1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1941

CHAPTER 80

Appeals in Civil Actions

9490. Appeal from district court.

Appellate jurisdiction may not be enlarged by consent of the litigant. Simon v. L., 292NW270. See Dun. Dig. 286.

Appellate jurisdiction cannot be conferred by consent. Bulau v. B., 294NW845. See Dun. Dig. 286.

Right to appeal is statutory. State v. Rock Island Motor Transit Co., 295NW519. See Dun. Dig. 283.

9491. Title of action on appeal.

A party entitled to join in an appeal may do so by enering a voluntary appearance in appellate court after appeal has been perfected. Owens v. O., 292NW89. See Dun. Dig. 311.

9492. Requisites of appeal.

3. On whom served.

Failure of appellants to serve notice of appeal on a party affected by judgment from which appeal was taken is remedied when such party files in supreme court his consent to be bound by disposition of case. Kavli v. L., 292NW210. See Dun. Dig. 320.

9493. Return to Supreme Court.

1. In general.

While a memorandum not expressly made a part of an order granting a new trial unless plaintiff consents to reduction in verdict may be referred to for purpose of throwing light upon or explaining the decision, it may not be referred to for purpose on impeaching, contradicting or overcoming express findings or conclusions necessarily following from decision, but may be referred to to ascertain that verdict was not result of passion or prejudice. Ross v. D., 290NW566; 291NW610. Cert. den. 61SCR9. See Dun. Dig. 394.

Where there has been a general appearance by defendant below, it is improper to include summons in printed record on appeal. Rigby v. N., 292NW751. See Dun. Dig. 353.

Printed record and brief served and filed on appeal from order denying a new trial were allowed as record and brief on subsequent appeal from judgment. Geddes v. B., 295NW518. See Dun. Dig. 355.

Burden is upon appellant to cause clerk of court below to transmit files to supreme court prior to date set for hearing of an appeal, and court is entitled to all files deemed needful pending appeal, and is not restricted to that part which appellant has requested clerk below to transmit. McFadden Lambert Co. v. W., 296NW18. See Dun. Dig. 341.

2. Authentication.

Where defendant's attorneys appealing from an order continuing in effect a temporary restraining order did not cause affidavit of plaintiff to be transmitted to supreme court because of belief that it was not filed, supreme court will consider the affidavit where trial judge endorsed thereupon a certificate that it was considered by him on hearing but that clerk had failed to file it. McFadden Lambert Co. v. W., 296NW18. See Dun. Dig. 339.

3. Briefs.

Where appellant's brief made subdivisions of arguments, but did not precede each subdivision with a separate statement of proposition urged in what followed, statutory costs were denied, though judgment was reversed. Liptak v. K., 293NW612. See Dun. Dig. 5964.

4. Settled case or bill of exceptions.

See also notes under §9327.

Sufficiency of evidence to sustain findings of fact cannot be reviewed on appeal without a settled case or bill of exceptions, in absence of which it is presumed that evidence sustained findings. Doyle v. S., 288NW152. See Dun. Dig. 344.

A finding of fact in nature of a conclusion from other facts specifically found may be reviewed on appeal without a settled case or bill of exceptions to determine whether facts specifically found support conclusion. Holden's Trust, 291NW104. See Dun. Dig. 344.

When a case comes up on appeal from an order sustaining a demurrer, no settled case is needed. Keller Corp. v. C., 291NW515. See Dun. Dig. 349.

Court will not review decision of a lower court upon any question of fact unless record contains all of the evidence introduced on trial pertaining to such question. State v. Anderson, 294NW219. See Dun. Dig. 343.

On appeal from a judgment where bill of exceptions or case is omitted, only question that may be considered is whether conclusions of law embodied in judgment are warranted by findings. Id. See Dun. Dig. 344.

Memorandum of trial court may be resorted to in order to sustain findings, but may not be used to overturn them. McGovern v. F., 296NW473. See Dun. Dig. 343.

Assignment that court erred in not finding that amount stated to be due in public notice of foreclosure of mortgage was grossly excessive was not open to consideration in absence of a settled case or bill of exceptions. Id. See Dun. Dig. 344(87).

Where there is not a settled case or bill of exceptions on appeal from judgment, only question presented is whether findings of fact support judgment. Moe v. O., 296NW512. See Dun. Dig. 344.

