to equalize partition though the coowner receiving the larger share does not consent that his interest be charged with its payment. *Hoerr v Hoerr*, 140 M 223, 165 NW 472, 167 NW 735.

558.13. OCCUPANT LIABLE TO COTENANTS; TRESPASS.

HISTORY. G.S. 1866 c. 74 ss. 15, 16; G.S. 1878 c. 74 ss. 15, 16; G.S. 1894 ss. 5784, 5785; R.L. 1905 s. 4404; G.S. 1913 s. 8040; G.S. 1923 s. 9536; M.S. 1927 s. 9536.

558.14 SALE MAY BE ORDERED.

HISTORY. R.S. 1851 c. 75 ss. 8, 14; P.S. 1858 c. 65 ss. 8, 14; G.S. 1866 c. 74 s. 12; G.S. 1878 c. 74 s. 12; G.S. 1894 s. 5781; R.L. 1905 s. 4405; G.S. 1913 s. 8041; G.S. 1923 s. 9537; M.S. 1927 s. 9537.

Where property could be divided into two portions only by leaving a stone building upon one and a brick building upon the other, and the line of division would necessarily be irregular, and in order to be anywhere near equal in value the greater portion of the lot would have to go with the brick building which was of much less value, held: under the circumstances, the court was justified in directing that the premises be sold, rather than divided. *Hennes v Huston*, 93 M 334, 101 NW 1133.

A complaint alleging that the premises could not be divided, except at a great loss and disadvantage to all parties interested therein, was equivalent to stating that the property was so situated that partition could not be made without great prejudice to the owners, as provided by Minnesota Statutes 1941, Section 558.14, and the complaint was sufficient. *Hennes v Huston*, 93 M 334, 101 NW 1133.

Judgment liens and a mortgage on the interests of three of five cotenants of land totaled over \$411,000; in an action for partition, service of the summons on one of the judgment creditors, Albert B. Geilfuss, assignee, who held a judgment against McK, one of the cotenants, was by publication only, and in the summons he was designated as "Albert Geilfuss, assignee". It was alleged in the complaint that the lands involved were of the value of \$1,200. The partition action resulted in a sale of the land to S. Thereafter execution on the judgment was issued, and McK's interest in the land sold to B. In an action to determine adverse claims brought subsequently by plaintiff who acquired the interest of S, against defendant who purchased from B, defendant claimed the court in the partition action had acquired no jurisdiction to render a default judgment binding upon "Albert B. Geilfuss, assignee", because of the defect of the summons, and, it appearing that liens on three of the undivided interests far exceeded the value of the land, that the court had no jurisdiction to decree a sale; and that its judgment was void and subject to attack collaterally. Held, the difference in names was not such as could cause Albert B. Geilfuss, assignee, or any one knowing him, to doubt that he was the person intended to be named, and such defect did not render the judgment void. The court had jurisdiction of the subject matter and of the parties, and the judgment was one it had jurisdiction to enter if the pleadings and proof warranted it; though it was error to order the sale, the error was at the most one that might have been taken advantage of on appeal; it did not avoid the judgment. The court did not exceed its jurisdiction in adjudging a sale of the property, and confirming such sale, and the cotenant's interest passed by it. *Ordean v Grannis*, 118 M 117, 136 NW 575, 1026.

The statute gives a cotenant the right to bring an action for a partition of the common property or for a sale thereof, if it appears that a partition is impracticable. *Hunt v Meeker Co. Abstract & L. Co.* 128 M 207, 150 NW 798.

Plaintiff and defendant jointly owned a lot and the two-story brick building thereon. A bank vault was built in the basement and first floor of the building. In an action for partition it was held, from the evidence, that the situation was such that prejudice would result from a division, and a sale was ordered. *Hunt v Meeker Co. Abstract & L. Co.* 135 M 134, 160 NW 496.

