

130278

# 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.

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CHAPTER 81

Arbitration and Award

**9513. 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*, 39Minn360, 40NW259, Park Const. Co. v. L., 296NW 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. L.*, 296NW 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. L.*, 296NW475. 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.*, 292NW765. 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.*, 292NW765. 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 of foreclosure. *Wagner v. B.*, 288 NW1. 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.*, 292NW198. 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.*, 288NW727. 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

by plaintiff but without pleading anything more, plaintiff, under his reply denying all new matter, could assail a written grant of easement, introduced by defendant, defensively against the charged trespass, upon ground that grant was result of a mutual mistake between parties thereto, defendant being in privity with grantee therein named. *Id.* See Dun. Dig. 9691.

A mutual mistake as to location of a grant of right-of-way to an electric company which cut down trees and

is sued for trespass held established as a matter of law. *Id.* See Dun. Dig. 9696.

Evidence held to sustain verdict that trespass by electric company was not casual, the result of inadvertence, mistake, or unintentional. *Id.* See Dun. Dig. 9696.

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

Title, points and lines in lakes and streams. 24Minn LawRev305.

## CHAPTER 83

### Foreclosure of Mortgages

#### BY ADVERTISEMENT

##### 9608. Postponement.

Relief from inequitable foreclosure of real estate mortgages and execution sales, extension of periods of redemption, and limitation of right to maintain actions for deficiency judgments. Laws 1941, c. 38.

##### 9618. Certificate of sale—Record—Effect.

Construction of sheriff's certificates in mortgage foreclosure by advertisement before January 1, 1875. Laws 1941, c. 388.

#### RIGHTS AND LIABILITIES OF PURCHASER

##### 12. Right to crops, rents and profits.

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.*, 288 NW1. See Dun. Dig. 6371.

**9618. Perpetuating evidence of sale.**—Any party desiring to perpetuate the evidence of any sale made in pursuance of this chapter may procure:

1. An affidavit of the publication of the notice of sale and of any notice of postponement, to be made by the printer of the newspaper in which the same was inserted, or by some person in his employ knowing the facts.

2. An affidavit or return of service of such notice upon the occupant of the mortgaged premises, to be made by the officer or person making such service, or, in case the premises were vacant or unoccupied at the time when such service must be made, an affidavit or return showing that fact, to be made by the officer or person attempting to make such service.

3. An affidavit by the person foreclosing said mortgage, or his attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale.

Such affidavits and returns shall be recorded by the Register of Deeds and they and the records thereof, and certified copies of such records, shall be prima facie evidence of the facts therein contained.

The affidavit provided for in subdivision 3 hereof may be made and filed for record for the purpose of complying with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, passed by the Congress of the United States and approved on October 17, 1940, and may be made and filed for record at any time subsequent to the date of the mortgage foreclosure sale. (As amended Act Apr. 26, 1941, c. 477, §1.)

Sec. 2 Act Apr. 26, 1941, provides that the act shall take effect from its passage.

##### 9629. Certificate of redemption—Record.

Rights of bona fide purchasers at execution sale. 24 MinnLawRev 805.

##### 9633. Mortgages to be reinstated in certain cases.

#### CURATIVE ACTS

Foreclosure sales by advertisement heretofore made, legalized. Laws 1941, c. 305.

#### EMERGENCY RELIEF ACT

Moratorium extended to July 1, 1942, by identical provisions of Act Feb. 28, 1941, c. 38.

##### 9633-1. Application of Act.

Constitutionality of moratorium law although challenged and argued by counsel, need not be determined where it is apparent from record that holder of sheriff's certificate does not wish to obtain possession of mortgaged property if some other reasonable means can be found to liquidate his claim. *Shumaker v. H.*, 288NW339. See Dun. Dig. 1644.

#### PART ONE

##### 9633-2. Emergency declared to exist.

Purpose of act was to grant distressed mortgagors, for a limited time only, an opportunity to save equities in their holdings, as a defensive shield to protect owners from exploitation by holders of mortgages. *Shumaker v. H.*, 288NW339. See Dun. Dig. 6392.

##### 9633-5. Period of redemption may be extended.

If owner of property cannot procure a loan on a tract claimed to be of value of more than twice amount of mortgage debt within a period of more than three years it is not probable that value claimed is there. *Shumaker v. H.*, 288NW339. See Dun. Dig. 6392.

Upon facts held that a new trial be had to determine whether there is reasonable probability of refinancing present mortgage indebtedness within a reasonable time. *Id.* See Dun. Dig. 6392.

If upon due hearing it shall appear that refinancing seems probable, mortgagee should receive the net amount of rental income of not less than \$250 per month where gross monthly income is in excess of \$450. *Id.* See Dun. Dig. 6392.

Laws 1939, c. 7, does not authorize the period of redemption from mortgage foreclosure sale to be extended where the proof is conclusive that the mortgagor's equity in the premises is of less value than the amount required to redeem and where mortgagor admits no effort made to refinance the mortgage, knowing it to be hopeless. *Smith v. T.*, 291NW516. See Dun. Dig. 6392.

Provision of New York moratory law that in event owner of mortgaged property fails to apply to the redemption of the principal any surplus which mortgaged property produces over carrying charges and interest mortgagee may foreclose, does not transfer the right to rent ipso facto to the mortgagee so as to impose a liability upon last record owner for amount of such surplus enforceable by supplementary proceedings where such owner did not assume the obligations of the mortgage. *Chase Nat. Bank of N. Y.*, 283NY350, 28NE(2d)868.

#### BY ACTION

##### 9634. By what rules governed.

##### 13. Issues which may be litigated.

In suit to foreclose trust deed, in which suit trustees acting under authority expressly conferred upon them by such trust deed selected a court of equity and demanded equitable relief of having amount of secured debt established and legal remedy of judgment for deficiency, not only the validity of the trust deed was an issue but also the validity of the bonds and the consideration therefor as well as question of fraud inhering in them. *Phoenix Finance Corp. v. I.*, (CCA8), 115F(2d)1.