

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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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Where an alternative motion for judgment notwithstanding or for a new trial is made, an appeal may be taken from whole order disposing of motion, but not from only that part granting or denying judgment. *Malley v. N.*, 194M236, 259NW825. See Dun. Dig. 5084.

Where an order does not involve the merits of the action, or is not a final order affecting a substantial right in a special proceeding, it is not appealable. *Fleischmann v. N.*, 194M227, 234, 260NW313. See Dun. Dig. 298.

22. Orders held not appealable.

Order for judgment is not appealable. *Palmer v. F.*, 179 M381, 230NW257(2).

Order denying motion for amended findings and order before judgment granting motion to file supplemental answer, held not appealable. 180M93, 230NW269.

Order directing verdict for plaintiff, order denying directed verdict for defendant, and order opening case for further testimony, held not appealable. 181M627, 231 NW617.

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*, 186M395, 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.

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 vacate judgment or order.

An order refusing to vacate a nonappealable order is not appealable. 174M611, 219NW923.

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, 222NW527.

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.

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.*, 192M510, 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.

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. 8032a.

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.

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.

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.

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.

CHAPTER 82

Actions Relating to Real Property

ACTIONS FOR PARTITION

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).

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