

Nineteen Hundred Thirty-One  
Supplement

to

# Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the  
Legislature, both new and amendatory, and notes showing repeals,  
together with annotations from the various courts, state  
and federal, construing the constitution, statutes,  
charters and court rules of Minnesota



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Order impounding fund in hands of client for distribution among attorneys when their respective shares were determined, held not appealable. 180M30, 230NW113.

#### SUBDIVISION 7

##### 18. Definitions.

"Special proceeding" is one which may be commenced independently of pending action by petition or motion, upon notice, to obtain special relief. Anderson v. L., 230NW645(1).

##### 19. Orders held appealable.

Order annulling an order vacating an order for an amendment to a judgment is appealable. 181M329, 232NW322. See Dun. Dig. 302.

An order, upon an order to show cause submitted upon affidavits determining right of respondent to an attorney's lien and the amount thereof, held a final order and appealable. Caulfield v. J., 237NW190. See Dun. Dig. 302.

##### 20. Orders held not appealable.

Order granting new trial, after reinstatement of case to enforce lien of attorneys, held not appealable under this subdivision. 178M230, 226NW699.

Order impounding attorneys' fee in hands of client to await determination of distributive shares of several attorneys, held not appealable. 180M30, 230NW113.

Order in open court, where parties have appeared. Granting motion to dismiss for want of prosecution is nonappealable. Anderson v. L., 230NW645(1).

Order in foreclosure directing resale in one parcel, held not appealable. 180M173, 230NW780.

An order denying a motion to dismiss a proceeding for laches in its prosecution is not appealable. State v. Hansen, 237NW416. See Dun. Dig. 296a, 309.

#### APPEALABILITY OF ORDER GENERALLY

##### 21. Orders held appealable.

Where alternative motion for judgment non obstante or for a new trial is made, an appeal may be taken from the whole order disposing of the motion, but not from only that part granting or denying judgment. 179M392, 229NW557.

Order denying new trial is appealable. 180M93, 230NW269.

##### 22. Orders held not appealable.

Order for judgment is not appealable. Palmer v. F., 230NW257(2).

Order denying motion for amended findings and order before judgment granting motion to file supplemental answer, held not appealable. 180M93, 230NW269.

Order directing verdict for plaintiff, order denying directed verdict for defendant, and order opening case for further testimony, held not appealable. 181M627, 231NW617.

##### 25. Waiver of right to appeal.

By paying the costs and damages awarded a plaintiff in an action in ejectment, a defendant does not destroy his right to appeal from the judgment of restitution. Patnode v. M., 234NW459. See Dun. Dig. 287(27), 463a.

##### 26. From order refusing to vacate judgment or order.

An order refusing to vacate a nonappealable order is not appealable. 174M611, 219NW928.

No appeal lies from an order denying a motion to vacate or modify a judgment; the ground of the motion being that the judgment was erroneous, rather than unauthorized. 176M117, 222NW527.

An order denying a motion to vacate a nonappealable order is not appealable. 178M232, 226NW700.

##### §9500. Appeal from order—Supersedeas.

An appeal from an order denying a motion for a new trial unaccompanied by a supersedeas bond, does not prevent entry of judgment. 177M89, 224NW464.

##### §9508. Justification of sureties.

Appeal was not dismissed for failure to furnish bond where appellant had acted in good faith and gone to considerable expense in preparing his appeal, and he was given ten days in which to file a sufficient bond. 176M632, 221NW643.

##### §9512. Death of party after submission of appeal.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 234NW675. See Dun. Dig. 15.

## CHAPTER 82

### Actions Relating to Real Property

#### ACTIONS TO TRY TITLE

##### §9556. Actions to determine adverse claims.

###### 1. Nature and object of action.

When the husband dies after the judgment of divorce in his favor, and pending the appeal in this court, and property rights are involved, his personal representative will be substituted and the case reviewed, notwithstanding the general rule as to the abatement of divorce actions by the death of either party. Swanson v. S., 234NW675. See Dun. Dig. 15.

###### 7. Answer.

Answer, held not sham. 180M480, 231NW224.

###### 8. Evidence.

Parol evidence as to land intended to be included in mortgage. 181M115, 231NW790.

###### 9. Judgment.

Former judgment between the parties held not resadjudicata on possession. 173M242, 217NW337.

Value of land involved as effecting jurisdiction of federal court for purpose of removal from state court. 31F(2d)136.

##### §9563. Ejectment — Damages — Improvements.

Written promise by remaindermen to pay for improvements erected by life tenant, held to create a mere personal obligation and constituted no defense or counterclaim in ejectment. 180M151, 230NW634.

Remaindermen are not liable for improvements made by life tenant, and holding of trial court that there was consideration for the contract is affirmed by equally divided court. 180M151, 230NW634.

##### §9565. Occupying claimant.

One who, through mistake as to the boundary participated in by the adjoining owner, builds a house on the land of such other, remains the owner thereof. 171M318, 214NW59.

##### §9566. Pleadings—Trial—Verdict.

###### 3. Evidence.

Fraud in obtaining signature of wife to deed. 173M51, 216NW311.

###### 9. Survey.

If the description in the verdict in ejectment

and judgment was not sufficiently definite or certain, the trial court indicated that on application a survey and plat would be ordered to make it so. *Deacon v. H.*, 235NW23. See Dun. Dig. 2905.