Plaintiff and defendant purchased and were the equal equitable owners of a 397-acre farm, 370 acres of which were in body, and 27 acres a mile away; on the 370 acres were buildings worth from \$7,000 to \$9,000; \$19,000 unpaid of the purchase price, with interest, was due at the end of the year. In an action for partition, held: the statute favors partition in kind rather than upon sale; but taking into consideration the difficulty of making an equal division without overloading one tract with too extensive improvements, the disinclination to decree owelty to make partition equal, and the existence of the \$19,000 encumbrance

MINNESOTA STATUTES 1945 ANNOTATIONS

3707

PARTITION OF REAL ESTATE 558.15

soon due, which could not be divided and put one part on one tract and the rest on the other, or put wholly on one, the finding of the trial court that the lands were so situated that partition thereof could not be had without great prejudice to the owners and that a sale should be had, was sustained. *Keyser v Hage*, 143 M 447, 174 NW 311.

In determining whether there should be a sale, the situation of the parties and the financial ability of either one of the parties to purchase, should be considered. Until the contrary appears, the presumption prevails that partition in kind should be made. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

Partition in kind is favored rather than a sale. He who asks a sale, has the burden of proving that partition in kind cannot be made without great prejudice to the owners. *Kauffman v Eckhardt*, 195 M 569, 263 NW 610, 264 NW 781.

The sale here attacked did not result in a price so grossly inadequate as to require re-sale, and the receipts therefrom were in accordance with the judgment and the law. *Smith v Wright*, 195 M 589, 263 NW 903.

The order for sale is reviewable on appeal from the final judgment. *Burke v Burke*, 209 M 386, 297 NW 340.

Appeals in partition proceedings. 26 MLR 218.

558.15 LIENS; NEW PARTIES; NO SALE, WHEN.

HISTORY. R.S. 1851 c. 75 ss. 17, 24, 44; P.S. 1858 c. 65 ss. 17, 24, 44; G.S. 1866 c. 74 ss. 13, 18, 20, 37; G.S. 1878 c. 74 ss. 13, 18, 20, 37; G.S. 1894 ss. 5782, 5787, 5789, 5806; R.L. 1905 s. 4406; G.S. 1913 s. 8042; G.S. 1923 s. 9538; M.S. 1927 s. 9538.

Where property admitted by the pleadings to be of the value of \$8,000, on which there were mortgages aggregating \$2,700, was bid off for \$2,000 by plaintiff, one of the cotenants; held, the court did not abuse its discretion in refusing to confirm the sale, and in ordering a re-sale thereof upon a judgment in an action for partition. *Johnson v Avery*, 56 M 12, 57 NW 217.

Ordean v Grannis, 118 M 117, 136 NW 575, 1026. See note under section 558.14.

In opening an interlocutory judgment in an action for partition and granting leave to answer upon the application of a non-resident, served with summons by publication, the court may impose terms under Minnesota Statutes 1941, Section 543.13, although the applicant has not been guilty of laches; but the court is not authorized to impose terms which deprive such applicant of any substantial right as claimed under the issues of his proposed answer, or terms which are burdensome, in a case where there is no laches, and the application is made within the year after entry of judgment. *Doherty v Ryan*, 123 M 471, 144 NW 140.

An interlocutory judgment in a suit for partition, which determined that the land was subject to the lien of a judgment in favor of one of the defendants, estops a codefendant from questioning the validity of the judgment in a subsequent action involving the title to the same land in which the defendants or those in privity are adverse parties. *Schoonmaker v St. P. Title & T. Co.* 152 M 94, 188 NW 223.

In partition proceedings an objection to a sale under Minnesota Statutes 1941, Section 558.15, on the ground that the liens exceed the value of the property proposed to be partitioned, must be made prior to the order or judgment directing sale as authorized by Minnesota Statutes 1941, Sections 558.04 and 558.14. *Smith v Wright*, 195 M 589, 263 NW 903.

That one of the cotenants claims a homestead exemption in his undivided interest, does not prevent a sale of the property which cannot be divided without great prejudice to the owners. *Smith v Wright*, 195 M 589, 263 NW 903.

