

CHAPTER 275.

EJECTMENT.

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275.01 Actions of ejectment. Actions for the recovery of possession of real property are styled actions of ejectment, and may be commenced and proceeded in as other civil actions are except as otherwise provided in this chapter.

Where title or the right of possession is in dispute between 2 parties, one of whom is in actual possession under claim or color of right, injunction will not as a rule lie to transfer possession to the other party; and particularly, injunction will be refused to determine an issue of ownership or the right of possession of land where an adequate remedy at law is available, as by ejectment. (See note to this case under 269.52.) *Lipinski v. Lipinski*, 261 W 327, 52 NW (2d) 922.

Where adjoining landowners take conveyances from a common grantor which describe the premises conveyed by lot numbers, but such grantees have purchased with reference to a boundary line then marked on the ground, such location of the boundary line so established by the common grantor is binding on the original grantees and all persons claiming under them, irrespective of the length of time which has elapsed thereafter. *Thiel v. Damrau*, 268 W 76, 66 NW (2d) 747.

275.02 Ejectment, who may recover. (1) No person can recover in ejectment unless he has an interest in the premises claimed and a right to the possession thereof or of some share, interest or portion thereof.

(2) (a) Any settler upon the public lands of the United States, under the laws thereof, may maintain actions of ejectment for such lands so settled upon or claimed or for any injuries done thereto, or the possession thereof, or for a forcible entry or unlawful detainer thereof.

(b) In order to maintain such action the land claimed shall be staked or otherwise marked out so that its boundaries may be readily traced and the extent of the claim easily known, and no such action shall be maintained unless the plaintiff shall occupy such land or has made improvements thereon to the value of fifty dollars, or where the land claimed exceeds one hundred and sixty acres, located in one body or in different parcels, or where for six months next preceding the commencement of the action the plaintiff has neglected to occupy or cultivate the land claimed.

Where a grantor had conveyed a strip of land to a city for use as a public alley, a deed of lots abutting such alley to the defendants, which referred to the recorded plat showing the alley as the north boundary thereof, also conveyed half of the alley to the defendants, as against a successor in interest to the original grantor, although the deed to the defendants made no reference to the alley, and the plat did not dedicate the land for the alley, and the certificates on the plat were not acknowledged. Grantor's successor may not maintain ejectment. *Williams v. Larson*, 261 W 629, 53 NW (2d) 625.

In an action for ejectment of defendants from part of a farm formerly operated by plaintiff's grandfather and father, evidence that plaintiff had leased the farm from his father from 1917 to 1927, and that his father had given him a deed thereto in 1927, and that defendants had no record or paper title but that both plaintiff and defendants had used the parcel in dispute during the 20-year period necessary to effect adverse possession, was sufficient to show a grant from one in possession to the plaintiff and prima facie title in the plaintiff, so that, defendants having failed to show a better or stronger title, such evidence supported a judgment in favor of plaintiff. *Schaefer v. Bednarski*, 271 W 574, 74 NW (2d) 191.

275.03 Ejectment, necessary parties defendant. If the premises for which ejectment is brought are occupied the occupant shall be made a defendant; if they are not occupied, the action must be against some person exercising acts of ownership on the premises claimed, or claiming title thereto or some interest therein, or against the person in whom the title appears of record in the office of the register of deeds of the county at the commencement of the action.

275.04 Ejectment; who joined as defendants; separate trials. The plaintiff in ejectment may join as defendant any person claiming title to the premises. The court may award a separate trial as to any of the defendants, as justice may require; and several judgments may be rendered upon the verdicts but the trial may proceed against all the defendants, and a joint or separate verdict may be found and separate judgments may be rendered on such verdicts according to the rights of the parties.

275.05 Ejectment complaint, what to allege; recovery of part. The complaint in ejectment actions shall set forth the plaintiff's estate or interest in the premises claimed, describing them and that he is entitled to possession and that the defendant unlawfully withholds possession from him, to his damage such sum as he claims, and may include a claim for damages for injuries to the freehold. The plaintiff may recover any individual share or interest in the premises claimed or any separate parcel thereof which he may establish.

