

citing *Alsmeyer v. Norden*, 30 W (2d) 593, 141 NW (2d) 177.

278.17 History: 1877 c. 143 s. 2; R. S. 1878 s. 3169; Stats. 1898 s. 3169; 1925 c. 4; Stats. 1925 s. 278.17; 1935 c. 541 s. 374; 1935 c. 542; 1965 c. 216.

Revisor's Note, 1935: An amendment of 278.17 withholds delivery of the sheriff's deed until the sale is confirmed. [Bill 50-S, s. 374]

The rights and interests which pass by a sheriff's deed are such as were, or might properly have been, litigated in the foreclosure action. *Pelton v. Farmin*, 18 W 222.

Confirmation of sale must precede issue of writ of assistance in favor of a purchaser. *Meehan v. Blodgett*, 91 W 63, 64 NW 429.

The discretion of the court in setting aside an order of confirmation because of the sheriff's conduct in chilling the bidding will not be disturbed unless it was abused. *Koop v. Burris*, 95 W 301, 70 NW 473.

A defendant's prior and paramount right or title to the mortgaged premises cannot be determined in a foreclosure suit, and any such rights of the mortgagor's grantor are not in issue, though he is a party to the suit; hence purchasers at a foreclosure sale under a mortgage executed by the grantees in a deed are bound by all the reservations in the latter. *Gilchrist v. Foxen*, 95 W 428, 70 NW 585.

A referee's deed passes all the right, title and interest of the mortgagee, including his interest in the premises arising under tax certificates held by him at the time of sale. *Ames v. Storer*, 98 W 372, 74 NW 101.

The writ of assistance under sec. 3169, Stats. 1898, may be issued against one who purchased the premises after foreclosure. Mere delay in applying for a writ of assistance is not sufficient to authorize its denial. The right to the remedy is not absolute and the court is clothed with discretionary power in respect to its issuance, but one who holds a sheriff's deed issued on foreclosure sale, duly confirmed, is prima facie entitled to the writ and to be put in possession of the purchase. *Prahl v. Rogers*, 127 W 353, 106 NW 287.

A foreclosure and sale of a mechanic's lien which was prior to a mortgage but subsequent to the foreclosure sale under the mortgage, the interest being purchased by the mortgagee, operated to pass to the purchaser the inchoate right of dower of the wife of the mortgagor. *Connecticut M. L. Ins. Co. v. Goldsmith*, 131 W 116, 111 NW 208.

Title vests, and redemption is barred, only on confirmation. *Gerhardt v. Ellis*, 134 W 191, 114 NW 495.

Where stanchions permanently attached to a barn were removed between the dates of purchase of the property on foreclosure, and the confirmation of the sale, an action for trespass was maintainable by the purchaser. *Robicheau v. Arnovitz*, 186 W 397, 202 NW 794.

A bona fide purchaser for value from a purchaser at a mortgage foreclosure sale takes free from the equities of the mortgagor and a second mortgagee. *First Nat. Bank v. Savings L. & T. Co.* 207 W 272, 240 NW 381.

Parties purchasing mortgaged premises at a foreclosure sale and obtaining possession

through a writ of assistance issued after a void confirmation of the sale had only the rights of a purchaser before confirmation of the sale, and hence were not entitled to possession of the premises as against the mortgagor until the sale should be validly confirmed. *Kalb v. Feuerstein*, 234 W 507, 291 NW 840.

278.18 History: 1947 c. 143; Stats. 1947 s. 278.18.

CHAPTER 279.

Waste.

279.01 History: R. S. 1849 c. 109 s. 17; R. S. 1858 c. 143 s. 17; R. S. 1878 s. 3170; Stats. 1898 s. 3170; 1925 c. 4; Stats. 1925 s. 279.01; 1961 c. 495.

An insolvent mortgagor will be restrained from cutting timber on mortgaged premises when such cutting will render the security inadequate. *Bunker v. Locke*, 15 W 635.

Equity will grant an injunction in favor of the owner of the reversion to stay or prevent waste threatened or being committed by a tenant. *Poertner v. Russel*, 33 W 193.