Where a court has jurisdiction generally of the subject matter and the parties, and renders a judgment which it had jurisdiction to render if the facts pleaded and proved warranted it, such judgment, though erroneous under the pleadings and proof in the case, is not void, and cannot be attacked collaterally. *Reid v Ind. Union of All Workers*, 200 M 606, 275 NW 300.

MINNESOTA STATUTES 1945 ANNOTATIONS

558.16 PARTITION OF REAL ESTATE

3708

558.16 PROCEED, HOW APPLIED.

HISTORY. R.S. 1851 c. 75 s. 24; P.S. 1858 c. 65 s. 24; G.S. 1866 c. 74 s. 19; G.S. 1878 c. 74 s. 19; G.S. 1894 s. 5788; R.L. 1905 s. 4407; G.S. 1913 s. 8043; G.S. 1923 s. 9539; M.S. 1927 s. 9539.

On account of financial stringency, the court properly set the sale in partition proceedings, the price being inadequate. *Johnson v Avery*, 56 M 12, 57 NW 217.

The trial court erred in adjudging a lien on plaintiff's moiety for the full amount paid by defendant on redemption. *Fritz v Ramspott*, 76 M 489, 79 NW 520.

Where a permanent improvement has been erected by one cotenant with the consent of the other, the court, in case of partition may award that portion of the land upon which the improvement is erected to the one who erected it, without taking its value into consideration, no injustice being done; but if a sale is necessary, the court may determine the enhancement of value by reason of the improvement, and award to the improving cotenant the amount so determined. *Hunt v Meeker Co. Abstr. Co.* 135 M 135, 160 NW 496.

An interlocutory judgment in a suit for partition, which determined that the land was subject to the lien of a judgment in favor of one of the defendants, estops a codefendant from questioning the validity of the judgment in a subsequent action involving the title to the same land in which the defendants or those in privity are adverse parties. *Schoonmaker v St. P. T. & T.* 152 M 97, 188 NW 223.

Contribution among cotenants does not mature, until the party owing a liability has paid more than his just share of the obligation. *Hoverson v Hoverson*, 216 M 228, 12 NW(2d) 501.

558.17 SALE OF REAL PROPERTY UNDER ACTION FOR PARTITION; NOTICE.

HISTORY. R.S. 1851 c. 75 ss. 27, 38; P.S. 1858 c. 65 ss. 27, 38; G.S. 1866 c. 74 ss. 22, 31; G.S. 1878 c. 74 ss. 22, 31; G.S. 1894 ss. 5791, 5800; R.L. 1905 s. 4408; G.S. 1913 s. 8044; G.S. 1923 s. 9540; M.S. 1927 s. 9540; 1937 c. 190 s. 1.

The order for sale is reviewable on appeal from the final judgment; but parties to a partition action who, until final judgment, have contended there should be a sale, will not be permitted on appeal to reverse their attitude. *Burke v Burke*, 209 M 386, 297 NW 340.

Where the premises were correctly described at the time of sale, and the bidders had notice of the correct description, the fact that in the notice of sale under partition proceedings, there was a defect in the description, would not invalidate the sale. *Jollo v Jollo*, 219 M 241, 17 NW(2d) 710.

558.18 PERSONS PROHIBITED FROM PURCHASING.

HISTORY. R.S. 1851 c. 75 s. 39; P.S. 1858 c. 65 s. 39; G.S. 1866 c. 74 s. 32; G.S. 1878 c. 74 s. 32; G.S. 1894 s. 5801; R.L. 1905 s. 4409; G.S. 1913 s. 8045; G.S. 1923 s. 9541; M.S. 1927 s. 9541.

558.19 PURCHASE BY PART OWNER.

HISTORY. R.S. 1851 c. 75 s. 42; P.S. 1858 c. 65 s. 42; G.S. 1866 c. 74 s. 35; G.S. 1878 c. 74 s. 35; G.S. 1894 s. 5804; R.L. 1905 s. 4410; G.S. 1913 s. 8046; G.S. 1923 s. 9542; M.S. 1927 s. 9542.

There was no error in permitting the purchaser, who was an encumbrancer, to give a receipt for so much of the proceeds of the sale as belonged to her. *Smith v Wright*, 195 M 593, 263 NW 903.

