

REVISED LAWS OF  
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,  
AND OTHER LAWS OF A GENERAL AND  
PERMANENT NATURE, ENACTED  
BY THE LEGISLATURE IN  
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES  
AND FULL AND COMPLETE NOTES OF ALL  
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY  
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**4315. Redemption pending action to set aside execution sale.**

**Operation in general.**—Where plaintiffs complied with Laws 1895, c. 326, it was not necessary also to produce to the sheriff or clerk the deed under which they claimed to redeem, as required by G. S. 1894, § 5474. Whether this would be so under the Revised Laws was not determined. *Thompson v. E. I. Dupont Co.*, 100 Minn. 367, 111 N. W. 302.

**4317. Property exempt.**— \* \* \*

11. Necessary seed for the actual personal use of the debtor for one season, not to exceed in any case the following amounts: one hundred bushels of wheat, one hundred bushels of barley, one hundred bushels of potatoes, one hundred bushels of oats, one hundred bushels of flax, ten bushels of corn; and binding material sufficient for use in harvesting the crop raised from such seed. (R. L. § 4317, subd. 11, as amended by Laws 1909, c. 12, § 1.)

**Subd. 8.**—The exemption of tools and instruments granted by G. S. 1894, § 5459, was lost by an abandonment of the trade or occupation. *Cable v. Hoolihan*, 98 Minn. 143, 107 N. W. 967, 116 Am. St. Rep. 348.

**Resident.**—Where a debtor sold all his nonexempt property and started for another state, with the intention of establishing a residence there, and while within this state an attachment was levied on his horse, held, that he was still a resident, and entitled to claim his exemptions. *Grimstad v. Lofgren*, 105 Minn. 286, 117 N. W. 515, 17 L. R. A. (N. S.) 990.

## SUPPLEMENTARY PROCEEDINGS.

**4323. Property applied to judgment—Receiver, etc.**

**Receiver.**—A judgment in favor of defendant in an action by a receiver is binding upon the creditor at whose instance he was appointed. *Dohs v. Holbert*, 103 Minn. 283, 114 N. W. 961.

## CHAPTER 78.

## JURIES.

[4329—]1. **How drawn and summoned in counties having more than 200,000 inhabitants.**—The judge or judges of any judicial district may, by order filed with the clerk of court of any county having a population of more than two hundred thousand, where a term of court is to be held, at least fifteen days before the sitting of such court, direct that the petit jurors for such or any subsequent term or terms be summoned for any day of the term fixed by such order other than the day now fixed by law. Such order may be at any time modified or vacated by the court by an order in like manner made and filed with the clerk at any time. When such order has been made, the clerk of the district court in such county shall in the presence of the judge thereof, at least ten days before the general term of said district court, under the direction of the judge or judges of said court, draw from the names in the list of persons selected to serve as petit jurors, made, certified and prepared for drawing, the names of as many persons as the court or judge shall direct to serve as petit jurors for a period of two weeks in such terms, commencing with the day of such term named in said order; and shall then continue in like manner to draw the names of other persons for each panel for as many successive panels of petit jurors as the court or judge may direct for successive periods of two weeks, covering the time that petit jurors are expected to be needed during such general term. Such clerk shall forthwith issue to the proper officer venires for such panels of petit jurors, returnable on the proper days as to each, respectively, at ten o'clock in the forenoon, and the officer shall forthwith thereafter, as soon as may be,

shall not reside within the state of Minnesota, in such manner as the court shall provide by order; provided, further, that nothing in this act shall be construed to apply to judgments not listed among the liabilities of the bankrupt in his petition to be adjudged a bankrupt under the act of July first, eighteen hundred ninety-eight and all amendments thereto. ('09 c. 230 § 1)

**Historical.**—"An act to provide for the discharge of judgments against persons discharged under the United States bankrupt law." Approved April 17, 1909.

#### 4281. Joint debtors—Contribution and subrogation.

**Subrogation—Failure to file notice.**—Where defendant, as clerk, was negligent in not entering and docketing a judgment by confession, and the judgment creditor was damaged thereby, plaintiff, who was obliged to pay the judgment as surety, was thereby substituted to the rights of the creditor, and could maintain action for damages, although he did not file the notice provided for in this section. *Whelan v. Reynolds*, 101 Minn. 290, 112 N. W. 223.

