

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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



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Amount which remainderman must contribute. 171M182, 213NW736.

Evidence held to sustain a finding of agreement that third mortgagee would redeem from first and lease land to mortgagor. 174M180, 213 NW889.

§9632. Holder of junior mortgage may pay.

Plaintiff, mortgagee, by releasing the mortgagors from their personal obligation to pay the mortgage, did not subordinate its mortgage to another mortgage obtained from a subsequent purchaser of the premises. 178M50, 226NW189.

The equities of mortgagees, as to each other, in respect to taxes paid or purchased by them, are not affected by the statute. *Des Moines Sav. Bk & Trust Co. v. E.*, 235NW390.² See Dun. Dig. 6236.

§9633. Mortgages to be reinstated in certain cases.

178M50, 226NW189.

CURATIVE ACTS

- Laws 1929, c. 5.
- Laws 1929, c. 53.
- Laws 1929, c. 325.
- Laws 1929, c. 378.
- Laws 1931, c. 198.
- Laws 1931, c. 199.
- Laws 1931, c. 230.
- Laws 1931, c. 237.

BY ACTION

§9634. By what rules governed.

12. Defenses.

In an action to have a deed declared a mortgage and have it foreclosed, it was immaterial that plaintiff had demanded more cash than was due, where defendant did not refuse to perform for that reason, but defended on other grounds. *Spielman v. A.*, 236NW319. See Dun. Dig. 6435.

16. Notice of election—Treating whole amount due.

Acceleration clause, held operative after extension agreement with mortgagor's grantee. 181M249, 232NW33. See Dun. Dig. 6318.

§9636. Judgment—Transcript to sheriff.

Personal judgment against grantee on mortgagor held properly denied. 172M366, 215NW 516.

§9641. Report—Confirmation—Resale.

2. Resale.

180M173, 230NW780.

§9642. Satisfaction of judgment—Execution for deficiency.

Mortgagor conveying property to third person, who assumed the mortgage debt, held liable for deficiency after foreclosure where it requested and consented to extension of mortgage. 181M249, 232NW33. See Dun. Dig. 6294.

§9643. Redemption by mortgagor, creditor, etc.

For rights of a creditor of a decedent debtor, see Laws 1929, c. 195.

Mortgagor is entitled to rents and profits during redemption period even though the foreclosure is of a second mortgage. 179M571, 229 NW874.

GENERAL PROVISIONS

§9646. Attorney's fees.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M 254, 232NW318. See Dun. Dig. 6425.

§9647. May be collected, when.

Attorney's fees cannot be charged as costs unless an attorney at law is employed. 181M 254, 232NW318. See Dun. Dig. 6425.

§9648. Purchaser at foreclosure, etc., may pay taxes, etc.

The purchaser at the sale, having failed to file an affidavit of taxes paid, they did not become a part of the sum to be paid in making redemption. 176M393, 223NW609.

Provision requiring filing of affidavit as to insurance and taxes 10 days before expiration of period of redemption is mandatory. *Op. Atty. Gen.*, Sept. 21, 1929.

§9649. Homestead included in mortgage—Separate sale.

Upon a mortgage foreclosure sale of the West Hotel in Minneapolis, the owner claimed a portion of the building as a homestead and demanded that the remainder of the mortgaged premises be first sold to satisfy the mortgage debt. Held, that the owner having the burden of proof failed to show that the property selected was compact in form and so chosen as not unreasonably to affect the value of the remaining part or that he was prejudiced. 181M 392, 232NW740. See Dun. Dig. 4213.

Compliance by the mortgagor requires a separate sale of the homestead upon foreclosure, even though the nonexempt property included in the mortgage brings no bid when first separately offered. *Madson v. N.*, 234NW636. See Dun. Dig. 6344a.

§9650. Court to appoint receiver of rents.

Appointment of receiver and his powers respecting payment of taxes and interest on prior incumbrances before and after foreclosure sale. 172M193, 214NW886.

Mortgagee who purchased at foreclosure sale was not entitled to appointment of receiver to collect and apply rent on unpaid taxes which were taken into consideration in bidding in the property. 171M350, 214NW52.