6. Assignments of error.

Though notice of appeal indicated entire order was to be attacked, this may be accomplished only by assigning error. Kemerer v. S., 288NW719. See Dun. Dig. 358.

Assignments of error that trial court erred in denying motion for direction of verdict, and that it also erred in denying motion for judgment notwithstanding verdict, raises only question of whether verdict is supported by the evidence. Fontaine v. J., 289NW68. See Dun. Dig. 361.

An omnibus assignment of error against findings of fact consisting of several separately numbered paragraphs is not good. Holzgraver v. S., 289NW881. See Dun. Dig. 361.

Where findings of fact consist of distinct numbered paragraphs appellant, if desiring to challenge any finding as not supported by the evidence, should designate the paragraph or parts of paragraph so challenged by an assignment of error. Id. See Dun. Dig. 361.

Errors assigned but not discussed or mentioned in brief or oral argument are deemed abandoned. Ollgaard v. C., 294NW228. See Dun. Dig. 366.

Assignments of error made without any argument or discussion whatever ought to be deemed abandoned. Lang v. C., 295NW57. See Dun. Dig. 386.

An assignment of error that court erred in denying a motion for a new trial, without more, raises no question of law, since it is duty of appellant to put finger on specific error. Slawik v. C., 296NW496. See Dun. Dig. 360(94, 96).

9494. Powers of appellate court.

1. In general.

Supreme Court has jurisdiction to remand a case to trial court to enable appellant to move that court that its memorandum be made a part of order pending on appeal. State v. Anderson, 291NW605. See Dun. Dig. 438a.

Where money was paid into court under an award in a highway condemnation proceeding and a contest ensued over ownership of the property and the fund, and on appeal it appeared that one contestant might not be entitled to any part of the fund, and the other contestant only a small part thereof, case was remanded for new trial of all the issues to prevent a gross miscarriage of justice, and for participation therein of the state, if attorney general elects to apply to intervene to obtain a possible recovery for the state. State v. Riley, 293NW 95. See Dun. Dig. 384.

State supreme court will not write its decision interpreting its own constitution on such a basis that Supreme Court of United States will have unquestionable jurisdiction to review it. National Tea Co. v. State, 294NW230. See Dun. Dig. 425.

1½. Persons entitled to allege error.

Defendant having, by motion for directed verdict, insisted that there was no fact issue as to giving of train signals, point was not waived because, motion for directed verdict denied, defendant asked appropriate instructions in submitting case to jury. Engberg v. G., 290NW579. See Dun. Dig. 384.

A proceeding for a declaratory judgment must be based on a justiciable controversy for lack of which appellate court will reverse for want of jurisdiction of subject matter, although point has nowhere been raised. Seiz v. C., 290NW802. See Dun. Dig. 384.

Respondents, who have not taken a cross-appeal, may not make cross-assignments of error. Holden's Trust, 291NW104. See Dun. Dig. 360.

Supreme court will not decide whether a litigant can rely upon res ipsa loquitur when specific acts of negligence are alleged, where point was not raised. Peterson v. M., 291NW705. See Dun. Dig. 384.

There was no issue before supreme court as to amount of plaintiff's attorney's fees, there being no appeal by any defendant from court's finding in favor of plaintiff. Risvold v. G., 292NW103. See Dun. Dig. 314.

Where defendant asked reformation of a contract sued on for "mutual mistake," and evidence established a unilateral mistake which was known at all times by other party, there was "mere variance" and the defendant was entitled to judgment, or at least a new trial, though theory of unilateral mistake was not raised until case reached supreme court. Rigby v. N., 292NW751. See Dun. Dig. 384.

Appellant was denied statutory costs on appeal where reversal was had upon a theory not raised in the court below. Rigby v. N., 292NW751. See Dun. Dig. 2238.

Parties of record in proceeding before Railroad and Warehouse Commission, in which they fully participated by consent and without objection, who upon appeal to district court were notified to appear and did appear and enter formal appearance and by consent litigated the issues raised by appeal to supreme court, will be

heard with other parties. State v. Rock Island Motor Transit Co., 295NW519. See Dun. Dig. 310.

1¾. Scope and extent of review.

