ages for withholding it, the court might render a money judgment against plaintiff for damages for withholding dower and might also, with defendant's consent, allow a gross sum in lieu of dower. Jones v. Jones, 71 W 513, 38 NW 88.

233.19 History: R. S. 1849 c. 62 s. 25, 26; R. S. 1858 c. 89 s. 25, 26; R. S. 1878 s. 2176; Stats. 1898 s. 2176; 1925 c. 4; Stats. 1925 s. 233.19; 1969 c. 339.

Where the action for dower is against other persons than the heirs of the deceased husband, the damages for mesne profits are to be estimated only from the time the dower was demanded of them. Thrasher v. Tyack, 15 W 256.

A dower interest is a continuation of the estate of the husband, and is held by him by appointment of law. Hence, although certain proceedings may be necessary to fix the extent or amount of the interest, when that is done the interest must necessarily vest, by relation or otherwise, from the death of the husband. This principle is fully recognized by the statute giving the widow one-third of the mesne profits from the death of the husband. Therefore, the fact that she may receive an allowance out of her husband's estate, under sec. 1, ch. 99, R. S. 1859, does not destroy or impair her right of dower or right to such mesne profits. Farnsworth v. Cole, 42 W 403.

233.20 History: R. S. 1849 c. 62 s. 27; R. S. 1858 c. 89 s. 27; R. S. 1878 s. 2177; Stats. 1898 s. 2177; 1925 c. 4; Stats. 1925 s. 233.20; 1969 c. 339.

233.21 History: R. S. 1849 c. 62 s. 28; R. S. 1858 c. 89 s. 28; R. S. 1878 s. 2178; Stats. 1898 s. 2178; 1925 c. 4; Stats. 1925 s. 233.21; 1969 c. 339.

233.22 History: R. S. 1849 c. 62 s. 29; R. S. 1858 c. 89 s. 29; R. S. 1878 s. 2179; Stats. 1898 s. 2179; 1925 c. 4; Stats. 1925 s. 233.22; 1969 c. 339.

233.23 History: R. S. 1849 c. 62 s. 30; R. S. 1858 c. 89 s. 30; R. S. 1878 s. 2180; Stats. 1898 s. 2180; 1921 c. 31; 1925 c. 4; Stats. 1925 s. 233.23; 1943 c. 316; 1947 c. 371; 1957 c. 210, 705; 1959 c. 165, 268; 1961 c. 193; 1969 c. 339.

Editor's Note: Chapter 193, Laws 1961, which repealed the amendment of 233.23 made by chs. 210 and 705, Laws 1957, and ch. 165, Laws 1959, contained a provision stating that the section, as amended by ch. 268, Laws 1959, was preserved.

CHAPTER 234.

Landlords and Tenants and General Provisions.

234.01 History: 1866 c. 74; R. S. 1878 s. 2181; Stats. 1898 s. 2181; 1925 c. 4; Stats. 1925 s. 234.01; 1969 c. 284.

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 234 through 1969, including the effects of ch. 284, Laws 1969. Various provisions of ch. 234 (including the provisions of 234.21—234.25) are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 284, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

234.02 History: R. S. 1858 c. 91 s. 1; R. S. 1878 s. 2182; Stats. 1898 s. 2182; 1925 c. 4; Stats. 1925 s. 234.02; 1969 c. 284.

Where judgment is rendered against the landlord the tenant may attorn to the stranger, notwithstanding his failure to notify the landlord as provided in sec. 1, ch. 91, R. S. 1858, where there has been no collusion between the parties. In such case the landlord is not bound by the judgment as to title or right of future possession, but is remitted to his action of ejectment. Stridde v. Saroni, 21 W 173. See also: Chase v. Dearborn, 21 W 57; Schrieber v. Carey, 48 W 208, 9 NW 124.

A landowner's agreement to give a cropper one-half of crops for working premises was a contract for services with title to crops remaining in the landowner until division, rendering the cropper's chattel mortgage, given after having breached the agreement, ineffective as against the owner. Herried v. Broadhead, 211 W 512, 248 NW 470.

234.03 History: R. S. 1849 c. 62 s. 34; R. S. 1858 c. 89 s. 34; R. S. 1858 c. 91 s. 2; R. S. 1878 s. 2183; Stats. 1898 s. 2183; Spl. S. 1920 c. 15; 1921 c. 14; 1923 c. 29; 1925 c. 4; Stats. 1925 s. 234.03; 1935 c. 78; 1943 c. 113; 1969 c. 284.

