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To

Mason's Minnesota Statutes

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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.

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CHAPTER 81

Arbitration and Award

9518. What may be submitted—Submission irrevocable.

Where contracting parties first agree to a statutory arbitration and later make complete submission to an arbitration which does not comply with statute but which is good at common law, it will be given effect as a common-law arbitration, overruling *Holdridge v. Stowell*, 39 Minn. 360, 40 NW 259. *Park Const. Co. v. I.*, 296 NW 475. See Dun. Dig. 499, 500.

Doctrine is discarded that general agreement to arbitrate ousts jurisdiction of courts, and are therefore illegal as against public policy. *Id.* See Dun. Dig. 499.

9516. Procedure after filing.

If arbitration is under statute ward is summarily reviewable, but if proceeding was under common law, an action lies on the ward. *Park Const. Co. v. I.*, 296 NW 475. See Dun. Dig. 507.

9517. Grounds of vacating award.

Where arbitrators are permitted by submission to fix their own fees, such allowance to themselves is a severable matter, subject to review and correction as such without effect on award otherwise. *Park Const. Co. v. I.*, 296 NW 475. See Dun. Dig. 509.

CHAPTER 82

Actions Relating to Real Property

GENERAL PROVISIONS

9521. Notice of lis pendens.

Notice of lis pendens need not be filed or published in an action by the state to quiet title under Laws 1939, c. 341. *Op. Atty. Gen.* (374g), Dec. 4, 1940.

ACTIONS FOR PARTITION

9527. Judgment for partition—Referees.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9530. Confirmation of report—Final judgment.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9537. Sale ordered, when.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9544. Final judgment on confirming report.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9544-1. Appeals from orders or interlocutory judgments.—Any party to any partition proceedings may appeal from any order or interlocutory judgment made and entered pursuant to Mason's Minnesota Statutes of 1927, Section 9527, 9530, 9537 or 9544, to the Supreme Court within thirty (30) days after the making and filing of any such order or interlocutory judgment. Any appeal taken pursuant to the provisions hereof shall be governed by the rules and laws applicable to appeals in civil cases. (Act Apr. 25, 1941, c. 448, §1.)

9544-2. Conclusiveness of determination.—All matters determined by any such order or interlocutory judgment shall be conclusive and binding upon all parties to such proceedings, and shall never thereafter be subject to review by the Court unless appealed from as provided for herein. (Act Apr. 25, 1941, c. 448, §2.)

9544-3. Repeal of inconsistent acts.—All acts or parts of acts inconsistent herewith are hereby repealed so far as may be necessary to give full force and effect to the provisions of this act. (Act Apr. 25, 1941, c. 448, §3.)

9544-4. Pending proceedings.—This act shall not affect any proceedings heretofore instituted and now pending. (Act Apr. 25, 1941, c. 448, §4.)

ACTIONS TO TRY TITLE

9556. Actions to determine adverse claims.

3. Interests determined.
Where in neither registration proceedings themselves nor by the record, existence of an unclaimed claimant is

shown, want of jurisdiction does not appear from judgment roll itself, judgment of registration is not subject to collateral attack in a suit to quiet title. *Dean v. R.*, 292 NW 765. See Dun. Dig. 8361.

5. Possession.

As affecting purchase by school district of tax title lands, a tax title is not a good marketable title until title has been quieted by action, since a tax title is subject to many errors and mistakes, which might be raised at any time within 15 years by original owner. *Op. Atty. Gen.* (425c-12), Sept. 12, 1940.

7. Answer.

In action to quiet title, defendant probably should have challenged the plaintiff's title by answer rather than by motion to dismiss complaint, but plaintiff is in no position to challenge procedure where he stipulated judgment roll in registration proceedings into the record, showing title in defendant, and did not challenge procedure until motion for new trial and rehearing. *Dean v. R.*, 292 NW 765. See Dun. Dig. 8049.

9557. Unknown defendants.

Notice of lis pendens need not be filed or published in an action by the state to quiet title under Laws 1939, c. 341. *Op. Atty. Gen.* (374g), Dec. 4, 1940.

9572. Mortgagee not entitled to possession.

Where mortgagee taking possession contracted, in event of foreclosure, either to buy property for full amount of debt or to release any deficiency judgment procured pursuant to foreclosure, and on foreclosure purchased for less than debts, subject to accrued taxes, mortgagor was entitled to rentals collected by mortgagee during period of redemption, and they could not be applied either on accrued taxes or upon indebtedness, though there was no deficiency judgment, contract wiping out entire debt on foreclosure. *Wagner v. B.*, 238 NW 1. See Dun. Dig. 6242.

MISCELLANEOUS ACTIONS

9580. Nuisance defined—Action.

Where property near which nuisance is maintained is owned jointly by husband and wife, husband and he alone may recover for injury to members of his family. *King v. S.*, 292 NW 198. See Dun. Dig. 7274.

Village probably would not be liable for nuisance occasioned by sewer system not owned or controlled by it. *Op. Atty. Gen.*, (387G-5), Jan. 20, 1940.

City council may adopt an ordinance prohibiting playing of music or making of advertising announcements from aircraft flying over city at low altitude. *Op. Atty. Gen.* (234a), Nov. 8, 1940.

Interference with surface waters. 24 MinnLawRev. 891.

9585. Trespass—Treble damages.

A verdict is not as a matter of law excessive where there is sufficient evidence to go to the jury that actual damages as distinguished from treble damages amounted to \$1300, verdict being for actual damages of \$400 and treble damages of \$1200. *Lawrenz v. L.*, 288 NW 727. See Dun. Dig. 2597.

Vendee in possession of land under a contract of purchase is entitled to recover all damages to land resulting from a trespass by third person. *Id.* See Dun. Dig. 9687.

Where plaintiff's complaint in suit for trespass alleged only fact of title generally and without disclosing means by which acquired, and defendant's answer pleaded generally that its alleged acts of trespass were consented to