275.06 Ejectment or condemnation; defense, how pleaded. If the defendant is entitled to have the lands described in the complaint or any part thereof condemned for public use the defendant shall set forth the facts and the purpose for which said lands are required. If no proceedings for condemnation have been instituted and the defendant is authorized to condemn such lands and intends to condemn the court may stay proceedings until the defendant can, with due diligence, institute and complete condemnation proceedings, and if it shall appear that the plaintiff is entitled to judgment he shall have costs.

In an action of ejectment to recover land from them to a reformation of their deed. Defendants have to plead a counterclaim and demand the judgment they seek. *Smith v. Vogt*, 251 W 619, 30 NW (2d) 617.

275.07 Ejectment, what plaintiff to prove. It shall be sufficient for the plaintiff to show a right to the possession of such premises at the time of the commencement of the action.

275.08 Ejectment, ouster proved, when. If the ejectment action be brought by tenants in common or joint tenants against cotenants the plaintiff must prove that the defendants ousted him or did some other act amounting to a total denial of his right as cotenant.

275.10 Ejectment, recovery for rents. The plaintiff in ejectment may recover damages for the rents and profits of the premises recovered, during the time the same are unlawfully withheld, not exceeding six years prior to the commencement of the action, and damages for injuries to the freehold which damages shall be assessed by the jury. In estimating such damages the value of the use of any improvements made by the defendant or those under whom he claims shall not be allowed.

275.12 How verdict rendered. In such actions the verdict shall be rendered as follows:

(1) If it be shown on the trial that all the plaintiffs have a right to recover the possession of the premises the verdict in that respect shall be for the plaintiffs generally.

(2) If it appear that one or more of the plaintiffs have a right to the possession of the premises or any share or interest therein and that one or more have not such right the verdict shall specify for which plaintiff the jury find and as to which plaintiff they find for the defendant.

(3) If the verdict be for any plaintiff and there be several defendants the verdict shall be rendered against such of them as were in possession of the premises or as claimed title thereto at the commencement of the action.

(4) If the verdict be for all the premises claimed, as specified in the complaint, it shall in that respect be for such premises generally.

(5) If the verdict be for a part of the premises described in the complaint the verdict shall particularly specify such part with the same certainty hereinbefore required in the complaint in the description of the premises claimed.

(6) If the verdict be for an undivided share or interest in the premises claimed it shall specify such share or interest, and if for an undivided share in part of the premises claimed it shall specify such share and shall describe such part of the premises as hereinbefore required.

(7) The verdict shall specify the estate which shall have been established on the trial by the plaintiff, if rendered in his favor, whether it be in fee dower, for life or for a term of years, specifying such life or lives or the duration of such term.

275.13 Same. If the right or title of a plaintiff in such action expire after the commencement of the action the verdict shall be according to the fact; and the damages for rents and profits shall be assessed up to the time that such right or title expired, and judgment therefor only shall be rendered in favor of such plaintiff.

275.14 Judgment; costs. The judgment, after trial, shall be in accordance with the verdict or decision of the court; and if judgment be for the plaintiff by default, according to the description of the premises and the estate therein alleged in the complaint or proved, with costs.

275.15 Ejectment, recovery where tax title defective. When the plaintiff in ejectment is entitled to recover by reason of a defect in any tax deed under which the defendant claims or in the proceedings prior to the sale upon which such tax deed was issued, unless the plaintiff proves that the premises were not liable to taxation or that such tax was paid prior to the sale, or the land was redeemed from such sale, the amount for which such land was sold, and the costs of executing and recording such tax deed, and the amount paid by the defendant for taxes subsequent to said sale, with interest on all such sums at the rate of ten per centum per annum from the time so paid until the date of verdict, shall be set off against the damages awarded to the plaintiff by the verdict; and if there be any excess, the plaintiff, as a condition of judgment, shall pay the same, with interest from the date of the verdict, within ninety days; and in default thereof, the defendant shall have judgment but no recovery shall be had upon any ground which is barred by the statutes of limitation.

