

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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Real estate assigned by final decree passes out of the control of the court and is discharged from further administration, and thereafter neither the probate court nor the district court on appeal has authority to vacate the decree without notice to the persons who then hold title to such real property. 175M524, 222NW68.

The probate court has power to vacate its final decree on the ground of fraud, mistake, inadvertence or excusable neglect upon proper application seasonably made. 175M524, 222NW68.

Sole heir having ratified settlement with claimants, authority of attorney acting for him cannot be questioned. Parcker's Estate, 227NW426.

On appeal from order admitting will to probate there is no right to trial by jury, such a trial being discretionary. 180M256, 230NW781.

An order directing the representative of an estate to pay a certain amount of money as fees to an attorney is not appealable, but is reviewable by certiorari. Carson's Estate, 232NW788. See Dun. Dig. 7786.

An order of the probate court directing an executor to turn over to decedent's aunt certain funds which he claimed to hold as an individual was a final order, and reviewable by writ of certiorari. Martin's Estate, 235NW279. See Dun. Dig. 1490, 7786, 7842.

Laws 1929, c. 271, §5, ante §8717-11, automatically makes the decision of the referee that of the court, and appealable as such. Parcker's Estate, 236NW206. See Dun. Dig. 7786.

Subd. 8.

Application to vacate decree of descent rendered by probate court on ground of mistake in both judicial discretion, and on appeal the district court exercises a like discretion. 179M315, 229NW133.

§8984. Who entitled to appeal.

1. From allowance or disallowance of claims. 230NW584.

The right of an aggrieved interested party to appeal from allowance of claim is subordinate to the right of the representative to appeal and may be exercised if the latter declines to appeal. 179M133, 228NW551.

§8985. Appeal, how and when taken.

179M133, 228NW551.

An appeal must comply with the provisions of this section and jurisdiction cannot be conferred on the district court by consent. 174M133, 218NW546.

Notice of appeal from decree in proceedings in one county specifying the decree as one of the probate court of another county, held fatally defective. 178M601, 228NW174.

Adverse party other than administrator appearing and contesting a claim is entitled to notice of appeal by claimant. 180M195, 230NW584.

While notice by mail, as authorized by §9242, is not applicable to the probate court, actual notice is sufficient to start the running of limitations under this section, and where a letter is actually received (the usual presumption in that respect being applicable) the requirement as to service of notice is satisfied. 180M570, 231NW218.

Language in a notice of appeal from probate court held merely descriptive of the order appealed from and as not attempting to limit the appeal to that portion of the order unfavorable

to appellant. Parcker's Estate, 236NW206. See Dun. Dig. 7789.

§8986. Return.

Probate court cannot charge fee for making return. Op. Atty. Gen., Apr. 30, 1929.

§8988. Notice of trial, etc.

On an appeal from an order of the probate court admitting a will to probate, burden is on proponent to prove testamentary capacity of testator. 172M217, 214NW892.

Court should make findings of fact, but this may be waived where the decision necessarily decided the question of fact involved. 172M217, 214NW892.

On appeal the issue is the same as it was in the probate court. If the order was right when made, it cannot be reversed. 172M231, 215NW223.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Dismissal for failure to file appeal in district court is discretionary. 181M217, 232NW1. See Dun. Dig. 7787a.

On appeal to district court from an order of the probate court amending a final decree of distribution after the time for appeal from such decree had expired the trial is de novo, and, there being no pleadings in the district court, that court must determine the right to amendment upon the petition filed in the probate court and the proof in support thereof. 181M528, 233NW305. See Dun. Dig. 7794(76).

The recitals or findings in the order appealed from cannot serve as proof of the existence of the facts averred in the petition. 181M528, 233NW305. See Dun. Dig. 7794.

§8989. Proceedings in certain cases—Trial.

Order of probate court settling account of administrator is conclusive on sureties on bond. 42F(2d)266. See Dun. Dig. §3580f.

District court is without jurisdiction of settlement of accounts of administrator except on appeal. 42F(2d)266. See Dun. Dig. §2759(28).

§8990. When judgment affirmed—When reversed.

42F(2d)266; note under §8989.

Exercise of judicial discretion by the probate court will not be reversed on appeal, except for a clear abuse thereof. Fuits' Estate, 177M311, 225NW152.

Weight of inferences and findings of fact by court in a proceeding involving construction of ambiguous will. 177M311, 225NW156.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Practice in district court of moving for a new trial after a trial de novo and findings made affirming the probate court, and in appealing from the order denying the new trial is not commended. Walker's Estate v. M., 236NW485. See Dun. Dig. 294, 300, 7735.

