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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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and on conviction his office is automatically vacated. Op. Atty. Gen. (126G), Oct. 11, 1940.

An infamous crime is one punishable by imprisonment in state prison, and whether compounding a crime is an offense involving a violation of official oath is dependent upon connection of offense with official duties, and vacation of office is automatic in case of conviction of proper crime, and town board has no power to remove a person merely because of his conduct. Op. Atty. Gen. (475g), Dec. 2, 1940.

There is no statutory procedure for removal of elective village officers for malfeasance or nonfeasance in office, but any public office becomes vacant when incumbent is convicted of an infamous crime, or of any offense involving a violation of official oath of office. Op. Atty. Gen. (359a-20, 475h), Dec. 6, 1940.

Person pleading guilty to federal offense forfeits his office though sentence is suspended. Op. Atty. Gen. (490d), Jan. 20, 1941, overruling Op. Atty. Gen. (490d), Aug. 21, 1934.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. Op. Atty. Gen. (471M), Jan. 4, 1941.

Subd. 6.

Where one after election as town clerk fails to qualify within time required by law, a vacancy results to be filled by appointment until next annual town meeting, at which time a successor may be elected for balance of unexpired term. Op. Atty. Gen. (436p), April 30, 1940.

6954. Removal by governor.

Justices of the peace are state officers and their courts are state courts, and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 238NW845. See Dun, Dig. 8011.

Section does not apply to municipal officers or school officers, being removal proceedings by the governor. Op. Atty. Gen., (475E), May 2, 1940.

Governor has no power to remove a clerk of a school district, and the only school officer that he could remove would be a county superintendent of schools or any collector, receiver or custodian of public moneys. Op. Atty. Gen. (213G), June 22, 1940.

6957. Appointment—How long to continue—Impeachment.

Appointee to fill vacancy in office of county commissioner holds office until beginning of official year following next ensuing general election. Op. Atty. Gen., (126a), Dec. 1, 1939.

"Next general election," means the one occurring after there is sufficient time, after the vacancy, to give notice required by law that vacant office is to be filled at election, and four days is not sufficient time to give notice. Op. Atty. Gen. (126h), Oct. 11, 1940.

Appointment to fill vacancies in office of county commissioner are governed by this section. Id.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. Op. Atty. Gen. (471m), Jan. 4, 1941.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oaths of office.

Village president reelected to office may file his oath of office by mail. Op. Atty. Gen., (471h), Dec. 20, 1939.

ACKNOWLEDGMENTS

6970. Form of certificate.

Acknowledgment is only prima facie evidence and can be assailed by one claiming deed was forged. *Amland v. G.*, 296NW170. See Dun, Dig. 78.

6979. In foreign countries.

Acknowledgments heretofore taken in foreign countries by a judge of a court of law, declared valid. Laws 1941, c. 340.

6981-1. Validation of foreign acknowledgments.—

That all acknowledgments to any Deed or other Instrument heretofore taken in any foreign country by a Judge of a Court of Law therein, where the signature of said Judge was written and the stamp or seal

of the Court was attached, affixed or impressed on said deed or other instrument are certified to be genuine by a President or Vice President of the Supreme Law Court of the foreign country where the acknowledgment was taken and where the signature of said President or Vice President of said Supreme Law Court and the stamp or seal of said Supreme Law Court on said instrument are certified to be genuine by the Consul or Vice Consul of the United States in said foreign country, be, and the same are hereby declared to be legal and valid and effectual for all purposes. (Act Apr. 21, 1941, c. 340, §1.)

6981-2. Same—Application.—

This act shall not apply to any pending actions and no action shall be maintained questioning the validity of any acknowledgment coming within the purview of Section 1 of this Act unless said action be brought within 6 months after its enactment. (Act Apr. 21, 1941, c. 340, §2.)

CHAPTER 49

Fees

6987. Fees of clerk of district court.

Under Laws 1919, chapter 229, clerk is not entitled to receive fees in personal property tax cases, while clerks governed by Laws 1937, chapter 19, are entitled to receive and retain fees in such cases. Op. Atty. Gen., (144B-21), Sept. 30, 1939.

(48).

Clerk is not entitled to charge 20 cents for indexing each plaintiff and each defendant in actions to quiet title where there are a great number of defendants, without a rule or order of the court. Op. Atty. Gen., (144B-15), Sept. 19, 1939.

6993. Fees of sheriffs.

(23).

