

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

thereunder, with a certificate attached executed by the trustee in the same manner as deeds are required to be executed by the laws of this state describing such instrument so granting an interest or evidencing a lien and stating that the same is held subject to the provisions of such trust, shall be so recorded or filed after such recording or filing of such instrument granting said interest in or evidencing such lien on said real estate. (Act Apr. 24, 1929, c. 318, §1.)

8226-1½. * * * * *

DECISIONS RELATING TO REAL ESTATE BROKERS

1. Representation of principal in general—misrepresentations and fraud of broker.

A party to a real estate deal is not bound by misrepresentations of a volunteer broker without authority. *Poppe v. B.*, 184M415, 238NW890. See Dun. Dig. 1145.

2. Compensation.

Verdict for broker on issue of fraud in obtaining signature to commission contract for sale of land sustained. *Stead v. E.*, 182M469, 234NW678. See Dun. Dig. 3839.

Although plaintiff did not have the exclusive right to sell the farm, his exclusive agency contract made defendant liable to pay commission to plaintiff, if a sale was made by defendant or any other person. *Stead v. E.*, 182M469, 234NW678. See Dun. Dig. 1141.

Money lender agreeing to pay broker when loan is closed and funds are placed to the credit of a borrower may refuse to make loan upon any ground whatsoever though arbitrary and capricious. *Chapman v. M.*, 184M467, 239NW231. See Dun. Dig. 1132.

Real estate broker has earned agreed commission when purchaser and seller execute earnest money contract proposed by latter. *Horrigan v. S.*, 187M115, 244NW545. See Dun. Dig. 1147.

Evidence held to sustain finding that broker found purchasers ready, able and willing and notified principal who wrongfully withdrew authority and refused to sell. *Kaercher v. S.*, 249NW180. See Dun. Dig. 1147(51).

Where broker advises owner that he has found a purchaser and the owner then, without good reason or excuse, refuses to contract or sell, his agreement with broker is breached and further production of purchaser to owner is dispensed with. *Id.*

Where owner authorizes brokers to sell real property at a net cash price to owner, owner, in absence of fraud, is not interested in agreement between brokers and purchaser as to compensation. *Id.*

3. —Unlicensed broker.

Statute of Montana, requiring that real estate brokers be licensed, held no bar to recovery for property plaintiff claims was by him sold directly to defendants. *Hopkins v. H.*, 249NW584. See Dun. Dig. 1135, 1530.

4. —Procuring cause of contract.

A real estate broker, having no exclusive agency to sell or find a purchaser for real property, in order to be entitled to a commission, must show that he was the procuring or efficient cause of a sale for which he claims commission. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

Evidence held to sustain finding that defendant agreed to compensate plaintiff for procuring a sale of real estate and that plaintiff did so procure it. *Johnson v. M.*, 183M477, 237NW22. See Dun. Dig. 1161(27).

In an action to recover a commission for finding a purchaser for real estate, the evidence held to support verdict for plaintiff. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(27).

A broker who merely finds a purchaser, without producing him to his principal, held not procuring cause of a sale. *Carney v. J.*, 187M293, 245NW367. See Dun. Dig. 1149.

5. —Transaction completed by principal.

Where a broker abandoned negotiations for sale of land, he was not entitled to a commission where principal afterwards sold to his prospect. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

6. —Actions.

There was no error in admitting oral evidence that a written assignment of commission by broker was for collection only. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(26).

Whether broker agreed to reduction of agreed amount of his compensation before completion of purchase held for jury. *Forward v. B.*, 184M474, 239NW228. See Dun. Dig. 1161.

Evidence did not justify submission to jury of defense that broker, without knowledge of seller, was agent of purchaser. *Horrigan v. S.*, 187M115, 244NW545. See Dun. Dig. 1146.

8229. Record of conveyances, etc.

Act Ex. Ses., Dec. 23, 1933, c. 8, legalizes conveyances made in 1928, in which acknowledgment of grantors was taken before the grantee who was a proper officer to take acknowledgments. Omitted as special and temporary.

8230. Instruments relating to timber, minerals, etc.

Notice of termination of state mineral contract should be acknowledged in order that it may be recorded. *Op. Atty. Gen.*, Mar. 6, 1933.

CHAPTER 64

Plats

8236. Platting of land—Donations.

After revocation and abandonment, a conveyance by the platting of blocks or lots abutting the street conveyed the land to the center thereof. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 1059, 2653.

8237. Survey and plat—Monument—Rivers, etc.

The finding that the plat of a town site, which contained no designation of a monument from which future surveys could be made, conformed to the statute, is not sustained. *Doyle v. B.*, 183M265, 236NW236. See Dun. Dig. 2634(82).