Where trial court in denying motion to vacate judgment did not exercise any discretion in, or actually pass upon, merits of application for leave to answer, an assignment of error with respect to portion of order denying leave to answer would present nothing for review. Kemerer v. S., 288NW719. See Dun. Dig. 397.

Affidavits presented on motion for new trial on ground of newly discovered evidence are not before the supreme court on consideration of merits of issue of fact determined below. Campbell v. L., 288NW833. See Dun. Dig. 388.

Questions not presented by pleadings nor litigated at trial cannot be considered on appeal. Slawik v. L., 290 NW228. See Dun. Dig. 384.

Construction of will, being dependent on legal implications of its language can be determined on appeal without a retrial. Holden's Trust, 291NW104. See Dun. Dig. 425.

It is neither the practice nor duty of supreme court to increase printed matter for which lawyers must pay, and to that end will refrain from discussion of evidence merely to demonstrate correctness of decision below. Dahn's Estate, 292NW776. See Dun. Dig. 414.

Only errors assigned below are reviewable on appeal from an order denying a motion for a new trial. Geo. Benz & Sons v. H., 293NW133. See Dun. Dig. 384.

Review is confined to record before the court, and it may not consider evidence appearing in a companion case. Sworski v. C., 293NW297. See Dun. Dig. 346.

Unless objections to misconduct in argument are taken before jury retires, they cannot be reviewed on motion for new trial or appeal, although record contains argument in full. Symons v. G., 293NW303. See Dun. Dig. 388a, 9800.

Question whether an order dismissing an action in district court is properly appealable cannot be overlooked though not raised on appeal. Bulau v. B., 294NW845. See Dun. Dig. 358.

Causes will be disposed of on appeal within limits of consideration fixed upon theory on which they were tried. Dahlstrom v. H., 295NW508. See Dun. Dig. 401 (48).

Order refusing to settle a case made long after entry of judgment cannot be reviewed on appeal from judgment. McGovern v. F., 296NW473. See Dun. Dig. 389 (32).

2. Dismissal of appeal.

A motion to dismiss an appeal as frivolous will be granted only where it is perfectly apparent, without argument, that it is of that character. Chisholm Water Supply Co. v. C., 287NW493. See Dun. Dig. 462.

3. Affirmance.

Although court directed a verdict for defendant solely on ground of plaintiff's contributory negligence, there should be no reversal, if on entire evidence a verdict in plaintiff's favor could not stand. Fickling v. N., 294NW 848. See Dun. Dig. 421.

4. Reversal.

Where court granted defendant's motion for judgment non obstante and denied motion for new trial and former alternative was erroneously granted, cause was reversed with leave to defendant to renew its motion for a new trial. Applequist v. O., 296NW13. See Dun. Dig. 5085.

4¾. Discretionary rulings.

The allowance of attorneys' fees and other expenses in divorce proceedings is largely a matter of discretion with trial court, and it is established policy of supreme court to be conservative in matter of such allowances and they are to be allowed cautiously and only when necessary. Burke v. B., 292NW426. See Dun. Dig. 2804.

Disposition of custody of children in a divorce case made by trial court will not be reversed upon appeal except for abuse of broad discretion with which court is invested. Locksted v. L., 295NW402. See Dun. Dig. 2800.

Temporary restraining order pending final judgment rests largely upon judicial discretion and should not be reversed in absence of abuse. McFadden Lambert Co. v. W., 296NW18. See Dun. Dig. 4490 (89).

5. Proceedings below on reversal.

Appeal from decree entered on reviewing court's mandate brings up for reexamination only the proceedings subsequent to the mandate, and court cannot consider new issues nor modify previous opinion or mandate. Pike Rapids Power Co. v. M., (CCA8), 106F(2d)891. See 99F(2d)902, in which cert. was denied 59SCR362, 488, and rehearing denied, 59SCR487.

6. Law of case.

Illinois Cent. R. Co. v. Minnesota, 309US157, 60SCR419, aff'g 205Minn621, 286NW359. Reh. den., 60SCR585.

Following reversal with directions, proceedings in lower court should conform to mandate, opinion of reviewing court being law of case. Pike Rapids Power Co. v. M., (CCA8), 106F(2d)891. See 99F(2d)902, in which cert. was denied 59SCR362, 488, and rehearing denied, 59 SCR487.