That one of the cotenants claims a homestead exemption in his undivided interest does not prevent a sale; but from the proceeds the court should see that the value of the improvements be secured to the party at whose expense the improvements were made. *Smith v Wright*, 195 M 593, 263 NW 903.

Constructive trusts. 25 MLR 682.

558.20 REPORT OF SALE.

HISTORY. R.S. 1851 c. 75 s. 40; P.S. 1858 c. 65 s. 40; G.S. 1866 c. 74 s. 33; G.S. 1878 c. 74 s. 33; G.S. 1894 s. 5802; R.L. 1905 s. 4411; G.S. 1913 s. 8047; G.S. 1923 s. 9543; M.S. 1927 s. 9543.

558.21 FINAL JUDGMENT ON CONFIRMING REPORT.

HISTORY. R.S. 1851 c. 75 s. 41; P.S. 1858 c. 65 s. 41; G.S. 1866 c. 74 s. 34; G.S. 1878 c. 74 s. 34; G.S. 1894 s. 5803; R.L. 1905 s. 4412; G.S. 1913 s. 8048; G.S. 1923 s. 9544; M.S. 1927 s. 9544.

See notes under section 558.16.

Appeals in partition proceedings. 26 MLR 218.

558.215 APPEALS FROM ORDERS OR INTERLOCUTORY JUDGMENTS TO THE SUPREME COURT.

HISTORY. 1941 c. 448 ss. 1, 2.

558.22 CLAIMS TO PROCEEDS, HOW DETERMINED.

HISTORY. R.S. 1851 c. 75 s. 24, 26; P.S. 1858 c. 65 ss. 24, 26; G.S. 1866 c. 74 ss. 20, 21; G.S. 1878 c. 74 ss. 20, 21; G.S. 1894 ss. 5789, 5790; R.L. 1905 s. 4413; G.S. 1913 s. 8049; G.S. 1923 s. 9545; M.S. 1927 s. 9545.

558.23 RECORD AND EFFECT OF CONVEYANCES.

HISTORY. R.S. 1851 c. 75 ss. 43, 44; P.S. 1858 c. 65 ss. 43, 44; G.S. 1866 c. 74 ss. 36, 37; G.S. 1878 c. 74 ss. 36, 37; G.S. 1894 ss. 5805, 5806; R.L. 1905 s. 4414; G.S. 1913 s. 8050; G.S. 1923 s. 9546; M.S. 1927 s. 9546.

558.24 SALE OF PART; LIFE ESTATE OR FOR YEARS.

HISTORY. R.S. 1851 c. 75 s. 15; P.S. 1858 c. 65 s. 15; G.S. 1866 c. 74 s. 17; G.S. 1878 c. 74 s. 17; G.S. 1894 s. 5786; R.L. 1905 s. 4415; G.S. 1913 s. 8051; G.S. 1923 s. 9547; M.S. 1927 s. 9547.

The sale in partition of the farm was properly made subject to the widow's life estate in the homestead. Heintz v Wilhelm, 151 M 195, 186 NW 305.

558.25 ESTATE FOR LIFE OR YEARS, MAY BE SET OFF OR SOLD.

HISTORY. R.S. 1851 c. 75 ss. 30, 31; P.S. 1858 c. 65 ss. 30, 31; G.S. 1866 c. 74 ss. 23, 24; G.S. 1878 c. 74 ss. 23, 24; G.S. 1894 ss. 5792, 5793; R.L. 1905 s. 4416; G.S. 1913 s. 8052; G.S. 1923 s. 9548; M.S. 1927 s. 9548.

Where lands leased for a term of years and in possession of the lessee, are owned by several persons as tenants in common both of rents and of the reversion, an action in partition may be maintained. Cook v Webb, 19 M 167 (129); Hanson v Ingwaldson, 77 M 533, 80 NW 702; Heintz v Wilhelm, 151 M 198, 186 NW 305.