8238. Dedication—Certification—Approval—Etc.

Even though the plat did not conform to c. 29, Gen. Stat. 1866, it effected a common-law dedication to the public of the streets and alleys thereon designated. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 2646(16), 2652(33).

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. *Op. Atty. Gen.*, Nov. 21, 1931.

8239-4. Plats corrected and legalized.—That in all cases where the plats or what purport to be plats of any towns or cities in this state of additions to or subdivisions thereof, and plats or parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify or show correctly, upon their face, the tract of land covered or intended to be covered thereby and the said property so platted was owned by and platted by a municipality, the surveyors, or one of them, who laid out or surveyed the same, may make or execute such certificate or the governing body of said municipality may, by resolution, authorize the Mayor and the City Clerk, together with the engineer or surveyor of said

municipality, if there be one, within one year from the passage of this act to make and file in the office of the register of deeds of the county in which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat.

And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for the purpose, entitled "Book of Plat Certificates," and said register of deeds shall, thereupon, note upon such plat and the copy thereof filed in his office as aforesaid, such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record, the fee provided by law for similar services. And such certificates, or the record thereof, shall, together with such plat, be prima facie evidence in all cases as to lands covered by said plat. (Act Apr. 26, 1929, c. 395.)

8239-5. Certain plats may be corrected.—That in all cases where the plats, or what purport to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon

their face the tract of land intended or purported to be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize, within six months from the passage of this act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof be prima facie evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 24, 1931, c. 319.)

8239-6. Correction of errors in recorded plats.—That in all cases where the plats, or what purports to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon their face the tract of land intended or purported to be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize within six months from the passage of this Act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof shall be prima facie evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 10, 1933, c. 188.)

8243-1. County Board to control platting of land.—The Board of County Commissioners of any county containing land adjoining a city of the first class but not included within the corporate limits of any city of the first class shall have power to control and regulate the platting of subdivisions of land and the laying out of streets and other public ways. In counties which do not contain a city of the first class the power herein granted shall not extend to lands more than five miles from the boundary of a city of the first class. (Act Apr. 18, 1929, c. 225, §1.)

8243-2. Comprehensive Plan.—In order to exercise the power conferred under this act, the Board of County Commissioners shall prepare a comprehensive Major Street Plan of the district involved, which plan shall be designated and adopted as the official Major Street Plan of the areas adjoining the City of Such plan may from time to time be amended, extended or amplified. In the preparation of the Major Street Plan and in the administration of the powers herein conferred, the Board of County Commissioners may avail itself of the assistance of the City Planning Commission of the city of the first class adjoining the areas involved. (Act Apr. 18, 1929, c. 225, §2.)

8243-3. Board to make regulations.—In exercising the powers herein conferred the Board of County Commissioners shall adopt regulations governing the platting of subdivision of lands within the areas designated. Such regulations may provide for the reasonable co-ordination of location and dimension of streets and boulevards and the location of utilities to be contained therein, the minimum width, depth and area of lots and the distance of the front building line from the streets in residence neighborhoods, the extent of the grading and drainage of streets to be required as a condition precedent to the approval of plats of subdivisions. No grades shall be established or required by such regulations which would cause a material damage to the land within the area sought to be subdivided. (Act Apr. 18, 1929, c. 225, §3.)

8243-4. To be construed as additional powers.—The powers herein conferred upon the Board of County Commissioners shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof and shall be supplemental to and shall not set aside the jurisdiction over plats of subdivisions now exercised by the governing bodies of villages and municipalities located in areas within the scope of this act, provided that upon the failure of the governing body of such village or municipality and the Board of County Commissioners to concurrently approve and adopt a plat of subdivision within sixty days of the time or presentation to each respective authority the approval of the Board of County Commissioners shall be final. The Board of County Commissioners may extend the time for concurrent approval with respect to individual plats of subdivisions. (Act Apr. 18, 1929, c. 225, §4.)

8243-5. Application.—Nothing herein shall amend, repeal or affect Chapter 178, Special Laws of Minnesota, for the year 1889. (Act Apr. 18, 1929, c. 225, §5.)

8246-2. Definitions.—For the purpose of this act, certain terms are defined as follows:

"Subdivision" means the division of a lot, tract, or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale or of building development. It also means the division of a lot, tract, or parcel of land into two or more lots, plats, sites or other divisions of land of more than one acre and less than ten acres in area, if such subdivision provides or there is shown on a plat thereof a new street or highway. It includes resubdivision and, when appropriate to the context, relates to the

process of subdividing or to the land or territory subdivided.

