

1938 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1938)  
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 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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## 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, 259NW798. 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.*, 194M83, 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.

**9519. Judgment—Contents and effect—Appeals.**

Perjury as ground for setting aside award after entry of judgment. 20MinnLawRev428.

## CHAPTER 82

## Actions Relating to Real Property

## ACTIONS FOR PARTITION

**9524. Action for partition or sale, who may bring.**

Partition is a statutory action but the proceeding is governed by equity principles. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7333.

**9527. Judgment for partition—Referees.**

*Smith v. W.*, 195M589, 263NW903; note under §9538. Court must determine rights and interest of all parties to action in property to be partitioned, whether such interest consists of liens, taxes paid, advances or improvements made. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7335.

**9530. Confirmation of report—Final judgment.**

Referee's report in partition proceedings is entitled to record without payment of taxes. *Op. Atty. Gen.* (373b-22), Apr. 10, 1937.

**9532. Liens, how affected.**

In action for partition of two separate farms valued respectively at \$15,500 and \$18,500, fact that plaintiff owned a mortgage on undivided half interest of defendant, did not require that there be a sale, and court should have made a division in kind, placing mortgage lien after proper adjustment upon farm set aside to defendant. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7343.

**9534. Compensation for equality.**

Where supreme court reversed decree in partition ordering sale of two farms and determined that one farm must go to each of two parties, a new trial was unnecessary where trial court had made specific findings and values of farms, but referees might value farms and determine owelty. *Kauffman v. E.*, 195M569, 264NW781. See Dun. Dig. 7345.

**9537. Sale ordered, when.**

*Smith v. W.*, 195M589, 263NW903; note under §9538. In determining whether there should be a sale, situation of parties and financial ability of either one of parties to purchase should be considered. *Kauffman v. E.*, 195M569, 263NW610. See Dun. Dig. 7343.

Partition in kind is favored rather than a sale, and he who asks a sale has burden of proving that partition in kind cannot be made without great prejudice to owners. *Id.*

**9538. Liens—New parties—No sale, when.**

In partition proceedings, an objection under §9538 to a sale, on ground that liens exceed value of property proposed to be partitioned, must be made prior to order or judgment directing sale, as authorized by §§9527 and 9537. *Smith v. W.*, 195M589, 263NW903. See Dun. Dig. 7343.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to the owners. *Id.*

**9540. Sale of real property under action for partition—Notice.**—The sale may be by public auction to the highest bidder for cash, upon published notice in the manner required for the sale of real property on execution. The notice shall state the terms of the sale; and if the property, or any part of it, is to be sold subject to a prior estate, charge, or specific lien, the notice shall so state. The terms of sale shall be made known at the time thereof, and, if the premises consist of distinct farms or lots, they shall be sold separately. The court may, if it be for the best interests of the owners of said property, order such property sold by private sale. If a private sale be ordered the real estate shall be appraised by two or more disinterested persons under order of the court, which appraisal shall be filed before the confirmation of the sale by the court. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. The court may order sale of real estate for cash, part cash and a purchase money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. (As amended, Apr. 12, 1937, c. 190, §1.)

**9542. Purchase by part owner, etc.**

There was no error in permitting purchaser, who was an incumbrancer, to give a receipt for so much of proceeds of sale as belonged to her. *Smith v. W.*, 195M589, 263NW903. See Dun. Dig. 7343.

**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).

Sale to incumbrancer held not to result in a price so grossly inadequate as to require resale, and receipts from purchaser were in accordance with judgment and law. *Smith v. W.*, 195M589, 263NW903. See Dun. Dig. 7343.

## 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.

Defendants who allege title in themselves and ask judgment quieting it in them waive form of action, and