CHAPTER 75

Courts of Justices of the Peace

GENERAL PROVISIONS

§8994. Place of holding court.

Does not authorize justice to regularly hold court in another town so as to usurp the office

of the local justice. Op. Atty. Gen., Mar. 19, 1929.

COMMENCEMENT OF ACTIONS

§9005. Summons—Service.

174M608, 219NW452, note under §9110.

PLEADINGS AND TRIAL

§9029. Title to real estate—Case certified.

Removal to district court from municipal court forcible entry and detainer case. 178M 282, 226NW847.

REPLEVIN

§9072. Writ—When returnable.

A writ of replevin issued pursuant to Laws 1895, c. 229, §22, is valid. 178M174, 226NW405.

APPEALS

§9092. May be taken, when.

Where an appeal is taken on questions of law and the judgment is reversed, the suit is no longer pending so as to bar a second suit on the same cause of action. 173M29, 216NW252.

§9093. Requisites.**½. Time for appeal.**

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. *Anderson v. G.*, 236 NW483. See *Dun. Dig.* 486(74).

2. Notice of appeal.

Notice of appeal from municipal court cannot be served by mail. 178M366, 227NW200.

3. Miscellaneous.

Though notice of appeal served by mail was ineffective, the district court obtained jurisdiction where appellee moved there for judgment against garnishee. 178M366, 227NW200.

§9099. Return or amendment compelled, when.

Amendment of defective record on appeal from municipal court. *Op. Atty. Gen.*, Dec. 9, 1930.

CRIMINAL PROCEEDINGS

§9110. Jurisdiction.

Justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in Minneapolis. 174M608, 219NW452.

Waiver gives no such jurisdiction.—*Id.*

Village justices and constables have jurisdiction under criminal acts committed outside vil-

lage boundaries except offenses committed within the limits of any city or village wherein a municipal court is organized and existing. *Op. Atty. Gen.*, May 19, 1931.

§9111. Same—To try and determine.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. *State ex rel. Ryan v. M.*, 234NW453. See *Dun. Dig.* 6900b (63).

§9112. Complaint—Warrant.

Labeling complaint and warrant as though state of Minnesota were plaintiff was mere irregularity that did not affect jurisdiction of justice, and additional language "against the form of the statute in such case made and provided," when charging a violation of an ordinance, was mere surplusage. 177M617, 225NW 286.

It is sufficient to state the facts and identify the ordinance by number. 177M617, 225NW286.

Section is not applicable where the charge constitutes a felony. **Op. Atty. Gen.*, Aug. 5, 1930.

§9117. Arraignment.

Right of defendant to appeal after plea of guilty in municipal court. *Op. Atty. Gen.*, Dec. 9, 1930.

§9130. Allowance of appeal.

Where there is an appeal from conviction in justice court for violation of game and fish laws, revocation of defendants license is ineffective until conviction on appeal. *Op. Atty. Gen.*, Dec. 19, 1929.

§9145. Fines—How collected and paid over.

A justice of the peace, where the prescribed punishment is in the alternative as between a fine or jail sentence, may impose a straight jail sentence without the option of a fine, but where a defendant is sentenced to pay a fine and an alternative jail sentence is imposed in default of payment of the fine, the commitment should so state because the defendant is entitled to pay his fine to the sheriff any time after he is committed, and thereupon be released. *Op. Atty. Gen.*, Feb. 28, 1931.

CHAPTER 76

Forcible Entry and Unlawful Detainer

§9149. Recovery of possession.

Minn. Bldg. & Loan Ass'n v. C., 234NW872.

4. When action will lie.

Force is not a necessary element to authorize action. 178M282, 226NW847.

5. Who may maintain.

Sheriff may maintain action against tenant on land bid in by state for non-payment of taxes. *Op. Atty. Gen.*

6. Parties defendant.

Husband of person holding under contract for

deed could be ejected in separate action against him alone. 178M282, 226NW847.

§9157. Writ of restitution.

Defendant evicted from premises under a writ of restitution has a right to appeal and have a trial de novo. 178M460, 227NW656.

§9158. Appeal.

178M460, 227NW656; note under §9157.

CHAPTER 77

Civil Actions

§9164. One form of action—Parties, how styled.**2. Election of remedy.**

Election of remedies. 171M65, 212NW738.

Action to recover on an express contract, held not an election of remedies so as to bar a sub-

sequent action in conversion. 178M93, 226NW417.

A judgment entered on a verdict directed for the defendant on the ground that the defendant was not authorized by the law under which it was organized to execute the promissory notes alleged as causes of action by the receiver of the payee bank is not a bar to action for money