

1934 Supplement

To

**Mason's Minnesota Statutes**

**1927**

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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less so directed either by this court or district court. State v. Dist. Court., 250NW7. See Dun. Dig. 8082a.

#### 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., 248NW38.

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.

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.

#### 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.

#### 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.

(5).

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

## 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., 182M492, 234NW675. See Dun. Dig. 15.

##### 7. Answer.

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

##### 8. Reply.

Where in a legal action to determine adverse claims, the defendants assert a legal title, the plaintiffs may, in their reply, plead facts showing an equitable title that ought to prevail over defendants' legal title. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8052.

##### 8½. Evidence.

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

##### 9. Judgment.

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

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

Equitable title of one who purchased fractional interest under deed mistakenly conveying smaller fractional interest and who improved land, held to prevail over legal title in action to determine adverse claims. Garrey v. N., 185M487, 242NW12. See Dun. Dig. 8042.

#### 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. 171 M318, 214NW59.

#### 9566. Pleadings—Trial—Verdict.

##### 3. Evidence.

Fraud in obtaining signature of wife to deed. 173M 51, 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., 182M540, 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. 178M 150, 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.

This section does not deprive mortgagee of former recourse to equitable remedy of a receivership to protect security. Gardner v. W., 185M147, 240NW351. See Dun. Dig. 6456(38).

After foreclosure of mortgage on instalment, mortgage and all its covenants, including that to pay taxes, remain in full force and mortgagee is entitled under assignment of rents as part of security to collect rents to apply upon delinquent taxes, even those accrued at time of foreclosure for instalment. Peterson v. M., 248NW667. See Dun. Dig. 6227n, 26.

#### 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. 179 M73, 228NW340.

A building contract, warranty deed, and a contract for deed held a conditional sale, not an equitable mortgage. Westberg v. W., 185M313, 241NW315. See Dun. Dig. 6153.

There is no longer a presumption that a transfer by a mortgagor to his mortgagees is given as further security or as a new form of security, and a mortgagor may eliminate his title by conveying directly to mortgagee. McKinley v. S., 247NW389. See Dun. Dig. 6160, 6166, 6250.

Evidence held to show conveyance to plaintiff and contract by him and wife to reconvey was equitable mortgage. Jeddelloh v. A., 247NW512. See Dun. Dig. 6164, 6167.