Where appellant moved that cause be remanded to trial court so as to permit a hearing on his motion for amended finding or, if that be denied, for permission to move court to make its memorandum part of order for review, no complaint could be made of failure of trial court to make findings upon all determinative fact issues, separately stated, court having granted alternative asked for. State v. Anderson, 294NW219. See Dun. Dig. 9849.

7½. Presumptions.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

Where upon stipulation of counsel in open court, jury is permitted to view stairway and premises, where plaintiff fell and sustained personal injuries, and to consider whatever they saw there as evidence, we cannot say that there was insufficient evidence to sustain their verdict against storekeeper. Smith v. O., 292NW745. See Dun. Dig. 371.

Appellate court cannot assume that jury failed to heed a direction in instructions limiting consideration of impeaching testimony. Klingman v. L., 296NW528. See Dun. Dig. 380.

8. Findings of fact.

Pike Rapids Power Co. v. M., (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. Reh. den., 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

Review of denial of motion for directed verdict for defendant on ground of insufficiency of proof of negligence of defendant and conclusive proof of contributory negligence of plaintiff requires that testimony be viewed in light most favorable to plaintiff. Stolte v. L., (CCA8), 110F(2d)226.

In reviewing ruling of lower court on motion for a directed verdict question presented is whether or not there was substantial evidence to sustain a verdict, and in determining that question, evidence favorable to party against whom a directed verdict has been sought must be accepted as true and he is entitled to benefit of all favorable inferences therefrom. Champlin Refining Co. v. W., (CCA8), 113F(2d)844.

A verdict supported by substantial evidence will not be disturbed on appeal. Meyer v. A., 287NW680. See Dun. Dig. 415.

A verdict in an equity case upon a special question is determinative and remains so unless vacated. Dose v. I., 287NW866. See Dun. Dig. 415.

On review of an order denying motion for amended findings or a new trial each material finding sustained by sufficient evidence must stand. Bearl v. E., 288NW844. See Dun. Dig. 411.

A finding of fact in nature of a conclusion from other facts specifically found may be reviewed on appeal without a settled case or bill of exceptions to determine whether facts specifically found support conclusion. Holden's Trust, 291NW104. See Dun. Dig. 388.

Findings of fact which are controlled or influenced by error of law are not final on appeal and will be set aside. Id. See Dun. Dig. 388.

A verdict, whether general or special, supported by substantial evidence, is final on appeal. Blume v. B., 291NW906. See Dun. Dig. 415.

Findings of trial court will stand on appeal where those that are decisive are well supported, though other findings perhaps go beyond the evidence. Rhoads v. R., 292NW760. See Dun. Dig. 388.

In action to procure a divorce trial court determines credibility of the witnesses and weight to be given their testimony and can conclude that testimony is product of imagination and exaggeration rather than a recital of what actually took place. Id.

It would be highly improper for supreme court to disturb finding of trial court in will contest of lack of testamentary capacity. Dahn's Estate, 292NW776. See Dun. Dig. 411.

Where two juries have found verdict for plaintiff, second verdict, approved by trial court, will not be interfered with unless evidence is demonstrably false or not entitled to credence. Becker v. T., 294NW214. See Dun. Dig. 388.

Whether certain witnesses are worthy of belief is primarily for jury and trial court. Id.

If a decisive finding is supported by sufficient evidence and is adequate to sustain conclusions of law, it is immaterial on appeal whether or not some other findings are not so supported. Locksted v. L., 295NW402. See Dun. Dig. 411.

Disposition by trial judge of an issue of fact arising from conflicting evidence on motion to vacate a judgment is final. Connors v. U., 296NW21. See Dun. Dig. 5124.

On appeal in an action for an accounting court has no authority to make or amend findings of fact where evidence is in conflict, but may only determine whether findings of fact as made below are manifestly and palpably contrary to evidence. Range Ice & Fuel Co. v. B., 296NW407. See Dun. Dig. 411, 434.

9495. Judgment notwithstanding verdict.

3. Motion for judgment.

On motion for judgment notwithstanding verdict, single question is whether there is any competent evidence reasonably tending to sustain verdict. Peterson v. M., 288 NW588. See Dun. Dig. 5080.