The term "street" includes street, avenue, boulevard, road, lane, alley, viaduct, and other ways. (Act Mar. 20, 1933, c. 93, § 1.)

8246-3. City planning commissions to control platting.—The governing body of any city of the first class, having more than 35 per cent of the land area of said city unplatted land may, by ordinance, authorize and empower its city planning commission to control the platting of land. (Act Mar. 20, 1933, c. 93, § 2.)

8246-4. Jurisdiction.—The territorial jurisdiction of such planning commission over the subdivision of land shall include all land located in the municipality and all land lying within 3 miles of the corporate limits of the municipality and not located in any other municipality, except that, in case of any such nonmunicipal land lying within 3 miles of more than one municipality having a planning commission, the jurisdiction of such planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. (Act Mar. 20, 1933, c. 93, § 3.)

8246-5. Plats must be approved by commission.—Whenever such planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the register of deeds of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission. (Act Mar. 20, 1933, c. 93, § 4.)

8246-6. May adopt regulations.—Before exercising the powers referred to in Section 2, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction, so as to secure a harmonious development and to provide for the coordination of streets with other streets and with the city plan and to provide for open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include reasonable provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping or other facilities shall be installed as a condition precedent to the approval of the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the city may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by the municipality. The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

All such regulations shall be published as provided by law for the publication of ordinances, and, before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the planning commission to the register of deeds of the county or counties in which the municipality and territory are located. (Act Mar. 20, 1933, c. 93, § 5.)

8246-7. Must approve plat within forty-five days.—The planning commission shall approve or disapprove a plat within 45 days after the submission thereof; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand: Provided, however, that the applicant for the planning commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the planning commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat

shall be acted on by the planning commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the city plan and a part thereof. Approval of a plat by the planning commission shall be deemed the acceptance by the public of any street or other open space offered therein for dedication, but shall not impose any duty upon the governing body to maintain or improve such dedicated areas until the governing body shall have authorized maintenance or improvement of the same, in accordance with charter or other local provisions governing public expenditures for such purposes. (Act Mar. 20, 1933, c. 93, § 6.)

8246-8. Not to sell until plat is approved.—Whoever, being the owner or agent of the owner of any land located within a subdivision transfers or sells or agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been approved by the planning commission and recorded or filed in the office of the county register of deeds, shall forfeit and pay a penalty of \$100 for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the said penalty by a civil action in any court of competent jurisdiction. (Act Mar. 20, 1933, c. 93, § 7.)

8246-9. Plats must be approved before filing.—The county register of deeds shall not file or record a plat of a subdivision unless such plat has the approval of the planning commission as required by law. (Act Mar. 20, 1933, c. 93, § 8.)

8246-10. Street improvements.—The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street, or lay or authorize water mains or sewers or connections to be laid in any street, within any portion of territory for which the planning commission shall have adopted a major street plan, unless such street (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan, or unless such street (b) is a street on a subdivision plat approved by the planning commission or a street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 20, 1933, c. 93, § 9.)

8246-11. Building restrictions.—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after

submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 20, 1933, c. 93, §10.)

8246-12. Inconsistent acts repealed.—Platting control by the planning commission, as provided in this act, shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivision of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 20, 1933, c. 93, §11.)

8246-13. May appeal to District Court.—Any person or persons, jointly or severally aggrieved by any decision of the planning commission concerning such plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than

ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.

CHAPTER 65

Registration of Title

REGISTRATION

8247. Registration.

Adverse possession. 171M410, 214NW271.

8248. Registered land—Adverse possession.

One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

8258. Examiner of titles.

Constitutional. 85M437, 446, 89NW175.

8261. Order for summons—parties defendant.—If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued therein. This order shall contain the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application, or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the

order of the court shall be, and shall be known as, defendants.

Whenever the description in the application includes land which, according to the plat of the United States Government Survey, forms part or all of the bed of a meandered stream or lake, the State of Minnesota shall be made a party defendant; provided, however, that in all cases where decree of registration has been heretofore entered for any such land without the State of Minnesota having been joined and served with summons, it shall be deemed that title had heretofore passed to the applicant by reliction or accretion. (R. L. '05, §3383; G. S. '13, §6882; Apr. 8, 1933, c. 164.)

8262. Form of summons—service.—The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state or who cannot be found therein and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein" by publishing the same in a newspaper printed and published in the county herein the application is filed, once each week for three consecutive weeks; provided if the order for summons or a supplemental order of the court, filed before, during or after the publication of the summons, shall so direct, the summons may be personally served without the state upon any one or more of the defendants who are non-residents of the state or who cannot be found therein, in like manner and with like effect as such service in a summons in a civil action in the district court. The clerk shall