One holding under a mortgagee, after default, is a tenant at will or from year to year. Hennesy v. Farrell, 20 W 42.

A provision in a land contract, that in case of default of payment the vendee might be proceeded against as a tenant at sufferance is inoperative where he has taken possession and paid part of the purchase money. He is not a tenant, as he has equities that will defeat ejectment or forcible detainer, and he cannot be summarily expelled. Diggle v. Boulden, 48 W 477, 4 NW 678.

Where a lessee holds possession after the expiration of his term by agreement with the subsequent lessee to hold till he shall notify him to remove he is a tenant at will of the lessee. Gunsolus v. Lormer, 54 W 630, 12 NW 62.

Defendant worked his father's farm on shares in 1882. In the spring of 1883 it was arranged between him and his brother and their parents that the brother and parents should move upon a new farm, leaving the defendant upon the old place, and that the brothers should work together and pay up a mortgage debt on the 2 farms, and each pay half of the father's small debts, and that when the parents died the sons should be paid for so doing. There was no agreement as to how long this arrangement should continue. Defendant worked upon the old farm, paid some interest upon one of the mortgages, and made some improvements. He became merely a tenant at will, subject to be removed by the father or his grantee. Webb v. Seekins, 62 W 26, 21 NW 814.

Where tenants have denied the landlord's right to possession and claim to hold adversely no notice to quit is necessary in order to main-

tain ejectment. Evans v. Enloe, 70 W 345, 34 NW 918, 36 NW 22.

A stipulation in a lease that the lessee shall surrender the leased premises whenever the lessor desires to proceed with certain improvements thereon does not give the lessor the right to terminate the lease by re-entry, but is merely a covenant for the breach of which the lessor may recover damages. Each of 2 lessees under a lease containing such a stipulation is the agent of the other to make the surrender when the contingency happens. If a lease containing no such stipulation is held by 2 persons as partners one of them cannot surrender the lease without the concurrence of the other, if the latter is reasonably accessible and can be consulted. Bergland v. Frawley, 72 W 539, 40 NW 151.

The doctrine that a tenancy by sufferance necessarily arises when a man comes into possession of lands lawfully, but holds over wrongfully after the determination of his interest therein, has been qualified in this state in an important particular. In order to create a tenancy by sufferance in favor of a tenant holding over after the expiration of his term, the consent of the landlord, either express or implied, to the continuance of the tenancy is essential. Hence, if the lessee continues in possession after the expiration of a lease, pending negotiations for a renewal lease, which is not executed by reason of his default, his possession is wrongful from the expiration of the former lease, and no tenancy thereafter existed, either at will or by sufferance, and the lessee was not entitled to notice. Eldred v. Sherman, 81 W 182, 51 NW 441.

A lease providing that it should expire after 3 years from date if the property was sold, terminates on a sale made more than 3 years from such date. Hickox v. Seegner, 123 W 128, 101 NW 357.

Tenancies at will referred to in sec. 2183, Stats. 1911, include periodic tenancies, that is tenancies from year to year, month to month or week to week, arising as an inference from the conduct of the parties, except those tenancies from year to year which are governed by sec. 2187. The notice terminating a tenancy at will from month to month must fix the termination and the time for removal at the end of a rent paying month. Sutherland v. Drolet, 154 W 619, 143 NW 663.

A notice to quit, terminating a tenancy from month to month, must make the termination at the end of the period, and not before. Scheuer & Tieges v. Benedict, 173 W 241, 181 NW 129.

See note to 291.05, citing Hartnip v. Fields, 247 W 473, 19 NW (2d) 878.

Tenancy at will and notice to quit. McGreever, 1 MLR 39.

234.04 History: R. S. 1858 c. 91 s. 3, 4; R. S. 1878 s. 2184; Stats. 1898 s. 2184; 1925 c. 4; Stats. 1925 s. 234.04; 1947 c. 478; 1957 c. 427; 1959 c. 166, 226, 660 s. 66; 1969 c. 284.

A complaint which alleges that on a day named notice to terminate the tenancy was served upon the defendant personally is good. Minard v. Burtis, 83 W 267, 53 NW 509.