#### §9569. May remove crops.

176M37, 222NW292.

#### §9572. Mortgagee not entitled to possession.

An assignment of rents, contained in a real estate mortgage, for the purpose of paying taxes and insurance on the property in case of the failure of the mortgagor or his grantees to pay the same, is held valid, following *Cullen v. Minnesota L. & T. Co.*, 60M6, 61NW818. 178M150, 226NW406.

The assignee of the rents was entitled to recover same from a tenant of one who acquired title to the property subject to the assignment. 178M150, 226NW406.

Mortgagor is entitled to rents and profits prior to foreclosure, and until the period of redemption has expired after foreclosure, and on the foreclosure of a second mortgage any right of the second mortgagee to have rents applied on the prior liens terminated, and the mortgagor was entitled to the rents and profits during the period of redemption. 179M571, 229NW874.

#### §9573. Conveyance by mortgagor to mortgagee.

Notwithstanding this section equity may scan a conveyance by mortgagor to mortgagee, and if the transaction is fair it will be given effect as a conveyance. 179M73, 228NW340.

#### §9576. Notice to terminate contract of sale—Etc.

Laws 1931, c. 173, legalizes proceedings under this section where mortgage registration tax has not been paid.

##### 1. In general.

Where contract terminated, unpaid installments cannot be recovered. 176M601, 224NW157.

Having procured judgment for cancellation of contract, vendor could not proceed for specific performance. 177M79, 224NW464.

One borrowing money and giving deed and taking back a contract of sale enters into a "mortgage" which cannot be canceled. *Sanderson v. E.*, 234NW450. See Dun. Dig. 6154, 10091.

After a cancellation, nothing remains of the contract upon which the remedy of rescission can operate. *Olive v. T.*, 234NW466. See Dun. Dig. 10091.

Certain timber permits construed as being conditioned upon the payment for the timber on the date therein specified for payment, and not to give the grantee the right thereafter to enter upon the land and remove the timber without making payment therefor. *Northern Lumber Co. v. L.*, 233NW593. See Dun. Dig. 10091(18).

##### 2. Notice to terminate.

A vendee of real estate who acquiesces in a statutory cancellation by notice of his contract, and surrenders possession accordingly, is estopped from thereafter questioning the validity of the notice on technical grounds. *Olive v. T.*, 234NW466. See Dun. Dig. 10091.

An executory contract of sale of real prop-

erty gives the vendee the equitable title in fee. The proceeding for forfeiture is in the nature of a strict foreclosure of the vendee's interest, and no right of redemption survives the 30 days' notice. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 10091.

A contract in the form of an executory contract of sale, if made to secure a loan, is a mortgage. If a mortgage, the vendee's title can be extinguished only by foreclosure and the lapse of the statutory period of redemption. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 6152, 10091.

A building and loan association organized under §7743, et seq., including the amendments of 1919 and 1925, cannot make a loan in the form of an executory contract of sale and have a forfeiture or strict foreclosure on 30 days' notice pursuant to Gen. Stat. 1923, §9576. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See Dun. Dig. 10091.

##### 4. Action for damages.

Cancellation of contract under this section precludes subsequent suit for damages for false representations inducing contract. 181M169, 231NW826.

### MISCELLANEOUS ACTIONS

#### §9580. Nuisance defined—Action.

Village ordinance prohibiting the keeping of dog kennels without reference to whether such kennels created a nuisance held invalid. 173M61, 216NW535.

Finding that school district was negligent in exposing school teacher to tuberculosis, sustained by evidence, but there was not sufficient evidence to show that it maintained a nuisance by its failure to make the school building sanitary, and it was not liable for damages under §3098. 177M454, 225NW449.

The findings do not show that the obstruction of the water was of such character as to constitute a nuisance. *Pahl v. L.*, 233NW836. See Dun. Dig. 7240(52).

Finding that stove factory was a nuisance sustained. *Heller v. A.*, 234NW316. See Dun. Dig. 7255.

Record sustains a finding that the district in which a funeral home is proposed to be established is not strictly residential, and that such establishment is not a nuisance. *O'Malley v. M.*, 234NW323. See Dun. Dig. 6525, 7255.

#### §9581. Fence, etc., when nuisance.

174M457, 219NW770.

#### §9585. Trespass—Treble damages.

Verdict for \$350 held not excessive for cutting of trees. *Hansen v. M.*, 234NW462. See Dun. Dig. 2597, 9696(33).

#### §9590. Action to determine boundary lines.

Establishment of center of section of land. 172M338, 215NW426.

#### §9591. Pleadings—Additional parties.

Title by adverse possession may be proved under a general allegation of ownership. 171M488, 214NW283.

#### §9592. Judgment—Landmarks.

Action contemplates the settlement of title and a judgment is res adjudicata in a subsequent action in ejectment. 171M488, 214NW283.

## CHAPTER 83

### Foreclosure of Mortgages

#### BY ADVERTISEMENT

#### §9603. Requisites for foreclosure.

##### ½. In general.

Finding that interest had been paid and that

no default had occurred held sustained by the evidence. 171M469, 214NW472.

An agent to collect interest is within his authority in receiving the interest one day before it is due to be applied as of the date it is due. 171M469, 214NW472.