If purchaser under a land contract, before payment, has no right to remove a building the vendor's remedy is by a proceeding to stay waste. *Northrup v. Trask*, 39 W 515.

Where a mortgagor threatens waste involving irreparable injury which will render the security inadequate the mortgagee may have an injunction regardless of the mortgagor's solvency or insolvency. *Starks v. Redfield*, 52 W 349, 9 NW 168.

Waste is an act or omission of duty, by a tenant of land, which does a lasting injury to the freehold, and tends to the permanent loss of the owner of the fee, or to destroy or lessen the value of the inheritance, or to destroy the identity of the property, or to impair the evidence of title. *Bandlow v. Thieme*, 53 W 57, 9 NW 920.

A tenant in possession of a building, whether rightfully or not, who makes any material alteration therein, as by erecting a chimney where there was none, without the landlord's consent, commits waste. *Brock v. Dole*, 66 W 142, 28 NW 334.

One who purchases land subject to a mortgage and removes a building therefrom to other lands which he owns, thus rendering the security inadequate, commits waste. *Edler v. Hasche*, 67 W 653, 31 NW 57.

Where property had become valueless for residence purposes because of the growth of the city and the fact that it was surrounded by factories and railway tracks, it was not waste for the owner of the life estate to remove the dwelling house. *Melms v. Pabst Brew. Co.* 104 W 7, 79 NW 738.

The measure of damages for waste by removing timber from land is the diminished value of the land, not the value of the timber in its manufactured state. *Nelson v. Churchill*, 117 W 10, 93 NW 799.

An action for waste may be brought against the executor or administrator of the estate of the wrongdoer, whether the plaintiff has or has not filed a claim. Waste is an action sounding in tort, and purely tort actions should

be prosecuted against the legal representative of the wrongdoer when the wrongdoer is deceased. *Payne v. Meisser*, 176 W 432, 187 NW 194.

279.02 History: R. S. 1849 c. 109 s. 1; R. S. 1858 c. 143 s. 1; R. S. 1878 s. 3171; Stats. 1898 s. 3171; 1925 c. 4; Stats. 1925 s. 279.02.

An allegation that defendant had cut large amounts of timber and wood is not sufficient to sustain an action for waste. *Wright v. Roberts*, 22 W 161.

In an action by a ward, alleging waste and fraud, it was error to dismiss for failure to prove fraud. The guardian should have been compelled to make good all damage caused by waste. *Willis v. Fox*, 25 W 646.

A tenant for life who neglects to pay taxes which accrue after his tenancy commences is liable for waste. *Phelan v. Boylan*, 25 W 679.

An action for waste lies only where there is privity of estate between the parties. *Whitney v. Morrow*, 34 W 644.

A gasoline filling station building and equipment were so attached to and used in the business conducted on the premises as to become part of the realty, as regards the lessee's right to remove the station at end of the term. *Northwestern L. & T. Co. v. Topp O. & S. Co.* 211 W 489, 248 NW 466.

Liability of periodic tenant for waste in absence of covenant to repair. *Holz*, 41 MLR 58.

279.03 History: R. S. 1849 c. 109 s. 2; R. S. 1858 c. 143 s. 2; R. S. 1878 s. 3172; Stats. 1898 s. 3172; 1925 c. 4; Stats. 1925 s. 279.03.

The question whether a life tenant has been guilty of waste in making changes necessary to make property useful is a question for the jury. *Melms v. Pabst Brew. Co.* 104 W 7, 79 NW 738.

279.04 History: R. S. 1849 c. 109 s. 3; R. S. 1858 c. 143 s. 3; R. S. 1878 s. 3173; Stats. 1898 s. 3173; 1925 c. 4; Stats. 1925 s. 279.04.

279.05 History: R. S. 1849 c. 109 s. 4; R. S. 1858 c. 143 s. 4; R. S. 1878 s. 3174; Stats. 1898 s. 3174; 1925 c. 4; Stats. 1925 s. 279.05.