Where a complaint states that notice was served by delivering to and leaving with the wife of defendant a notice, it will be assumed that the wife was of proper age and that she resided upon the premises. State ex rel. Engle v. Hilgendorf, 136 W 21, 116 NW 848.

A landlord's election to enter leased premises, after a tenant's abandonment, to mitigate damages, may be evidenced by formal notice or by unequivocal act. Mere entry and taking possession by a landlord of premises abandoned by a lessee for the purpose of leasing does not constitute an election to enter for the purpose of mitigating damages for a tenant's breach of lease, since it is an equivocal act. Bringing an action for rent for the period the premises were unrented established that the landlord took possession for the purpose of mitigating damages. Acceptance of a key and putting a "for rent" sign in a building abandoned by a tenant did not constitute an election to terminate a lease. A guarantor of rent was not relieved by assignment of a lease without his knowledge, where the lease provided for assignment with the landlord's consent. Weinsklar R. Co. v. Dooley, 200 W 412, 228 NW 515.

A landlord who has given the 30-day statutory notice to terminate a tenancy at will may re-enter in a peaceable manner after the period has expired. The right to do so is not affected by the fact that the landlord sought the additional protection of a writ of restitution which was issued upon a void judgment. In such case, entry by the sheriff through the unlocking of the door by the janitor in the tenant's absence is peaceable. Shefelker v. First Nat. Bank, 212 W 659, 250 NW 870.

234.05 History: R. S. 1858 c. 91 s. 5; R. S. 1878 s. 2185; Stats. 1898 s. 2185; 1925 c. 4; Stats. 1925 s. 234.05; 1969 c. 284.

The liability imposed by sec. 2185, R. S. 1878, is penal in its nature, at least for one-half the amount. A cause of action thereunder may be joined with one for the conversion of chattels included in the lease of the realty by failure to deliver them to the lessor according to the lease. Alliance E. Co. v. Wells, 93 W 5, 66 NW 796.

An action under sec. 2185, R. S. 1878, is upon an implied contract and not in tort. State ex rel. Alliance E. Co. v. Helms, 101 W 280, 77 NW 194.

234.06 History: R. S. 1858 c. 91 s. 6; R. S. 1878 s. 2186; Stats. 1898 s. 2186; 1925 c. 4; Stats. 1925 s. 234.06; 1969 c. 284.

234.07 History: R. S. 1858 c. 91 s. 2; R. S. 1878 s. 2187; 1885 c. 109; Ann. Stats. 1889 s. 2187; Stats. 1898 s. 2187; 1925 c. 4; Stats. 1925 s. 234.07; 1969 c. 284.

Where a city leased land for use as a street for one year and neglected to deliver up the possession, the same rule applied as in ordinary cases, and the lessor might consider it a tenant from year to year. Gilman v. Milwaukee, 31 W 563.

A tenant in common holding over under a lease from his cotenant of the interest of the latter is not presumed to continue his holding under the lease, but to hold as cotenant. But if he recognizes the lease he will be deemed to hold as a lessee. Rockwell v. Luck, 32 W 70.

Notwithstanding the statute of frauds, by

an oral lease for 2 years at a specified sum per year, the occupation extending 18 months, the lessee became a tenant from year to year on the terms stipulated. Koplitz v. Gustavus, 48 W 48, 3 NW 754.

A lessee for a year at a fixed rent who continues in possession afterwards with the consent of the lessor under an agreement for an increased rent if the lessor shall erect new buildings, without any new arrangement as to time, is a tenant from year to year. Second Nat. Bank v. O. E. Merrill Co. 69 W 501, 34 NW 514.

The facts of this case did not show a holding over. Adler v. Mendelson, 74 W 464, 43 NW 505.

Where the lease terminated on August 1st, and the tenants held over after the expiration of the term, notice in writing given on October 29th signifying the intention to quit the premises on the 30th of November was insufficient, as the notice should have been given for a termination of the term on August 1st. Peehl v. Bumbalek, 99 W 62, 74 NW 545.

For facts showing waiver by the landlord of notice under sec. 2187, Stats. 1898, see Eimermann v. Nathan, 116 W 124, 92 NW 550.

Sec. 2187, Stats. 1898, does not apply where the original lease was for 6 months. In such a case where the tenant holds over without a new lease it may at the election of the landlord be considered a renewal of the prior lease for a like period and upon like terms. Waterman v. Le Sage, 142 W 97, 124 NW 1041.

