

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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An order refusing to amend findings of fact and conclusions of law by adding to, or striking out, or inserting others in lieu of those made, is not appealable; but the error claimed is reviewable when properly presented on appeal from an appealable order or judgment. *Louis F. Dow Co. v. B.*, 185M499, 241NW569. See Dun. Dig. 309.

Order of district court dismissing appeal from probate court is not appealable. In re *Ploetz' Will*, 186M396, 243 NW383. See Dun. Dig. 294.

An order granting or refusing inspection of books and documents in hands or under control of an adverse party is not appealable. *Melgaard*, 187M632, 246NW478. See Dun. Dig. 296a, 298(49).

Order denying motion for judgment, notwithstanding findings and decision, is not appealable. *Gunderson v. A.*, 190M245, 251NW515. See Dun. Dig. 309.

Order granting judgment notwithstanding verdict is not appealable. *Selover v. S.*, 201M562, 277NW205. See Dun. Dig. 5084.

An order discharging an order to show cause and dismissing a criminal contempt proceeding can only be reviewed by certiorari, and fact that trial court may have based its order on mistaken belief that it lacked jurisdiction does not affect mode of review. *Spannaus v. L.*, 202 M497, 279NW216. See Dun. Dig. 309.

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.*, 182M348, 234NW459. See Dun. Dig. 287 (27), 463a.

26. From order refusing to modify or 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, 222NW627.

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

An order denying a motion to vacate an ex parte order bringing in an additional party defendant is appealable. *Sheehan v. H.*, 187M582, 246NW353. See Dun. Dig. 308.

A motion, after judgment was entered, to set aside or reduce amount of verdict and judgment on a ground presented to and passed upon at trial and again on an alternative motion for judgment or a new trial, cannot be maintained, and an order denying such motion is not appealable. Such question can be raised on appeal from an order denying the alternative motion, or on appeal from judgment. *Lavelle v. A.*, 197M169, 266NW445. See Dun. Dig. 308.

Order denying motion to vacate dismissal entered without prejudice and for reinstatement of action on calendar was appealable. *Hoffer v. F.*, 204M612, 284NW873. See Dun. Dig. 308(41).

30. Order striking answer.

Appeal lies from order denying a motion to vacate order striking out answer as sham, but motion to vacate must be made returnable before expiration of time to appeal from original order. *Johnson v. K.*, 285NW715. See Dun. Dig. 308.

An order striking out an answer or part thereof is appealable. *Id.* See Dun. Dig. 308.

31. From order on motion to amend findings or conclusions.

An order denying a motion to correct a verdict so as to include erroneously omitted interest is not appealable. *Newberg v. C.*, 190M459, 252NW221. See Dun. Dig. 309.

Order refusing findings is not appealable. *Nichols v. V.*, 192M610, 257NW82. See Dun. Dig. 309.

An appeal does not lie from an order denying a motion for amended finding. *White v. M.*, 192M522, 257NW281. See Dun. Dig. 309.

34. Contempt proceedings.

When object of a proceeding in contempt is to impose punishment merely, order adjudging contempt is reviewable on certiorari, but when object is to enforce doing of something in aid of a civil proceeding, order of contempt is reviewable on appeal. *Proper v. P.*, 188M15, 246 NW481. See Dun. Dig. 1395, 1702 to 1708a.

9499. Bond or deposit for costs.

Gruenberg v. S., 188M566, 248NW38; note under §9504. Failure to serve upon respondent a copy of a supersedeas bond filed in Supreme Court was an irregularity which should have been challenged by motion. *Barrett v. S.*, 184M107, 237NW881. See Dun. Dig. 333.

Section 9499 is not applicable to bonds required on certiorari issued to industrial commission, which are properly fixed and approved under §4320. *Nelson v. K.*, 201M123, 275NW624. See Dun. Dig. 324, 10426.

Inasmuch as a personal representative, in conduct of an action for wrongful death, acts for district court and not at all for probate court or estate of deceased, he is not acting in his capacity as executor or administrator, and therefore is not relieved by §9692, from necessity of furnishing an appeal bond or undertaking, of depositing cash in lieu thereof imposed by §9499. *Sworski v. C.*, 203M545, 282NW276. See Dun. Dig. 325a.