A receiver should not be appointed to collect rents and profits and apply them on delinquent taxes or interest, if the mortgagor is entitled to such rents, unless there is waste. 173M18, 216NW329.

§9651. Default to be shown.

Without proof of insolvency or inadequacy of security, nonpayment of taxes, not shown to jeopardize title or security during year of redemption, does not warrant appointment of receiver in action to foreclose mortgage. 176M 71, 222NW516.

CHAPTER 84

Actions by or against Personal Representatives and Heirs

§9656. What causes of action survive.

1. Held to survive.

Rights under Wisconsin Statutes 1927, §287.01 may be enforced in Minnesota. *Chubbuck v. H.*, 234NW314. See Dun. Dig. 14, 1530.

A right of action accruing to a party under

a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of this state. *Chubbuck v. H.*, 234NW314. See Dun. Dig. 14, 1530.

Action under Wisconsin Survival Statute, *Chubbuck v. M.*, 234NW868.

§9657. Action for death by wrongful act.

11. Limitation of actions.

Action for death against city must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

16. Damages.

Where the action is brought to recover for death by wrongful act, and the defense is contributory negligence by one or more of the next of kin or beneficiaries, the proper practice is to require the jury to assess the value of the loss of the life to all the next of kin and by special verdict determine who, if any, of the next of kin was guilty of contributory negligence. Har-

ington v. A., 235NW534. See Dun. Dig. 2616 (7).

\$2,564, held not excessive for death of child. 179M528, 229NW784.

16b. Negligence.

Negligence of defendant held not the proximate cause of death. 171M486, 214NW763.

17. Evidence.

Evidence of financial condition of next of kin, held admissible. 179M528, 229NW784.

§9661. Next of kin—Liability for debts.

32F(2d)665.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

§9677-1. State may take fidelity insurance.

—The comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employes in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commission shall direct, insuring the fidelity of such department employes in the respective amounts so required, upon a form to be prescribed by the comptroller. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the Commission shall require. The surety upon the bonds of all state officers and state employees required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form and generally by the comptroller, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state. (Laws 1929, c. 263, §1; Apr. 20, 1931, c. 233, §1.)

§9677-2. Payment of premium.—The premiums upon the bonds of all state officers and the premiums on all fidelity insurance placed under the provisions of this act shall be paid out of the appropriation for the maintenance of the department for which such bond or insurance is required, and such fidelity insurance, when placed in lieu of individual bond, shall be deemed full compliance with any provision of law requiring any such official or employe to give bond to the state for the faithful discharge of duty.

If schedule or position insurance is provided covering the personnel of any department or agency all individual fidelity bonds covering such officers or employes theretofore bonded shall be canceled and a proportionate part of the premiums paid therefor refunded. (Laws 1929, c. 263, §2; Apr. 20, 1931, c. 233, §2.)

§9677-3. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Laws 1929, c. 263, §3; Apr. 20, 1931, c. 233, §3.)

§9692. Undertaking in lieu of bond.

174M56, 218NW444.

§9700. Contractors bonds.—No contract with the State, or with any municipal corporation or other public board or body thereof, for the doing of any public work, shall be valid for any purpose, unless the contractor shall give bond to the state or other body contracted with, for the use of the obligee and of all persons doing work or furnishing skill, tools, machinery or materials or insurance premiums or equipment or supplies for any camp maintained for the feeding or keeping of men and animals engaged under, or for the purpose of, such contract, conditioned for the payment, as they become due, of all just claims for such work, tools, machinery, skill, materials, insurance premiums, equipment and supplies, for the completion of the contract in accordance with its terms, for saving the obligee harmless from all costs and charges that may accrue on account of the doing of the work specified, and for the enforcing of the terms of the bond if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained and for the compliance with the laws appertaining thereto. The penalty of such bond shall be not less than the contract price, and if after the giving of said bond the contract price should for any reason be increased, the obligee may require an additional bond, the penalty of which shall be not less than the amount of such increase, and if such additional bond be not furnished within ten days after such demand, the work on such contract shall cease until such additional bond shall have been furnished. Provided, that in contracts made by the state board of control or the Minne-