Where a default personal property tax judgment is entered and sheriff returns execution unsatisfied, he is entitled to usual fee, including mileage and percentage, in case taxpayer thereafter voluntarily pays amount of tax judgment to county treasurer. Op. Atty. Gen., (390c-13), Nov. 28, 1939.

6996. Fees of constables.

In a village of less than 5000 with a municipal court, a police officer making an arrest in his capacity as a peace officer, without a warrant, may not collect a fee, but if he makes an arrest upon a warrant he may charge

fee allowed constable. Op. Atty. Gen. (847a-8), Jan. 14, 1941.

(11).

Mileage fee may not be charged when summons has been sent by mail. Op. Atty. Gen., (847a-4), Sept. 22, 1939.

A constable cannot charge separate mileage for each prisoner when he transports three prisoners on same trip. Op. Atty. Gen., (847a-5), Oct. 17, 1939.

6997. Police officers—Fees in state cases.

Chief of police receiving a warrant from municipal court for a felony against an accused in jail in another county may go to that county and be reimbursed from county funds. Op. Atty. Gen., (785l), March 26, 1940.

6998. Fees of justices of the peace.

A justice of the peace is not allowed a specific fee of \$2.00 for transferring venue of a case, civil or criminal, to another justice. Op. Atty. Gen. (266B-25), Dec. 21, 1940.

(35).

Justice of the peace at Wayzata has no authority to hold court in city of Minneapolis for convenience of parties or an accused, but if he holds court in a town, village, or ward within his county adjoining the town or ward in which he resides, or in any village located within his town, he is entitled to 10 cents a mile for travel

to and from place of holding trial. Op. Atty. Gen., (266a-13), Oct. 23, 1939.

6999. Fees in justices courts—Costs and disbursements.

Where action is settled between parties without any further court action after issuance of summons, it is only where summons asked for costs and disbursements that justice could enter judgment against defendant for costs. Op. Atty. Gen. (266B-7), Jan. 17, 1941.

7002. Fees of register of deeds—Certain counties.
Section 8365, as amended by Laws 1935, chapter 168, supersedes §7002(c), and register of deeds should receive 25 cents and no more for furnishing a certified copy of chattel mortgage filed with him. Op. Atty. Gen., (373B-10(e)), Oct. 18, 1939.

(4).
Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

(5).
Where mortgagee has a number of mortgages against one mortgagor, and last mortgage is paid and on satisfaction he sets up mortgage paid and also all other prior mortgages and gives number and date of filing of each instrument, register of deeds is entitled to charge a separate fee for each satisfaction recorded. Op. Atty. Gen., (373B-16), March 13, 1940.

7005. Fees of appraisers, etc.

Where sheriff picks up city police officers and goes to scene of a bank robbery in another town and engage in

gun battle and capture and convict the robbers, county board is limited in payment of city officers to three dollars per day and mileage, and is without power to pay reasonable compensation for services rendered. Op. Atty. Gen., (390a-1), Dec. 11, 1939.

7007. Witness fees of officers of municipalities.

Village councilmen of New York Mills attending court in defense of action against village are not entitled to reimbursement for expenses, though they are eligible to receive witness fees and mileage outside of village. Op. Atty. Gen., (469a-8), Jan. 4, 1940.

7009. Expert witnesses.

Fees of all witnesses, expert and otherwise, in a proceeding under the Psychopathic Personality Act are payable by county on order of probate court, and it is immaterial who calls the witnesses. Op. Atty. Gen., (248B-11), April 12, 1940.

A psychiatrist under subpoena as an expert in a psychopathic personality proceeding is entitled to fee fixed by court under general statute, and it is immaterial that he is employed in the service of the state. Op. Atty. Gen. (248B-11), June 1, 1940.

7014. Fees for services not rendered—Illegal fees.

Constable is only village officer who may charge a fee for serving justice court warrants or attending on justice court, and enforcement of village ordinances, including appearances in justice court in connection with prosecutions thereunder is a part of regular, official duties of village marshal and village policemen, for which their salaries are full compensation. Op. Atty. Gen. (847-2-4), Jan. 21, 1941.

CHAPTER 49A

Trade and Commerce

1. Contracts and written instruments in general.

2. —Mutual assent.

Relief from a mutual mistake may be granted defensively as well as offensively. *Lawrenz v. L.*, 288NW727. See Dun. Dig. 8337(30).

A statement of intention is not a promise upon which can be predicated a contract. *Sickmann's Estate*, 289NW 832. See Dun. Dig. 1726.

On a claim by a son against his mother's estate for improvements made to her farm, evidence held insufficient to sustain a finding of a contract to reimburse him therefor. *Id.* See Dun. Dig. 1742.