9500. Appeal from order—Supersedeas.

Roehrs v. T., 185M154, 240NW111; note under §9277. *Gruenberg v. S.*, 188M566, 248NW38; note under §9504. 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.

Where district court has reversed a rate-fixing order of Railroad and Warehouse Commission, an appeal by state and applicant does not stay entry of judgment unless so directed either by this court or district court. *State v. Dist. Court*, 189M487, 250NW7. See Dun. Dig. 8082a.

By not giving a supersedeas bond on appeal, garnishee proceedings were not stayed and no rights against garnishee were preserved, appeal being from order discharging garnishee. *Ridgway v. M.*, 192M618, 256NW521. See Dun. Dig. 334.

9504. For sale of real property—Supersedeas.

To effect a stay of proceedings on appeal by defendant from a judgment for restitution in a forcible entry and unlawful detainer case, bond on appeal must conform to provisions of statute. *Gruenberg v. S.*, 188M566, 248 NW38.

Defendant in unlawful detainer may not file a St. Paul city sinking fund certificate in lieu of a bond. *Id.*

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. 176 M632, 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.*, 182 M492, 234NW675. See Dun. Dig. 15.

CHAPTER 81

Arbitration and Award

9513. What may be submitted—Submission irrevocable.—Except as in this section provided, every controversy which can be the subject of a civil action or a labor dispute as defined in the Minnesota Labor Relations Act, may be submitted to the decision of one or more arbitrators in the manner prescribed in this act, but nothing herein shall preclude the arbitration of controversies according to the common law. No submission shall be made of a claim to any estate in fee or for life in real estate, but a claim to an interest for a term of years, or for a lesser term, and controversies respecting a partition of lands, or concerning the boundaries thereof, may be submitted. When a controversy has been submitted, no party thereto shall have power to revoke the submission without the consent of all the others; and, if any of them neglect to appear after due notice, the cause may nevertheless

be heard and determined by the arbitrators upon the evidence produced. (As amended Apr. 22, 1939, c. 439.)

District court may vacate an award if there is no evidence to sustain it. *Borum v. M.*, 184M126, 238NW4. See Dun. Dig. 509.

Evidence held not to require finding that certain issues were voluntarily submitted for determination before arbitrators. *McKay v. M.*, 187M521, 246NW12. See Dun. Dig. 487a.

An arbitration at common law eliminates certain questions which might be present if an award is result of statutory arbitration. *Mueller v. C.*, 194M83, 259NW 798. See Dun. Dig. 499.

Historical development of commercial arbitration in the United States. 12MinnLawRev240.

9515. Powers and duties of arbitrators—Filing of award.

Agreement to submit to arbitration, account between parties relating to a partnership and all other matters

in difference between them, is too indefinite to show that dissolution of partnership, sale of assets thereof to one or other of partners, leasing by one to other of real property which was not partnership property, and an agreement by one partner not to compete in business with other, were matters within authority of arbitrators to determine. *McKay v. M.*, 187M521, 246NW12. See Dun. Dig. 487a.

Conciliator under Laws 1939, c. 440, §9, has no authority to pay arbitrators, but they must be paid as provided for in this section. *Op. Atty. Gen.* (270), June 6, 1939.

9517. Grounds of vacating award.

Where award of referees so links matters submitted to arbitration with matters not so submitted that they cannot be separated without prejudice to parties, court should not sustain a part of award and set aside other parts thereof. *McKay v. M.*, 187M521, 246NW12. See Dun. Dig. 507.

Where a controversy between employer and employee is submitted to arbitrators for their decision upon two or more determinative issues, favorable decision of both of which for employee is essential to his cause of action, he cannot recover where decision of arbitrators ignores one of determinative issues so submitted. An award so unresponsive to submission is void. *Mueller v. C.*, 194M 83, 259NW798. See Dun. Dig. 499.

Arbitration, particularly in disputes between employers and employees, is a favorite of law, and award, if any, will ordinarily be final. *Id.* See Dun. Dig. 488.

(5).

District court may vacate an award if there is no evidence to sustain it. *Borum v. M.*, 184M126, 238NW4. See Dun. Dig. 509.

9519. Judgment—Contents and effect—Appeals.

Perjury as ground for setting aside award after entry of judgment. 20MinnLawRev428.