Occupancy of the basement of a building beyond the end of the first year under a lease for several years which was void because not in writing, a tenancy from year to year was created, and the occupant could not terminate the same until the end of the current year. Rundle-Spence M. Co. v. Badger-Packard M. Co. 169 W 513, 173 NW 211.

Where a tenancy is created by written lease the rights and liabilities of the parties are determined by its express terms. A holding over does not create a tenancy from year to year where the language of the lease negatives that result. Where such a lease, so limited, was given to a city, its exercise of supervision over a bartering and trading business conducted on the premises by third parties, after the term of the lease had expired, was an exercise of police power and did not create a tenancy from year to year. Metropolitan Inv. Co. v. Milwaukee, 182 W 539, 196 NW 240.

Where a tenant took possession October 4th under an oral agreement for a leasing for 5 years to begin on October 1st, he became a tenant from year to year holding over, and a notice to quit served October 1st of the next year, was sufficient. Hauser v. Fetzer, 183 W 25, 197 NW 170.

In the absence of agreement as to future occupancy by the tenant and a holding over after expiration of a lease for years, the term is presumed to be for a year; the option on the part of the landlord to regard the tenant as liable for another year period cannot be exercised when the tenant remains in possession under an agreement that he is to hold for a shorter period. Hog v. Johnson, 209 W 581, 245 NW 650.

Where the defendant took possession of garage premises under a 5-year lease in his individual name, and was then doing business as an individual although operating and paying rent under a corporate name, and he made no attempt to surrender possession on the expiration of the lease, he could be considered, at the election of the landlord, a holdover tenant from year to year on the terms of the original lease, and could be held personally liable for the rent during the years that there was a holding over, in view of the fact that neither the landlord nor her agent knew or should have known that the defendant was not the tenant, although the defendant in fact had incorporated his business and assigned the original lease to the corporation and rent checks were issued in its name. Voelz v. Spengler, 237 W 621, 296 NW 593.

In the case of a tenant for a term of a year or more, holding over and payment and acceptance of rent raise a rebuttable presumption that the landlord has elected to consider the tenancy one from year to year. The fact, that when the landlord accepted the rent the parties were negotiating for a new lease or a sale to the tenant, tends to rebut such presumption. Rottman v. Bluebird Bakery, 3 W (2d) 309, 88 NW (2d) 374.

Where a lease contains an option for an extension, as opposed to a renewal, of the lease, an option to purchase contained in the original lease survives in the extension period and may be exercised by the tenant during that period. If a tenant for a year or more holds over after the expiration of his term he may at the election of his landlord be considered a tenant from year to year on the terms of the original lease, and the lease is in effect extended rather than renewed from year to year, once the landlord has made the election. Last v. Puehler, 19 W (2d) 291, 120 NW (2d) 120.

Holdover tenant's right to exercise right of first refusal contained in original lease. 1964 WLR 337.

234.08 History: R. S. 1858 c. 91 s. 7; R. S. 1878 s. 2188; Stats. 1898 s. 2188; 1925 c. 4; Stats. 1925 s. 234.08; 1969 c. 284.

234.09 History: R. S. 1849 c. 62 s. 31, 32; R. S. 1858 c. 89 s. 31, 32; R. S. 1858 c. 91 s. 8, 9; R. S. 1878 s. 2189; Stats. 1898 s. 2189; 1925 c. 4; Stats. 1925 s. 234.09; 1969 c. 284.

The assignee of the lessee holds under the same tenancy until it is in some way terminated. Cross v. Button, 5 W 600.

Where a lease contains a covenant to pay the rent the lessee is liable therefor notwithstanding the lease may have been assigned with lessor's consent and rent accepted of the assignee. Bailey v. Wells, 8 W 141.

The presumption that a party, other than the lessee, found in possession of leased premises holds under assignment may be rebutted by proof that he never, in fact, had such an assignment. Mariner v. Crocker, 18 W 251.

One in possession of land is liable for rent. In the absence of any agreement as to the amount, the landlord may recover what is reasonable. Wittman v. Milwaukee, L. S. & W. R. Co. 51 W 89, 8 NW 6.

