

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
FRANCIS B. TIFFANY

ST. PAUL
WEST PUBLISHING CO.

1910

for the successive panels. The clerk of the court in such counties shall in like manner issue venire 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

serve all such venires 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 venires 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 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, serve all such venires 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 venires 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

judgment be recovered in a municipal court where no statutory costs are now allowed in such municipal court in such action, and double costs in all other actions wherein costs are recoverable or on appeal. (R. L. § 4339, as amended by Laws 1907, c. 200, § 1.)

4344. Interest on verdict, etc.—When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added thereto. (R. L. § 4344, as amended by Laws 1909, c. 371, § 1.)

Operation in general.—This section does not apply to judgments for taxes. *State v. New England Furniture & Carpet Co.*, 119 N. W. 427.

4349. Chargeable on estate or fund.

G. S. 1894, § 5509, cited in *Conlon v. Holste*, 99 Minn. 493, 110 N. W. 2.

4352. In criminal proceedings.

Appeal—Costs for or against state.—There is no statute under which costs or disbursements can be taxed for or against the state in the Supreme Court on appeal in a criminal case. *State v. Tetu*, 98 Minn. 351, 108 N. W. 470.

4353. Supreme court—Costs and disbursements.

Disbursements—Apportionment.—Where there were cross-appeals, and the expense of printing the record and causing the return to be made was rendered necessary solely by reason of defendant's appeal, although plaintiff was permitted to submit his appeal on defendant's record, taxation of one-half the cost of printing to each was improper. *Hess v. Great Northern R. Co.*, 98 Minn. 198, 108 N. W. 7, 803.

4355. Security for costs.

G. S. 1894, § 5518, cited in *State Board of Examiners in Law v. Byrnes*, 100 Minn. 76, 110 N. W. 341.

CHAPTER 80.

APPEALS IN CIVIL ACTIONS.

4357. Appeal from district court.

Right of state to appeal.—In a proceeding by the state against a corporation and its officers, charging them with violation of the anti-trust statute, the state may appeal from a judgment in favor of defendants. *State v. Duluth Board of Trade*, 107 Minn. 506, 121 N. W. 395.

4359. Notice of appeal—Service—Effect.

Waiver of appeal.—Appeal from an order setting aside service of summons held not waived by subsequent personal service pending the appeal; nor did such subsequent service render the validity of the first a moot question. *Venner v. Great Northern R. Co.*, 121 N. W. 212.

4360. Return to supreme court.

Memorandum.—A memorandum, not made a part of an order granting a new trial, which in itself is clear and positive, may not be referred to on appeal to impeach the order or overcome its effect. *Alton v. Chicago, M. & St. P. R. Co.*, 120 N. W. 749.

4361. Powers of appellate court.

Mandate.—Where a new trial has been directed by the Supreme Court, the parties may waive the fact that a mandate has not been sent down to the trial court. *Courtney v. Minneapolis, St. P. & S. S. M. R. Co.*, 100 Minn. 434, 111 N. W. 399.

Law of case.—The decision of a former appeal, reviewing a former trial, is the law of the case on an appeal reviewing a second trial, if the evidence was substantially the same on both trials. *Brancht v. Graves-May Co.*, 96 Minn. 387, 104 N. W. 1089, 106 N. W. 112.

Right decision but wrong reason.—An order or decision, otherwise right as a matter of law, will not be reversed merely because the reasons assigned therefor by the court were wrong. *Kipp v. Clinger*, 97 Minn. 135, 106 N. W. 108.