279.06 History: R. S. 1849 c. 109 s. 5; R. S. 1858 c. 143 s. 5; R. S. 1878 s. 3175; Stats. 1898 s. 3175; 1925 c. 4; Stats. 1925 s. 279.06.

279.07 History: R. S. 1849 c. 109 s. 6; R. S. 1858 c. 143 s. 6; R. S. 1878 s. 3176; Stats. 1898 s. 3176; 1925 c. 4; Stats. 1925 s. 279.07.

279.08 History: R. S. 1849 c. 109 s. 9; R. S. 1858 c. 143 s. 9, 10; 1873 c. 76; 1875 c. 337; R. S. 1878 s. 3177; Stats. 1898 s. 3177; 1925 c. 4; Stats. 1925 s. 279.08.

Revisers' Note, 1878: Section 9, Chapter 143, R. S. 1858, as amended by Chapter 76, Laws 1873, and chapter 337, Laws 1875, and section 10, chapter 143, R. S. 1858, combined; chapter 76, Laws 1873; chapter 337, Laws 1875, amends section 9, and repeals the additional provision made by chapter 76, Laws 1873, and includes tax sales. All three are now retained, including execution sales expressly, which were included formerly only by implication. The action is given for an injunction pending the redemption, with the

right to damages if the redemption be not made.

After sale on foreclosure and before issue of sheriff's deed removal of fixtures by a mortgagor is waste for which the purchaser may recover damages. *Lackas v. Bahl*, 43 W 53.

Persons holding land both as mortgagees and as grantees of the mortgagor are liable for waste to a second mortgagee. *Scott v. Webster*, 50 W 53, 6 NW 363.

A tax-title claimant cannot, under sec. 3177, R. S. 1878, maintain an action to recover the possession of timber cut upon the land before the issuance of the tax deed. *Lacy v. Johnson*, 58 W 414, 17 NW 136.

In sec. 3177, R. S. 1878, "waste" is employed in its strict technical sense of a permanent injury to land by a tenant or one having intermediate estate therein. Unless there is a privity of estate between the parties the injury is merely a trespass and an action for waste cannot be maintained. Such privity must be alleged in the complaint. *Lander v. Hall*, 69 W 326, 34 NW 80.

279.09 History: R. S. 1849 c. 109 s. 10, 11; R. S. 1858 c. 143 s. 10, 11; R. S. 1878 s. 3178; Stats. 1898 s. 3178; 1925 c. 4; Stats. 1925 s. 279.09.

CHAPTER 280.

Nuisances.

280.01 History: R. S. 1849 c. 110 s. 5; R. S. 1858 c. 144 s. 5; R. S. 1878 s. 3180; 1882 c. 190; Stats. 1898 s. 3180; 1925 c. 4; Stats. 1925 s. 280.01; 1935 c. 541 s. 375; 1939 c. 423; 1943 c. 398.

On exercises of police power see notes to sec. 1, art. I; on penalty for unlawful obstruction of navigable waters see notes to 30.15; and on abatement of nuisances see notes to 31.25.

1. Private nuisance.
2. Public nuisance.
3. Procedure.

1. Private Nuisance.

One who has created a nuisance will be liable for its continuance after he has parted with title and given covenants of warranty. *Lohmiller v. Indian F. W. P. Co.* 51 W 683, 8 NW 601.

A nuisance to be actionable must materially affect or impair the comfort or enjoyment of individuals or the use or value of property. No party is liable to another as and for a nuisance simply because he keeps a stockyard, if it is kept in such a place and manner as not to contaminate the atmosphere to such an extent as to substantially interfere with the comfort or enjoyment of others or impair the use of their property. *Stadler v. Grieben*, 61 W 500, 21 NW 629.

A creamery company will be enjoined from causing offensive waste matter to flow upon another's pasture to its injury. *Price v. Oakfield H. C. Co.* 87 W 536, 58 NW 1039.

The deposit of refuse in a river will be restrained at the suit of a lower riparian proprietor whose personal comfort is affected thereby and who is deprived of the use of the