If a lessee, instead of assigning or underletting, conveys the demised premises and they come to the defendant by mesne conveyances

the latter is a lessee and is liable in an action for use and occupation. Although the term expired before the defendant took his conveyance, yet if he has notice of the tenancy he is liable. There having been no surrender, a hold ing over will be deemed to have occurred. De Pere Co. v. Reynen, 65 W 271, 22 NW 761, 27 NW 155.

The instrument in this case created a tenancy, though rent payable in kind. Rowlands v. Voechting, 115 W 352, 91 NW 990.

On the distinction between tenant and cropper see Taylor v. Donahue, 125 W 513, 103 NW 1099.

Where a long term lessee let a third person into possession under a contract requiring the latter "to assume complete charge" of the former's cafe, to act as manager, and providing a salary for such management, together with other provisions foreign to the terms of a lease, the third person was an employe and the lessee was liable for work and material furnished for repair upon request of such employe. Gerkhardt v. Mandarin Co. 182 W 11, 195 NW 910.

234.09 does not relieve mortgagors from liability under the mortgage for taxes by imposing such liability upon corporation, allegedly an agent of mortgagees, which had accepted assignment, after taxes had accrued, of leasehold interest in mortgaged property under lease requiring lessee to pay taxes. Brown v. Loewenbach, 217 W 379, 258 NW 379.

Where the lessee permits a third party to occupy and use the premises the lease may be used as evidence to prove the amount of rent due the landlord. Maas v. Lutz, 231 W 422, 285 NW 345.

234.10 History: R. S. 1858 c. 89 s. 33; R. S. 1858 c. 91 s. 10; R. S. 1878 s. 2190; Stats. 1898 s. 2190; 1925 c. 4; Stats. 1925 s. 234.10; 1969 c. 284.

234.11 History: R. S. 1858 c. 91 s. 11; R. S. 1878 s. 2191; Stats. 1898 s. 2191; 1925 c. 4; Stats. 1925 s. 234.11; 1969 c. 284.

234.12 History: R. S. 1858 c. 91 s. 12; R. S. 1878 s. 2192; Stats. 1898 s. 2192; 1925 c. 4; Stats. 1925 s. 234.12; 1969 c. 284.

234.13 History: R. S. 1858 c. 91 s. 13; R. S. 1878 s. 2193; Stats. 1898 s. 2193; 1925 c. 4; Stats. 1925 s. 234.13; 1969 c. 284.

234.14 History: R. S. 1858 c. 91 s. 14; R. S. 1878 s. 2194; Stats. 1898 s. 2194; 1925 c. 4; Stats. 1925 s. 234.14; 1969 c. 284.

The grantor may sever the rent from the reversion by granting the land with a reservation of the rent; or by assigning the rent and either retaining the reversion himself or conveying it to a third party who has knowledge of such assignment. An assignment of the entire rent, made at the time of the conveyance of the reversion, could not affect a previous assignment of the rent. Leonard v. Burgess, 16 W 41.

The grantee of a lessor at will has the same right to remove a tenant by proceedings under ch. 145, R. S. 1878, that his grantor would have had without the conveyance. Webb v. Seekins, 62 W 26, 21 NW 814.

Under the statute no attornment is necessary. When the lessor assigns or conveys the reversion the lessee or those claiming under him become the tenants of the assignee, and a disclaimer of his title has the same effect as a disclaimer of the title of the original lessor. Evans v. Enloe, 70 W 345, 34 NW 918, 36 NW 22.

The purchaser of demised lands succeeds to the rights of his grantor as to rent. Imler v. Baemish, 74 W 567, 43 NW 490.

234.15 History: R. S. 1858 c. 91 s. 15, 16; R. S. 1878 s. 2195; Stats. 1898 s. 2195; 1925 c. 4; Stats. 1925 s. 234.15; 1969 c. 284.

A covenant by a lessor to pay for improvements made by the lessee is one which runs with the land and the assignees of the reversion are bound by such covenant. The lessee and his assignees have a lien for such improvements and may retain possession until payment has been made. Ecke v. Fetzer, 65 W 55, 26 NW 266.

The interest of the lessee passes to his assignee or to his personal representatives in case of his death. Evans v. Enloe, 70 W 345, 34 NW 918, 36 NW 22.