CHAPTER 82

Actions Relating to Real Property

GENERAL PROVISIONS

9521. Notice of lis pendens.

Judgments and decrees legalized where notice of lis pendens was not recorded. Laws 1939, c. 344.

9522-1. Judgments validated in certain cases.—

That in all actions when judgments and decrees have been entered in the district court of this state where jurisdiction of any defendants including unknown defendants, has been obtained by publication of the summons and notice of lis pendens, and the notice of lis pendens in such action has not been recorded in the office of the Register of Deeds, that nevertheless all such judgments and decrees, when otherwise legal and valid, are hereby made valid and binding upon such defendants and unknown defendants so served by publication, in like manner as if such notice of lis pendens had been filed with the register of deeds prior to publication thereof, as required by law.

Provided, however, that the act shall not apply to cases where the judgment and decree has been entered since February 8, 1921, and provided, further, that nothing herein shall apply to or affect any action or proceedings now pending in any court in this state, or any action or proceedings commenced within thirty days after the passage of this act. (Act Apr. 20, 1939, c. 344.)

ACTIONS FOR PARTITION

9524. Action for partition or sale, who may bring.

Partition is a statutory action but the proceeding is governed by equity principles. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7333.

9527. Judgment for partition—Referees.

Smith v. W., 195M589, 263NW903; note under §9538.

Court must determine rights and interest of all parties to action in property to be partitioned, whether such interest consists of liens, taxes paid, advances or improvements made. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7335.

9530. Confirmation of report—Final judgment.

Referee's report in partition proceedings is entitled to record without payment of taxes. *Op. Atty. Gen.* (373b-22), Apr. 10, 1937.

9532. Liens, how affected.

In action for partition of two separate farms valued respectively at \$15,500 and \$18,500, fact that plaintiff owned a mortgage on undivided half interest of defendant, did not require that there be a sale, and court should have made a division in kind, placing mortgage lien after proper adjustment upon farm set aside to defendant. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7343.

9534. Compensation for equality.

Where supreme court reversed decree in partition ordering sale of two farms and determined that one farm must go to each of two parties, a new trial was unnecessary where trial court had made specific findings and values of farms, but referees might value farms and determine owelty. *Kauffman v. E.*, 195M569, 264NW781. See Dun. Dig. 7345.

9537. Sale ordered, when.

Smith v. W., 195M589, 263NW903; note under §9538.

In determining whether there should be a sale, situation of parties and financial ability of either one of parties to purchase should be considered. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7343.

Partition in kind is favored rather than a sale, and he who asks a sale has burden of proving that partition in kind cannot be made without great prejudice to owners. *Id.*

9538. Liens—New parties—No sale, when.

In partition proceedings, an objection under §9538 to a sale, on ground that liens exceed value of property proposed to be partitioned, must be made prior to order or judgment directing sale, as authorized by §§9527 and 9537. *Smith v. W.*, 195M589, 263NW903. See Dun. Dig. 7343.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to the owners. *Id.*

9540. Sale of real property under action for partition—Notice.—

The sale may be by public auction to the highest bidder for cash, upon published notice in the manner required for the sale of real property on execution. The notice shall state the terms of the sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or specific lien, the notice shall so state. The terms of sale shall be made known at the time thereof, and, if the premises consist of distinct farms or lots, they shall be sold separately. The court may, if it be for the best interests of the owners of said property, order such property sold by private sale. If a private sale be ordered the real estate shall be appraised by two or more disinterested persons under order of the court, which appraisal shall be filed before the confirmation of the sale by the court. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. The court may order sale of real estate for cash, part cash and a purchase money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. (As amended, Apr. 12, 1937, c. 190, §1.)

9542. Purchase by part owner, etc.

There was no error in permitting purchaser, who was an incumbrancer, to give a receipt for so much of proceeds of sale as belonged to her. *Smith v. W.*, 195M 589, 263NW903. See Dun. Dig. 7343.

9544. Final judgment on confirming report.

Order of the court confirming a sale in partition sustained against objection that the price was inadequate. *Grimm v. G.*, 190M474, 252NW231. See Dun. Dig. 7343(95).

Sale to incumbrancer held not to result in a price so grossly inadequate as to require resale, and receipts from purchaser were in accordance with judgment and law. *Smith v. W.*, 195M589, 263NW903. See Dun. Dig. 7343.

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