Cross Reference: For limitation of actions under void tax deed, see 75.29 and 75.39.

275.16 Ejectment, judgment conclusive. The judgment in an action of ejectment shall be conclusive as to the title established therein, upon the party against whom it is rendered and upon all persons claiming from, through or under him by title accruing after the filing of a notice of the pendency of the action as provided by section 281.03 subject to the exceptions contained in this chapter; and every purchaser whose conveyance is not recorded shall be bound by the proceedings in the action to the same extent and in the same manner as if he were a party thereto.

275.18 Defaulting defendant. If a defaulting defendant at the time of the rendition of judgment be a minor or insane or imprisoned on any criminal charge or upon criminal conviction such defendant, his heirs, devisees or assigns may apply to vacate such judgment and answer and defend within two years after such disability shall be removed or the defendant shall have died but not later than five years after entry of judgment.

275.21 Possession unaffected by new trial in ejectment. When the plaintiff in ejectment has taken possession by virtue of his judgment such possession shall not be affected by vacating such judgment as herein provided; and if the defendant thereafter recover judgment it shall be for the restitution of the possession and execution may issue for the delivery thereof to him.

275.23 Mortgagee cannot bring ejectment. No action of ejectment for the recovery of mortgaged premises shall be maintained by a mortgagee, his assigns or representatives.

275.24 Recovery for improvements. (1) In every case where a recovery shall be had of any land on which the party in possession or those under whom he claims, while holding adversely by color of title asserted in good faith, founded on descent or any written instrument, shall have made permanent and valuable improvements or shall have paid taxes assessed, such party, for himself and for the benefit of those under whom he claims, shall be entitled to have from the plaintiff, his heirs or assigns, if he insist upon his recovery, the value of such improvements at the time the verdict or decision against him is given and the amount paid for taxes, with interest from the date of the payment, to be assessed and recovered as hereinafter provided, and for the payment thereof shall have a lien on the real estate so recovered.

(2) When such recovery is of any estate less than a fee or of any share or interest less than the whole the claim for such improvements and taxes shall be proportioned to the benefits derived thereby to the estate, share or interest recovered. But the plaintiff shall be entitled to set off against such claim for improvements and taxes any claim for rents and profits enjoyed by the defendant or those under whom he claims during any period occurring prior to and terminating six years before the commencement of such action of ejectment and which he might have recovered but for the limitation by law thereon; and also any such rents and profits enjoyed by the defendant since the verdict in the ejectment action and prior to the assessment of the value of such improvements.

275.25 Claims, how made and tried. The claim for improvements and taxes under section 275.24 may be tried and the amount exceeding the set-offs assessed and recovered as follows:

(1) The defendant may counterclaim therefor and have the same tried and the amount assessed by the jury which tries the action of ejectment, but a separate verdict shall be rendered thereon; or

(2) Within ten days after a verdict for the plaintiff when no counterclaim was made, the court shall, on the application of the defendant, cause an issue to be made up between the parties and such issue shall stand for trial by a jury. No judgment shall be entered in the action of ejectment until the trial of such issue.

(3) If neither of the foregoing modes be pursued the defendant may recover such taxes and interest and the value of such improvements, with interest from the date of the verdict in the ejectment action, and enforce his lien therefor, by an action commenced within one year from the entry of such judgment in ejectment.

(4) If the defendant be, at the time of the verdict, under either disability mentioned in section 275.18, the time during which such disability shall continue shall not be reckoned any part of the year mentioned in subsection (3); but the action may be brought within one year after the removal of such disability.

