

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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In an action for fraud, where the value of the assets of a financial corporation at a given time is in issue, its record books and history, both before and after the time in question, may be examined and received as bearing upon such value at the time of the transaction involved. Watson v. G., 236NW213. See Dun. Dig. 3247.

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Agency.

While agency may be proved by the testimony of the agent as a witness, evidence of the agent's statements made out of court are not admissible against his alleged principals before establishing the agent's authority. Farnum v. P., 234NW646. See Dun. Dig. 3410(36), 149(71).

One to whom another was introduced as vice-president of a corporation held entitled to testify as to his conversation to prove agency. National Radiator Corp. v. S., 234NW648. See Dun. Dig. 149(77).

A prima facie case of agency is sufficient to authorize receiving in evidence a statement of the agent. State v. Irish., 235NW625. See Dun. Dig. 241.

Res gestæ.

The statement of an employee, a city salesman soliciting orders, when in the course of his employment he entered the place of business of his employer near the close of his day's work, that he had fallen on the street as he came in, coupled with the statement that he was going home, was properly held competent as res gestæ. Johnston v. N., 236NW466. See Dun. Dig. 3300.

Documentary evidence.

The record books of banks and financial corporations subject to the supervision of the superintendent of banks, when shown to be the regular record books of such a corporation, are admissible in evidence without further proof of the correctness of the entries therein. Watson v. G., 236NW213. See Dun. Dig. 3346.

A letter from the defendant to the plaintiff, written after suit was brought, was not erroneously received when the objection came from the defendant. Harris v. A., 236NW458. See Dun. Dig. 3409.

Parol evidence affecting writings.

Where a contract uses the phrase to give a deed and "take a mortgage back," parol evidence is admissible in aid of construction in determining whose note was to be secured by such

mortgage. Spielman v. A., 236NW319. See Dun. Dig. 3397.

Parol evidence held inadmissible to vary the terms of a written contract. Nygaard v. M., 237NW7. See Dun. Dig. 3368.

Parol evidence is inadmissible to show that a legislative bill was passed at a time other than that stated in the legislative journals. Op. Atty. Gen., May 1, 1931.

Expert testimony.

In action for damages for sale to plaintiff of cows infected with contagious abortion, testimony of farmers and dairy men, familiar with the disease and qualified to give an opinion, should have been received. Alford v. K., 235NW 903. See Dun. Dig. 3327(47), 3335(58).

An expert accountant, after examination of books and records and with the books in evidence, may testify to and present in evidence summaries and computations made by him therefrom. The foundation for such evidence is within the discretion of the court. Watson v. G., 236NW213. See Dun. Dig. 3329.

In malpractice case, questions to plaintiff's expert as to what the witness would do and as to what kind of a cast he would use in treating the plaintiff, not based on any other foundation, should not be permitted to be answered. Schmit v. E., 236NW622. See Dun. Dig. 7494.

In malpractice case, court erred in permitting plaintiff's witness to testify as to what stand or action certain medical associations had taken in reference to the right of a physician to testify in a malpractice case. Schmit v. E., 236NW 622. See Dun. Dig. 7494.

Expert witness in malpractice case should not have been permitted to testify as to degrees of negligence, to state that certain facts, assumed to be true on plaintiff's evidence, showed that plaintiff was highly negligent, very negligent in his treatment. Schmit v. E., 236NW622. See Dun. Dig. 7494.

Weight and sufficiency.

Evidence held not to sustain a holding that defrauded vendees had received any valid extension of time of payment, or that they had accepted favors from defendants such as to prevent recovery. Osborn v. W., 236NW197. See Dun. Dig. 10100(55).

The evidence sustains the finding that the defendant's intestate promised to give the plaintiff his property upon his death in consideration of services rendered and to be rendered himself and his wife, and that services were rendered. Simonson v. M., 237NW413. See Dun. Dig. 8789a (21).

Impeachment of witnesses.

Evidence brought out on cross-examination of one of defendant's witnesses, after plaintiff had rested, which was competent for the purpose of impeaching the witness, but related to a matter not in issue under the pleadings, and not presented as a part of plaintiff's case, goes only to the credibility of such witness. Buro v. M., 237NW186. See Dun. Dig. 3237a.

Part IV. Crimes, Criminal Procedure, Imprisonment, and Prisons

CHAPTER 93

General Provisions

§9906. Crimes defined and classified.

Definition of "crime," "offense," "misdemeanor."

Where defendant was permitted but not induced to complete the offense charged, the defense of entrapment is not available. State v. McKenzie, 235NW274. See Dun. Dig. 2448b.

§9907. Meaning of words and terms.

Op. Atty. Gen., Jan. 11, 1930.

§9908. Rules of construction.

The provisions of the game law are to be construed according to the fair import of their terms, viewed in the light of the purpose of the law. 177M483, 225NW430.