558.26 GROSS SUM IN LIEU OF ESTATE; PROCEEDS OF SALE TO BE INVESTED, WHEN; UNKNOWN PARTIES.

HISTORY. R.S. 1851 c. 75 ss. 32 to 35; P.S. 1858 c. 65 ss. 32 to 35; G.S. 1866 c. 74 ss. 25 to 28; G.S. 1878 c. 74 ss. 25 to 28; G.S. 1894 ss. 5794 to 5797; R.L. 1905 s. 4417; G.S. 1913 s. 8053; G.S. 1923 s. 9549; M.S. 1927 s. 9549.

558.27 FUTURE ESTATES.

HISTORY. R.S. 1851 c. 75 s. 36; P.S. 1858 c. 65 s. 36; G.S. 1866 c. 74 s. 29; G.S. 1878 c. 74 s. 29; G.S. 1894 s. 5798; R.L. 1905 s. 4418; G.S. 1913 s. 8054; G.S. 1923 s. 9550; M.S. 1927 s. 9550.

MINNESOTA STATUTES 1945 ANNOTATIONS

558.28 PARTITION OF REAL ESTATE

3710

558.28 WIFE MAY RELEASE.

HISTORY. R.S. 1851 c. 75 s. 37; P.S. 1858 c. 65 s. 37; G.S. 1866 c. 74 s. 30; G.S. 1878 c. 74 s. 30; G.S. 1894 s. 5799; R.L. 1905 s. 4419; G.S. 1913 s. 8055; G.S. 1923 s. 9551; M.S. 1927 s. 9551.

The common law rule of unity of husband and wife has been abandoned. The legislature may grant the wife valid rights that did not obtain under the common law. The administrator of the estate of a decedent for damages for wrongful death, against the husband of the sole beneficiary does not bring the action within the common law rule that a wife cannot bring an action against her husband for tort against her personally. *Albrecht v Potthoff*, 192 M 563, 257 NW 377.

Protection of the inchoate right of dower. 11 MLR 356.

558.29 INVESTMENT OF PROCEEDS.

HISTORY. R.S. 1851 c. 75 ss. 45 to 48; P.S. 1858 c. 65 ss. 45 to 48; G.S. 1866 c. 74 ss. 38 to 40; G.S. 1878 c. 74 ss. 38 to 40; G.S. 1894 ss. 5807 to 5809; R.L. 1905 s. 4420; G.S. 1913 s. 8056; G.S. 1923 s. 9552; M.S. 1927 s. 9552.

The defendant received in his official capacity, as clerk of the district court, money paid into court in condemnation proceedings, which he deposited, in his name as clerk, in a solvent bank, which afterwards failed, whereby the money was lost. He and the sureties on his official bond are liable for such loss. *Northwestern Pacific v Owens*, 86 M 188, 90 NW 371.

Rights of persons disappearing. 9 MLR 98.

558.30 SHARE OF INFANT, HOW PAID.

HISTORY. R.S. 1851 c. 75 s. 50; P.S. 1858 c. 65 s. 50; G.S. 1866 c. 74 s. 42; G.S. 1878 c. 74 s. 42; G.S. 1894 s. 5811; R.L. 1905 s. 4421; G.S. 1913 s. 8057; G.S. 1923 s. 9553; M.S. 1927 s. 9553.

558.31 SHARE OF INCAPABLE PERSON.

HISTORY. R.S. 1851 c. 75 s. 51; P.S. 1858 c. 65 s. 51; G.S. 1866 c. 74 s. 43; G.S. 1878 c. 74 s. 43; G.S. 1894 s. 5812; R.L. 1905 s. 4422; G.S. 1913 s. 8058; G.S. 1923 s. 9554; M.S. 1927 s. 9554.

558.32 PROCEEDINGS WHEN STATE A PARTY.

HISTORY. R.S. 1851 c. 75 s. 53; P.S. 1858 c. 65 s. 53; G.S. 1866 c. 74 s. 45; G.S. 1878 c. 74 s. 45; G.S. 1894 s. 5814; R.L. 1905 s. 4423; G.S. 1913 s. 8059; G.S. 1923 s. 9555; M.S. 1927 s. 9555.