275.26 Recovery may be set off against damages. When the right of a defendant to recover for such improvements and taxes shall be established and the amount thereof assessed in either of the two first modes aforesaid such assessment, with the costs of the trial of such issue, shall be set off against the sum awarded for costs and damages to the plaintiff in the action of ejectment, and if there remain any excess the judgment in such action shall provide that the plaintiff shall pay the amount thereof with interest from the date of the verdict in the ejectment action, within three years from the date of such assessment as a condition of execution, and shall have no claim for rents and profits while the same remains so unpaid after assessment, and that, in default of such payment, he shall be deemed to have abandoned his claim of title to the premises in question and, together with all persons claiming under him, shall be forever barred of a recovery and of claim of title, and the title to the premises in question shall be deemed absolutely vested in the defendant, and the defendant shall recover his costs of any separate trial of the value of such improvements; but that upon payment as aforesaid the plaintiff shall have execution for the premises recovered.

275.27 Failure to pay; judgment for defendant. At the expiration of the three years limited in any such judgment the court may make an order upon the foot of the judgment, upon application of the defendant, after notice and upon satisfactory proof of the fact, declaring that the plaintiff has failed to make the payment required thereby as a condition of execution and that the judgment has become absolute in favor of the defendant.

275.29 Ejectment; defendant's option to purchase land built upon. (1) **CONDITIONS THEREOF; CLAIM FILED.** Where a recovery shall be had of any land on which the party in possession or those under whom he claims, while holding adversely by color of title asserted in good faith, founded on descent or any written instrument, or by mistake in boundary or otherwise by adverse possession has erected a permanent and valuable building situate in part on such land and in part upon adjoining land in which plaintiff has no interest, and the portion of said building upon land so recovered cannot be removed or separated from the remaining portion without serious injury to the part upon the land recovered and the other part the defendant may, within ninety days after judgment (exclusive of the time from taking an appeal therefrom to the filing of the remittitur from the appellate court) file his petition stating facts as above specified, and that he desires to purchase the interest of the plaintiff in such land. Thereupon the court shall cause an issue to be made up between the parties and such issue shall be tried by a jury. The defendant shall have the burden of proof.

(2) **BOND TO STAY EXECUTION.** Upon filing such petition the ejectment defendant may apply to the court to fix the terms of a bond to be given by him to stay the execution of the judgment, except the collection of costs; and upon giving such bond in such sum and with such sureties as the court shall direct, conditioned that the defendant will abide by, perform and pay such judgment as may be rendered upon his claim, and the ejectment judgment, including the value of use of the premises after the ejectment judgment, the court shall stay such judgment, except the collection of costs, until the determination of the issue upon such petition.

(3) **TRIAL OF ISSUE UPON CLAIM; VERDICT AND JUDGMENT.** The jury shall determine whether the claim is such as specified in this section and if they determine that it is they shall determine the value of the estate of the plaintiff in the land so recovered at the time when its value was highest between the time of the taking possession by the defendant and the time of the trial, exclusive of improvements placed thereon by such defendant or those under whom he claims, either when used separately or in connection with other lands owned by the plaintiff, and the date when such lands were of highest value, the damages to such plaintiff for the detention of such lands up to such date, and mesne profits to that date. If the verdict establishes the defendant's claim the court shall enter judgment in favor of the

plaintiff and against the defendant for the amount determined to be the value of the interest of such plaintiff in said premises, with interest thereon from the date when such property was of said highest value, and such damages for detention and mesne profits.

(4) **EFFECT OF PAYMENT; ENFORCEMENT OF JUDGMENT.** Upon payment of the amount of such judgment with interest all the estate of said plaintiff shall vest in and be the property of said defendant. But if the same be not paid in one year from entry of judgment (exclusive of the time from taking an appeal therefrom to the filing of the remittitur from the appellate court), such plaintiff may have satisfaction of such latter judgment or enforce the original judgment for possession in ejectment; and in such case may have an action upon defendant's bond for the use of the premises from the date of such original judgment.

275.33 Purchaser's liability pending ejectment. If the defendant in an action of ejectment shall alien the land in suit during its pendency and have no property whereof the damages recovered can be collected every person to whom such lands shall have come shall be liable in an action for such damages, for the time that he shall have possessed the premises.