Cited in *Akin v. Lake Superior Consol. Iron Mines*, 103 Minn. 204, 114 N. W. 654, 837.

See note under section 4284.

#### 4282. Several judgments against joint debtors.

**Application in general.**—Action may be maintained upon contract or for a tort, against one of several persons jointly liable. *Fryklund v. Great Northern R. Co.*, 101 Minn. 39, 111 N. W. 727.

Where an action is brought against one of the parties to a joint contract, and the complaint alleges a contract made by him and the evidence shows a joint contract, there is, in the absence of showing that defendant was misled, no fatal variance. *Morgan v. Brach*, 104 Minn. 247, 116 N. W. 490.

Cited in *Town of Kettle River v. Town of Bruno*, 106 Minn. 58, 118 N. W. 63.

**Bringing in joint obligor—Waiver.**—Where one of joint lessees, sued independently, pleaded a general denial and made no objection to being proceeded against alone, he was not, after a decision, entitled to amend and set up that such contract was joint. *Hoatson v. McDonald*, 97 Minn. 201, 106 N. W. 311.

**What law governs.**—Under this section the rule that the *lex fori* governs in matters of procedure applies. *Fryklund v. Great Northern R. Co.*, 101 Minn. 37, 111 N. W. 727.

#### 4284. By confession—On statement.

**Sufficiency of statement.**—A judgment by confession, based upon a statement regular except that it does not sufficiently state the facts out of which the debt arose, is valid as between the parties. Neither the judgment debtor nor subsequent purchasers claiming under him can avoid such a judgment. *Whelan v. Reynolds*, 101 Minn. 290, 112 N. W. 223.

**Duty of clerk.**—When such statement is presented to the clerk, with a request to enter and docket a judgment thereon, if he fails so to do promptly he is liable to the judgment creditor for damages sustained thereby. *Whelan v. Reynolds*, 101 Minn. 290, 112 N. W. 223.

See note under section 4281.

#### 4286. Submission without action.

Cited in *Lager v. Sibley County*, 100 Minn. 85, 110 N. W. 355; *Manley v. Scott*, 121 N. W. 628.

### EXECUTIONS.

#### 4306. Sale, when and how.

**Application of proceeds.**—Where the amount bid is in excess of that required to satisfy the execution and costs of sale, it is the duty of the sheriff to apply the balance to satisfaction of a junior judgment which is a lien on the land. *Carlson v. Headline*, 100 Minn. 327, 111 N. W. 259.

#### 4308. Certificate of sale of realty.

**Certificate—Issue without payment.**—A sheriff cannot be required to issue certificate until the amount bid has been paid in cash; but, if the certificate is issued without such payment, the sale is valid and the remedy of the execution debtor is an action against the sheriff for the unpaid purchase money. *Carlson v. Headline*, 100 Minn. 327, 111 N. W. 259.

#### 4312. Redemption, how made.

Cited in *Thompson v. E. I. Dupont Co.*, 100 Minn. 367, 111 N. W. 302.

See note under section 4315.

serve all such venirees and summon all such jurors and shall be entitled to the same mileage and no more that would be the case if the names of all the jurors and all the venirees were contained in a single venire. If there be a deficiency of petit jurors, the clerk shall, in open court, under the direction of the judge, draw from the box containing the names of the petit jury list, the names of additional persons to supply such deficiency; and writs of venire facias shall issue summoning such person, and returnable at such time as the judge of the court may direct. Provided, if at any time during such period of two weeks it shall appear that a jury shall be needed for an additional period not exceeding one week, the court or a judge thereof may, by order, direct that the panel of jurors then serving be further kept in service for such additional period. Provided, further, in districts where more than one judge is sitting in the same county at the same time, the panel may be divided and some portion thereof sent to each of two or more judges in such manner as the court may direct. (Laws 1907, c. 35, § 1, as amended by Laws 1909, c. 200, § 1.)

**Historical.**—"An act amending an act authorizing judges of the district court in counties having a population of more than 200,000 to fix the time when petit juries shall be convened and drawing and summoning of jurors in such cases, approved March 13th, 1907, being chapter 35, General Laws 1907." Approved April 17, 1909.

See section next following.