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Where the Legislature declares an offense in terms so indefinite that they may embrace, not only acts commonly recognized as reprehensible, but also others which it is unreasonable to believe were intended to be made unlawful, the statute is void for uncertainty. *State v. Parker*, 237NW409. See Dun. Dig. 8989.

§9912. Duress—How constituted.

176M175, 222NW906.

§9915. Criminal responsibility of insane persons.

Acts of cruel and inhuman treatment which result from a diseased mind are no cause for divorce. 171M258, 213NW906.

§9917. Principal defined.

Owner of business maintaining sign over sidewalk was liable for punishment for maintaining sign in violation of ordinance, although the sign was installed by a sign hanger and though ordinance provided that no one unless a licensed sign hanger should install any sign and should obtain a permit before installing one. 176M151, 222NW639.

§9920. Certain duties of courts and juries.

No conviction for perjury for untrue answers to questions after plea of guilty. 171M246, 213NW900.

§9930. Attempts—How punished.

Evidence held to warrant a conviction of attempt to commit rape. 171M515, 213NW923.

Evidence held to support conviction of attempt to commit arson. 173M368, 217NW378.

§9931. Second offenses—Punishment.

The procedure prescribed in this section and in §§9931-1 to 9931-4 does not place the defendant twice in jeopardy. 175M508, 221NW900.

Laws 1927, c. 236 (§§9931 to 9931-4), is constitutional. 175M508, 221NW900.

Identity of names is sufficient prima facie evidence of identities. 175M516, 221NW903.

This section as it stood prior to 1927 amendment does not prevent fixing of maximum term of imprisonment under §10765. 179M532, 229NW787.

Proof of identity, see Op. Atty. Gen., Apr. 28, 1929.

Minimum punishment is two years, in view of Mason's St. 1927, §9921-1. Op. Atty. Gen., July 19, 1929.

The prior convictions in order to be available for increased punishment must precede the

commission of the offense for which sentence is being imposed. *State v. McKenzie*, 235NW274. See Dun. Dig. 2503c.

§9931-2. Punishment not dependent upon indictment and conviction as previous offender.

Prosecution may be initiated by information though it may result in a sentence of imprisonment for more than ten years. 175M508, 221NW900.

§9931-3. Same—Information, etc.

Section 10666 has no application to the procedure under this section and is not repealed by the act of which this section is a part. 175M508, 221NW900.

Court did not err in charging the jury "As you all know the defendant at this term of court was convicted of burglary in the third degree." 175M516, 221NW903.

§9932. Imprisonment on two or more convictions.

Where execution of sentence was stayed and relator was placed on probation and was later sentenced and committed for a subsequent crime at which time stay of first sentence was revoked, the first sentence did not start to run until the expiration of the second sentence. 177M338, 225NW154.

§9934. Sentence—How limited—Jail—Workhouse.

Contempt is not a "crime" within §9934, and, in view of §9802, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

§9936. Suspension of sentence.

In absence of statute court cannot change or modify valid sentence after expiration of term. *State v. Carlson*, 228NW173

§9940. Restoration to civil rights.

Person convicted in federal court cannot vote or hold office without Presidential pardon. Op. Atty. Gen., Apr. 3, 1930; Apr. 21, 1930.

§9948. Convict as witness.

Misconduct of prosecuting attorney in cross-examining defendant with respect to other charges of crime, held to require a new trial. 176M442, 223NW769.

Insinuations that defendant had been involved in like affairs before, held prejudicial notwithstanding this section. 179M436, 229NW564.

CHAPTER 93A

Prevention and Control of Crime—Bureau of Criminal Apprehension

§9950-10. Taking of finger prints, etc.—

All sheriffs and deputies in their respective counties with the consent of the judge of the District Court or a court commissioner of or for the county in which the arrest is made and all police officers in cities of the first and second classes under the direction of the chief of police in such cities, shall have the power to take or cause to be taken finger and thumb prints, bertillon measurements, photographs and other identification data; (a) of all persons arrested for felony, (b) of all persons reasonably believed by the arresting officer to be fugitives from justice, (c) of all persons in whose possession, when arrested, are found concealed firearms or other danger-

ous weapons, burglar tools or outfits, high power explosives, or articles, machines or appliances usable for an unlawful purpose and reasonably believed by the arresting officer to be intended for such purposes. (As amended Feb. 28, 1929, c. 46, §6.)

§9950-11. Sheriff to report to bureau.—

The sheriff of each county and the chief of police of each city of the first and second classes shall furnish the bureau, upon such form as the superintendent shall prescribe, with such finger and thumb prints, bertillon measurements, photographs and other identification data, which may be taken under the provisions of Section 6 of this act, of persons who shall be convicted of a felony or who