A mistake of one contracting party, with knowledge of it by the other, is as much a ground for relief as mutual mistake. *Rigby v. N.*, 292NW751. See Dun. Dig. 1743.

Whether performance by an optionee to purchase land has been made or tendered is a question of fact. *Ferch v. H.*, 295NW504. See Dun. Dig. 1749a.

3½. —Parties to contracts.

In action for damages for breach of contract to give certain sales rights, held that there was a fact issue whether defendant or a corporation in which he had a substantial interest was the contracting party. *Foster v. B.*, 291NW505. See Dun. Dig. 1901.

Privity, in law of contracts, is merely name for a legal relation arising from right and obligation. *La Mourea v. R.*, 295NW304. See Dun. Dig. 1733.

4. —Rights of third persons.

Privity of contract, if needed to permit a third person to recover thereon, arises from right of such said third person to recover on promise in his favor. *La Mourea v. R.*, 295NW304. See Dun. Dig. 1896.

A promise of a contractor with a city to pay damages to third persons arising from work of sewer construction may be enforced by any third person injured by the work. *Id.*

A creditor or donee beneficiary of a contract may recover thereon though not a party to it, though promise in his favor is conditioned upon a future event, and he is not identified when contract is made. *Id.*

Where sub-contractor decided to stop work because of doubts about getting paid and continued to work upon promise that owner would satisfy his claims, sub-contractor had a cause of action against a title insurance company which promised owner to satisfy the claims, as a third party contract beneficiary. *Schau v. B.*, 295NW 910. See Dun. Dig. 1733, 1896.

4½. —Modification.

A litigant cannot select one of a series of agreements and maintain an action when agreement sued upon has in law been supplanted by another. *Foster v. B.*, 291NW 505. See Dun. Dig. 1778.

A provision in a written contract "therefore this letter upon your accepting and signing and returning a copy to our office will become our final agreement and void all other agreements now in existence" did not merely modify an existing contract of employment but superseded it. *Lidenberg v. A.*, 291NW512. See Dun. Dig. 1807.

4%. Novation.

There is no novation where a debtor is not released and another substituted in his stead, pursuant to agreement between creditor and debtors. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 7238.

Burden of proof of novation is upon debtor who asserts that he has been discharged. *First & Am. Nat. Bank of D. v. W.*, 292NW770. See Dun. Dig. 7238a.

5. Quasi contracts.

Claim of quasi contractual liability presupposes the absence of contract in fact, express or implied, and there is no longer any justification in use of term contract to describe obligation. *Ind. School Dist. v. C.*, 292NW777. See Dun. Dig. 1724.

Rights quasi ex contractu are in personam and are enforced by actions in personam. *Id.*

Whether labor or service is performed by an individual or by a public utility, basis upon which proof must rest is that there be reasonably adequate compensation for that which is furnished. *Scandrett v. H.*, 296NW26. See Dun. Dig. 10366.

6. Bailment.

Lessee of a machine was not liable for rent for time it was kept in use under promise to comply with representation and warranty. *Jaeger Mach. Co. v. M.*, 289 NW51. See Dun. Dig. 731.

In action for rent for use of machines, evidence held to warrant submission of counterclaim for extra expense occasioned by failure of machine to do amount and kind of work represented. *Id.*

A gas company installing a heater and drums of propane gas for fuel and installing it in a brooder house to be used by a party of hunters, all without any charge of any kind, owed no duty to warn hunters that heater would give off carbon monoxide gas where it had no knowledge that such gas would be given off, and was not liable for not installing a pipe to carry gas to outside. *Ruth v. H.*, 296NW136. See Dun. Dig. 731c.

A lender of a chattel for gratuitous use of borrower owes latter duty of warning him of only those defects of which lender is aware and which might imperil borrower by intended use of chattel. *Id.*

One who shares in gratuitous use of a chattel by consent of a bailee or donee stands in no better position than bailee or donee with respect to his rights against bailor or donor for injuries suffered from defects. *Id.* See Dun. Dig. 731d.

Where a chattel is delivered to a party for his gratuitous use with authority to consume a part of it by such use and party is to return part which is not consumed, there is a gift of part which is consumed and a bailment for gratuitous use of bailee of part which is to be returned. *Id.* See Dun. Dig. 728.

7. Employment.

There can be no recovery for services performed for benefit of another if idea of charging for them was an after-thought. *Sickmann's Estate*, 289NW832. See Dun. Dig. 1742.

8. Consideration.

There was a consideration for a contract between householder and electric company to supply electric