Where evidence is so overwhelmingly on defendant's side as to leave no room to doubt what facts are, court should grant judgment notwithstanding the verdict. Brulla v. C., 289NW404. See Dun. Dig. 5082.

Testimony of a passenger in a crowded Ford that he did not hear crossing whistle sounded or locomotive bell rung, it not appearing that such passenger was listening for sounds, or that windows of Ford were open, or that he heard rumbling of freight train running at 25 miles an hour at any moment prior to Ford's collision with

19th car from front, is of no probative value as against positive testimony of several witnesses in a position to know that whistle was sounded and bell rung. Krause v. C., 290NW294. See Dun. Dig. 5082.

It was error to deny motion for judgment notwithstanding verdict where there was only slight negative evidence supporting it, notwithstanding appellant asked appropriate instructions in submitting case to jury following denial of its motion for a directed verdict. Engberg v. G., 290NW579. See Dun. Dig. 5080.

Order for judgment notwithstanding verdict will be sustained only where there is no evidence reasonably supporting it. Goldfine v. J., 294NW459. See Dun. Dig. 5082.

6. Appealability of order on motion.

Requirement in this statute that appeal be taken from whole order does not apply to an appeal under Laws 1933, c. 259, §3. Holden's Trust, 291NW104. See Dun. Dig. 393.

When a motion is made in alternative for judgment notwithstanding or a new trial and a new trial is granted, moving party may not appeal from order denying judgment. Simon v. L., 292NW270. See Dun. Dig. 300.

7. Disposition of case on appeal.

Where court granted defendant's motion for judgment non obstante and denied motion for new trial and former alternative was erroneously granted, cause was reversed with leave to defendant to renew its motion for a new trial. Applequist v. O., 296NW13. See Dun. Dig. 5086.

9497. Appeal, when taken.

2. Appeal from judgment.

It is within discretion of trial court to settle a case where an appeal from a judgment has been perfected within six months from entry thereof, even though application to settle was not made until after expiration of said six months. McGovern v. F., 290NW575. See Dun. Dig. 316.

3. Appeal from order.

Where order denying new trial was filed March 8, 1940, and on March 12, 1940, a copy of order was duly served by mail upon defendants' attorney, and upon stipulation court on April 6, 1940, ordered all proceedings stayed in case until May 17, 1940, notice of appeal on May 11, 1940, was too late. Geddes v. B., 294NW845. See Dun. Dig. 317.

Certiorari in district court to review order of a civil service commission demoting superintendent of fire prevention bureau of Minneapolis Fire Department was not "an action" within meaning of §9498(1), and decision of court affirming action of the commission was "a final order, affecting a substantial right, made in a special proceeding" within §9498(7), and appeal therefrom must be taken within 30 days after service of written notice under §9497, and it is not contemplated that any judgment be entered in the certiorari proceeding. Johnson v. C., 295NW406. See Dun. Dig. 317.

9498. Appeals to supreme court.

STATUTE GENERALLY

½. In general.

Appealability of an order is not determined by merits of case but rather and only by nature of order from which a review is sought. Rodgers v. S., 289NW580. See Dun. Dig. 296a.

Right of appeal is governed by statute. Bulau v. B., 294NW845. See Dun. Dig. 283.

An appeal from both a judgment, which is appealable, and an order, which is not appealable, will be treated as a valid appeal from judgment only and will be disregarded so far as it relates to the order. State v. Rock Island Motor Transit Co., 295NW519. See Dun. Dig. 294.

¾. Party aggrieved.

An appellee or respondent, by making appellant a party to litigation or proceedings, is estopped to deny that appellant has a sufficient interest to entitle him to prosecute an appeal. State v. Rock Island Motor Transit Co., 295NW519. See Dun. Dig. 310(87).

A party defendant whose rights and liabilities under a contract will be adversely affected if order from which appeal is taken by all defendants jointly is affirmed may maintain in his own name and right such appeal though his co-appellants, with plaintiff's consent, dismiss their appeal. Rice v. C., 295NW529. See Dun. Dig. 311.