[4329—]2. **Same.**—The judge or judges of any judicial district may, by order filed with the clerk of the court of any county having a population of more than two hundred thousand, where a term of court is to be held at least fifteen days before the sitting of such court, direct that the petit jurors for such or any subsequent term or terms be summoned for any day of the term fixed by such order other than the day now fixed by law. Such order may be at any time modified or vacated by the court by an order in like manner made and filed with the clerk at any time. When such order has been made, the clerk of the district court in such county shall, in the presence of a judge thereof, at least ten days before the general term of said district court, under the direction of the judge or judges of said court, draw from the names in the list of persons selected to serve as petit jurors, made, certified and prepared for drawing, the names of as many persons as the court or judge shall direct, to serve as petit jurors for a period of two weeks in such terms, commencing with the day of such term named in said order; and shall then continue in like manner to draw the names of other persons for each panel for as many successive panels of petit jurors as the court or judge may direct for successive periods of two weeks, covering the time that petit jurors are expected to be needed during such general term. Such clerk shall forthwith issue to the proper officers venirees for such panels of petit jurors, returnable on the proper days as to each, respectively at ten o'clock in the forenoon, and the officer shall forthwith thereafter, as soon as may be, serve all such venirees and summon all such jurors and shall be entitled to the same mileage, and no more, that would be the case if the names of all the jurors in all the venirees were contained in a single venire. If there be a deficiency of petit jurors, the clerk shall, in open court, under the direction of the judge, draw from the box containing the names on the petit jury list the names of additional persons to supply such deficiency; and writs of venire facias shall issue summoning such persons, and returnable at such time as the judge of the court may direct. Provided, that in all districts consisting of one county only, in which but one term of court is held annually, petit jurors may be drawn from time to time during such term, as the court may direct

for the successive panels. The clerk of the court in such counties shall in like manner issue venirens for such petit jurors returnable at such hour as a judge, or the judges of said court may direct. (Laws 1907, c. 35, § 1, as amended by Laws 1909, c. 221, § 3.)

**Historical.**—"An act authorizing judges of the district court in counties having a population of more than two hundred thousand to fix the time when petit jurors shall be convened, and directing the drawing and summoning of jurors in such cases," approved March 12, 1907 (Laws 1907, c. 35), as amended by "An act to amend section 4165 and section 5262 of the Revised Laws of 1905 and chapter 35 of the General Laws of 1907, relating to the trial of causes and the drawing of grand and petit jurors in the district court," approved April 17, 1909 (Laws 1909, c. 221).

See section next preceding.

**[4336—]1. Jurors, when and how selected in counties having more than 100,000 inhabitants.**—In all counties having a population of more than 100,000, judges of the district court or a majority thereof of the district embracing such county or counties shall, annually, in the month of December of each year, at the court house in said county, select from the qualified electors of said county 125 persons properly qualified to serve as grand jurors, and 2,000 persons properly qualified to serve as petit jurors, and shall make out and certify separate lists thereof, and forthwith deliver such lists to the clerk of the district court of said county; and from said lists of persons to serve as grand jurors and as petit jurors shall respectively be drawn all grand jurors and petit jurors at any time required for the transaction of business in the district court of said county; provided, that if in any year such selection and lists shall not be made in the month of December, the same may be done at any time thereafter that any judge of said court may designate; and if from any cause there shall be a deficiency of persons resident in said county and properly qualified in either of such lists, such judges or a majority thereof, may, at any time designated by them, select from such qualified electors of said county other persons to cover such deficiency, and in like manner may certify and deliver to such clerk lists of the persons so selected, which supplementary or additional lists shall thereafter stand as parts of the original list; and provided, further, that the validity or legality of such selection or lists shall not be affected by the fact that any person or persons so selected may be disqualified from serving as grand or petit jurors, or by the selection of a greater or less number of persons than as specified in this act; provided, further, that the first selection and lists hereunder may be made at any time after the passage of this act. ('07 c. 2 § 1)

**Historical.**—"An act relating to the selection of jurors in counties having a population of over 100,000." Approved January 18, 1907.

Cited in *State v. Quirk*, 101 Minn. 334, 112 N. W. 409.

## CHAPTER 79.

### COSTS AND DISBURSEMENTS.

**4339. In actions for services—Double costs.**—Whenever any person having employed another to perform any labor or service, shall neglect or refuse for thirty days after the same is due and payment demanded to pay the agreed price, or the reasonable value if there be no agreement, and the same shall be recovered by action, there shall be allowed to the plaintiff, and included in his judgment, in addition to his disbursements allowed by law, five dollars costs if the judgment be recovered in a justice court and a like sum if the