A tenant can recover money deposited to secure performance of a lease which was to be applied on the final months' rent from a grantee of the lessor when the lease was terminated by foreclosure without applying the deposit, where the grantee knew of the agreement and received benefits under the lease. Bay View State Bank v. Liber, 33 W (2d) 539, 148 NW (2d) 122.

234.16 History: R. S. 1858 c. 91 s. 17; R. S. 1878 s. 2196; Stats. 1898 s. 2196; 1925 c. 4; Stats. 1925 s. 234.16; 1969 c. 284.

Where one who entered upon land without claim of title afterwards took an assignment of a past-due mortgage of the land, the value of his subsequent use and occupation should be applied to reduce the mortgage debt; if that has been paid he is liable for such value in an action by the owner. Ackerman v. Lyman, 20 W 454.

An action lies under a contract providing that the purchaser (in possession) should hold as tenant at sufferance, subject to be removed as a tenant holding over. Wright v. Roberts, 22 W 161.

Sec. 2196, Stats. 1898, is in substance the same as sec. 14, ch. 19, 11 George II, which was originally passed to obviate the rule of the common law that there could be no action of assumpsit for rent except upon express terms made at the time of demise. This requires that there must be an agreement express or implied. Munkwitz R. Co. v. Milwaukee, 143 W 230, 126 NW 542.

Where a landlord merely served a notice on tenants that their lease would not be recognized, and demanded $150 per month rent, and the tenants, claiming under the lease, continued in possession and tendered $65 per month as stipulated in the lease, the landlord, on obtaining a judicial determination that there was no valid lease, was entitled to recover only the reasonable rental value of the property, rather than the demanded $150 per month. Beck Inv. Co. v. Ganser, 259 W 69, 47 NW (2d) 490.

234.17 History: 1903 c. 306 s. 1; Supl. 1906 s. 2196a; 1925 c. 4; Stats. 1925 s. 234.17; 1969 c. 284.

The lessee is not released from the payment of rent unless he surrenders the possession of the leased premises. Acme G. R. Co. v. Werner, 151 W 417, 139 NW 314.

Where there was no express agreement in the lease that the tenant should continue liable irrespective of the subsequent condition of the premises, the landlord could not claim that 234.17 did not apply. The untenantable condition of the basement did not excuse the lessee from liability for rent during his occupancy prior to the date of vacation. Denham v. Madole, 194 W 583, 217 NW 423.

Under a lease of a building which provided for the abatement of rent if the building be destroyed or made unfit for occupancy or use either by the elements, inherent defects or other like causes, the lessee was not entitled to an abatement of rents where the condition of the building was due to normal deterioration. Finnegan v. McGavock, 230 W 112, 283 NW 321.

A lessee can recover his advance payment where the furnished house he leased was uninhabitable when the lease term commenced. Pines v. Perssion, 14 W (2d) 590, 111 NW (2d) 409.

234.18 History: R. S. 1858 c. 91 s. 18; R. S. 1878 s. 2197; Stats. 1898 s. 2197; 1925 c. 4; Stats. 1925 s. 234.18; 1969 c. 284.

Upon judgment against the tenant, in the action of which he fails to give notice of adverse proceedings, he may attorn to the plaintiff in case there has been no collusion between the parties. The landlord is not bound by the judgment as to the title or right of possession, but must bring ejectment. Stridde v. Saroni, 21 W 173.

234.19 History: 1893 c. 77; Stats. 1898 s. 2197a; 1925 c. 4; Stats. 1925 s. 234.19; 1969 c. 284.

Although sec. 2197a, Stats. 1898, confers no power to foreclose a lease unless the improvements have actually been made and have cost more than $5,000, a court of equity having assumed jurisdiction for the purposes of foreclosure and given judgment accordingly, the judgment should not be disturbed if it grants such relief only as comes within its general equitable jurisdiction. Mohawk Co. v. Bankers S. Co. 162 W 272, 156 NW 154.

A lease of parts of a building for a term of 60 years which gave the lessee "permission" at his discretion, but not requiring him, to remodel the premises to fit them for the uses for which they were let, without indicating the cost thereof, is not such a lease as is contemplated by sec. 2197a, Stats. 1915. Toy v. Manderin Co. 168 W 596, 171 NW 53.