SUBDIVISION 1

4. From judgment on appeal to district court.

Certiorari in district court to review order of a civil service commission demoting superintendent of fire prevention bureau of Minneapolis Fire Department was not "an action" within meaning of §9498(1), and decision of court affirming action of the commission was "a final order, affecting a substantial right, made in a special proceeding" within §9498(7), and appeal therefrom must be taken within 30 days after service of written notice under §9497, and it is not contemplated that any judgment be entered in the certiorari proceeding. Johnson v. C., 295NW406. See Dun. Dig. 294.

SUBDIVISION 3

10. Orders held appealable.

An appeal lies from a part of a judgment or order which involves a distinct and separable question. Holden's Trust, 291NW104. See Dun. Dig. 296a.

An appeal lies from that part of an order, in proceedings by a trustee for accounting and distribution under L. 1933, c. 259, §3, allowing trustee's accounts and ordering distribution of estate, which determines who are entitled to take as distributees, since such part presents a distinct and separable question. Id. See Dun. Dig. 298.

Order concerning disposition of condemnation damages deposited with clerk of court was appealable. State v. Anderson, 294NW219. See Dun. Dig. 302.

11. Orders held not appealable.

An order denying a motion for judgment based upon a stipulation of liability is not an appealable order. Rodgers v. S., 289NW580. See Dun. Dig. 298.

Where action was brought against a county and a town and a demurrer was sustained as to county and overruled as to town, an order refusing to require plaintiff to file an amended complaint omitting allegations applying to county on motion of town was an intermediate order and not appealable. Parsons v. T., 295 NW909. See Dun. Dig. 298.

SUBDIVISION 4

13. Orders held not appealable.

When a motion is made in alternative for judgment notwithstanding or a new trial and a new trial is granted, moving party may not appeal from order denying judgment. Simon v. L., 292NW270. See Dun. Dig. 300.

An order denying an alternative motion for amended finding or a new trial is not appealable as a final order. State v. Rock Island Motor Transit Co., 295NW519. See Dun. Dig. 301.

SUBDIVISION 5

15. Orders held appealable.

An order dismissing a cause for want of jurisdiction is appealable. Bulau v. B., 294NW845. See Dun. Dig. 301.

16. Orders held not appealable.

General rule is that no appeal lies from an action by court which requires a subsequent order or judgment to give it effect. Rodgers v. S., 289NW580. See Dun. Dig. 298(17).

An order denying a motion for judgment based upon a stipulation of liability is not an appealable order. Id. See Dun. Dig. 298.

Part of order denying motion for amended findings is not appealable, though it may be ground for an assignment of error. Driessen v. M., 294NW206; State v. Anderson, 294NW219. See Dun. Dig. 301.

Generally, an order of dismissal is but an order upon which judgment may be entered, and appeal should be from the judgment. Bulau v. B., 294NW845. See Dun. Dig. 301.

SUBDIVISION 7

19. Orders held appealable.

While a judgment which is authorized but erroneous can only be reviewed by an appeal from the judgment, yet if judgment is unauthorized, it may be vacated on motion, and appeal from order denying application may be taken. Kemerer v. S., 288NW719. See Dun. Dig. 308.

An order which on its face appears to be a final one in a special proceeding and affecting a substantial right is appealable. State v. Anderson, 291NW605. See Dun. Dig. 302.

Order concerning disposition of condemnation damages deposited with clerk of court was appealable. State v. Anderson, 294NW219. See Dun. Dig. 302.

Certiorari in district court to review order of a civil service commission demoting superintendent of fire prevention bureau of Minneapolis Fire Department was not "an action" within meaning of §9498(1), and decision of court affirming action of the commission was "a final order, affecting a substantial right, made in a special proceeding" within §9498(7), and appeal therefrom must be taken within 30 days after service of written notice under §9497, and it is not contemplated that any judgment be entered in the certiorari proceeding. Johnson v. C., 295NW406. See Dun. Dig. 302.

20. Orders held not appealable.

A litigant whose alternative motion for judgment notwithstanding or a new trial is denied as to judgment but granted as to new trial cannot appeal. Halweg's Estate, 290NW577. See Dun. Dig. 300.

9499. Bond or deposit for costs.

Appeal from judgment was not dismissed because bond was inadequate, there were no sureties and it was not in form required by statute, but appellant was given 10 days in which to file a proper bond. Geddes v. B., 295 NW518. See Dun. Dig. 328.