As against the lessor, a lessee under a lease for a term exceeding 50 years is entitled to continue to receive the rents, issues and profits until one year after the date of entry of judgment in an action to foreclose the lease. A receiver appointed in such action is not entitled to receive the rents for the year following entry of judgment foreclosing the lease, in the absence of the lessee's waiver of his right under the statute to receive the rent for such year. Tweedy v. Johnston, 222 W 302, 267 NW 282.

234.20 History: R. S. 1849 c. 62 s. 37; R. S. 1858 c. 89 s. 37; R. S. 1878 s. 2198; Stats. 1898 s. 2198; 1925 c. 4; Stats. 1925 s. 234.20; 1969 c. 284.

A proceeding brought to recover for the taking of land by a railroad company is an action for an injury to the inheritance within sec. 2198, R. S. 1878. Hooe v. Chicago, M. & St. P. R. Co. 98 W 302, 73 NW 787.

Where a tenant directed defendant to drive upon premises with a load of coal and in doing so the sidewalk was broken and furrows were cut in the lawn, an action could not be maintained under sec. 2198, Stats. 1898. Watson v. Harrigan, 112 W 278, 89 NW 1079.

234.21 History: R. S. 1849 c. 62 s. 38; R. S. 1858 c. 89 s. 38; R. S. 1878 s. 2199; Stats. 1898 s. 2199; 1925 c. 4; Stats. 1925 s. 234.21; 1969 c. 284.

A tenant in common may lease or convey his undivided share, but a demise of a specific part of the land is inoperative against his cotenant. Where a widow, having a dower right in the common property, as guardian of minors owning an undivided half of land, leased the west half of the common estate, the cotenant owning the other undivided half, such minors were not jointly liable to the latter for one-half of the rent received by the guardian and used for them. Shepardson v. Rowland, 28 W 108.

A tenant is liable to account to his cotenant for the interest of the latter in grass taken by such tenant from the common property. McKinley v. Weber, 37 W 279.

In the absence of a statute construed to work a different result, a tenant in common, joint tenant, or coparcener who has enjoyed occupancy of the common premises or some part thereof is not liable to pay rent to the others therefor, or to account to them respecting the reasonable value of his occupancy, where they have not been ousted or excluded nor their equal rights denied, and no agreement to pay for occupancy, or limiting or assigning rights of occupancy, has been entered into. Estate of Elsinger, 12 W (2d) 471, 107 NW (2d) 580.

Liability of cotenants to each other for rents, profits, and use and occupation. Heon, 42 MLR 363.

234.22 History: R. S. 1849 c. 62 s. 35; R. S. 1858 c. 89 s. 35; R. S. 1878 s. 2200; Stats. 1898 s. 2200; 1925 c. 4; Stats. 1925 s. 234.22; 1969 c. 284.

234.23 History: 1887 c. 479; Ann. Stats. 1889 s. 2200a; Stats. 1898 s. 2200a; 1925 c. 4; Stats. 1925 s. 234.23; 1951 c. 576; 1953 c. 55; 1955 c. 214; 1969 c. 284.

A consul general of a foreign country who has resided in this state 10 years is a resident alien. Removal from the United States ipso facto constitutes him a nonresident alien, and land in excess of 320 (now 640) acres owned by him or by a corporation in which he owns in excess of 20% of the stock immediately becomes subject to forfeiture. 9 Atty. Gen. 319.

234.24 History: R. S. 1849 c. 62 s. 36; R. S. 1858 c. 89 s. 36; R. S. 1878 s. 2201; Stats. 1898

s. 2201; 1925 c. 4; Stats. 1925 s. 234.24; 1969 c. 284.

234.25 History: R. S. 1858 c. 86 s. 4; R. S. 1878 s. 2202; Stats. 1898 s. 2202; 1925 c. 4; Stats. 1925 s. 234.25; 1969 c. 284.

CHAPTER 235.

Alienation by Deed, and Proof and Recording of Instruments.

235.01 History: R. S. 1849 c. 102 s. 52; R. S. 1858 c. 86 s. 1; R. S. 1858 c. 134 s. 24; 1859 c. 37; 1862 c. 34 s. 1; R. S. 1878 s. 2203, 2216; 1880 c. 129; Ann. Stats. 1889 s. 2203, 2216; Stats. 1898 s. 2203, 2216; 1905 c. 45 s. 1; Supl. 1906 s. 2203, 2216; 1907 c. 568; 1911 c. 222; 1913 c. 240; 1917 c. 566 s. 36; 1925 c. 4; Stats. 1925 s. 235.01, 235.19 (2); 1945 c. 410; 1949 c. 114, 256, 639; 1951 c. 703; Stats. 1951 s. 235.01; 1953 c. 428; 1969 c. 285.

Revisor's Note, 1951: The witness requirement comes from 235.19 (1) which is later repealed. As amended, this section puts all the formal requirements in one place, at the beginning of the chapter. The provisions for proof where there is no acknowledgment (235.34 to 235.39) are comparatively rarely used, and there is no need for reference to those sections—"or proved as directed in this chapter"—in 235.01. (Bill 353-S)

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 235 through 1969, including the effects of ch. 285, Laws 1969. Five sections of ch. 235 (235.34—235.38) are restated in sections of ch. 889, on documentary and record evidence, effective July 1, 1971; and numerous other provisions of ch. 235 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 285, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

1. Requirements; capacity.
2. Conveyance of homestead.
3. Conveyance by corporation.

1. Requirements; Capacity.

On acknowledgments see notes to 235.19; and on recordability see notes to 235.39.

Erasure of the grantee's name in a deed fully executed and substitution of the name of another has no effect whatever. Hilmert v. Christian, 29 W 104.

It is immaterial in what particular place the witnesses' signatures appear if it is clear that they sign as such. Webster v. Coon, 31 W 72.

The certificate of acknowledgment is no part of the execution. Knight v. Leary, 54 W 459, 11 NW 600.

A deed lacking formalities amounts to a contract to convey, passing the equitable title. Breutzer v. Lawrence, 58 W 594, 17 NW 423.

A conveyance attested by one witness only is valid between the parties, but is not entitled to be recorded, and its record is not evidence of the original deed. Herren v. Strong, 62 W 223, 22 NW 408.

A deed executed by one not named as grantor is effectual to convey his interest. Hrouska v. Janke, 66 W 252, 28 NW 166.

The formalities of witnesses and acknowledgment are necessary only to give notice to subsequent purchasers. A deed takes effect to pass the title upon its execution and delivery, and not when it is attested and acknowledged; it is a good conveyance at common law without either. Slaughter v. Bernards, 88 W 111, 59 NW 576.

As between the parties to it, a mortgage is a valid lien on the land, though it is not witnessed or acknowledged. Welsh v. Blackburn, 92 W 562, 66 NW 528.

It is not necessary that a deed should be witnessed in order to pass the title to the land described in it. It is necessary only to entitle it to be recorded, in order to operate as constructive notice. Although a deed was acknowledged by the several grantors upon different days, in different counties, and before different officers, and attested by but 2 witnesses, and it did not appear that such grantors were not together when the deed was executed, the presumption is that it was duly witnessed. Harris v. Edwards, 94 W 459, 69 NW 69.

Handing over a deed with the mistaken impression that it was correctly executed does not constitute a delivery. Zoerb v. Paetz, 137 W 59, 117 NW 793.

The grantor was unable to sign her name, so she held the top of the pen while her brother, as she supposed, wrote her name at the foot of the deed, but he in fact wrote his own name. In other respects the deed was regularly executed. The deed was a valid conveyance. McAbee v. Gerarden, 187 W 399, 204 NW 484.

In an action to set aside a deed of a farm by a father to a daughter, which farm the father devised to others after the daughter's death, testimony of the daughter's surviving husband that she had the deed in their home from the time of its execution and that he saw it, and that he found it there in her diary and record book about 6 years after her death, was sufficient to support the trial court's finding that the father delivered the deed to the daughter on or about the date of its execution with intent to pass title thereto, so that she was the owner of the farm and it did not pass under the father's will, although, among other things, the father lived on the farm from the date of the deed until the date of his death, and neither the daughter nor the husband ever occupied the farm or asserted any rights thereto during the father's lifetime. Herzing v. Hess, 263 W 617, 58 NW (2d) 430.

In the case of a conveyance, the burden of proof of unsoundness of mind and incapacity of the grantor at the time of the conveyance rests on the party who seeks the impeachment of the deed. Nyka v. State, 268 W 644, 68 NW (2d) 458.

A deed not witnessed or acknowledged (i.e., not entitled to record) may convey title. Where a telephone company was the grantee in such a deed of an easement, the United States, not having a paramount title to the easement, could not question the title of the