

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

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.

Edited by
the
Publisher's
Editorial Staff

*Minnesota State Law Library
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

Part III. Civil Actions and Proceedings

CHAPTER 74

Probate Courts

GENERAL PROVISIONS

8707-1. Salaries of judges of probate court in certain counties.—The probate judges in all counties in this state shall receive as compensation for services rendered by them for their respective counties annual salaries to be paid in 12 equal monthly installments based on the then last preceding completed state or federal census, as follows:

In counties having a population of 6,000 and less than 9,000—\$1500.00; if the population is 9,000 and less than 13,000—\$1800.00; if the population is 13,000 and less than 14,500—\$1900.00; if the population is 14,500 and less than 16,500—\$2100.00; if the population is 16,500 and less than 18,500—\$2200.00; if the population is 18,500 and less than 21,500—\$2350.00; if the population is 21,500 and less than 24,500—\$2500.00; if the population is 24,500 and less than 27,500—\$2650.00; if the population exceeds 27,500—\$3000.00; provided, further, that in any county having an area of not less than 1700 square miles and not more than 2000 square miles, and having not less than 50 full or fractional Government townships and not more than 60 full or fractional Government townships, and having an assessed valuation of not less than \$2,000,000 and not more than \$3,000,000, the provisions of this act shall not apply. (Act Apr. 28, 1941, c. 487, §1.)

8707-2. Same—Exception.—This Act shall not apply to the salary of the probate judge of any county having a population of less than 11,200, or whose salary is fixed by other existing laws in a greater amount than herein provided, and provided further that this act shall not operate to increase the salary of any probate judge more than \$300.00 per year nor to increase the salary in any county where the salary is set by Laws 1937, Chapter 69. (Act Apr. 28, 1941, c. 487, §2.)

8707-3. Same.—Provided that this act shall not apply in counties containing not less than 46 nor more than 49 full and fractional congressional townships and having an assessed valuation of not less than \$4,500,000 and not more than \$5,000,000, and having a population of not less than 20,000 nor more than 22,500. (Act Apr. 28, 1941, c. 487, §3.)

8707-4. Repealer.—All acts or parts of acts inconsistent herewith are hereby repealed upon the effective date of this act. (Act Apr. 28, 1941, c. 487, §4.)

8707-5. Time act takes effect.—This act shall take effect and be in force from and after January 1, 1943. (Act Apr. 28, 1941, c. 487, §5.)

SALARY AND CLERK HIRE IN PARTICULAR COUNTIES

Counties having between 14 and 19 organized townships, with population of between 32,000 and 35,500, and containing a city of the third class, Act Mar. 6, 1941, c. 48, §§1-3, fixes salary of probate judge at \$3,000, and allows not to exceed \$4,000 for clerk hire.

Act Apr. 1, 1941, c. 111, §1, amends Laws 1939, c. 296, §1, fixing salary of probate judge at \$3,500, and allows \$2,500 per annum as clerk hire in certain counties containing a city of the second class, and between 18 and 21 townships.

Act Apr. 10, 1941, c. 204 provides that probate judge in a county with area of 600 to 700 square miles, population 19,000 to 20,300, and an assessed valuation of \$9,500,000, shall have an annual salary of \$2350.

Laws 1941, c. 208 amends Laws 1933, c. 76, as amended by Laws 1935, cc. 70 and 273 as amended by Laws 1939, c. 286.

Act Apr. 18, 1941, c. 311, §3, authorizes salaries for probate judges of from \$1,800 to \$2,500, in certain counties having populations of from 20,000 to 22,500.

Act Apr. 19, 1941, c. 322, §1, fixes salary of judges of probate court in certain counties having populations of between 13,500 and 14,500, at \$2,000 per annum.

Act Apr. 24, 1941, c. 414 provides that in counties of 16,000 to 20,000 inhabitants, assessed valuation of \$10,000,000 to \$15,000,000 and with 22 to 30 congressional townships the probate judge shall have a salary of \$2200 for all services performed, and \$12.00 per annum for clerk hire.

Act Apr. 25, 1941, c. 449, fixes salaries of probate judges in certain counties having populations of between 39,000 and 41,000, at \$3,000 per annum, and authorizes certain salaries for the clerks and deputy clerks.

Notes of Decisions

Judge whose salary is fixed by Laws 1939, chapter 296, must file an annual statement of fees collected pursuant to §976. Op. Atty. Gen. (347E), Jan. 9, 1940.

COMMITMENT OF FEEBLE-MINDED, INEBRIATES AND INSANE PERSONS

8960. Commitment of feeble minded person—Discharge. [Repealed.]

Repealed. Laws 1935, c. 72, §196.

Reenacted under §§8992-176, 8992-179, 8992-183, 8992-184 this chapter.

Provision giving the state board of control discretionary power with respect to release of patient is not unconstitutional. State v. Carlgren, 296NW573. See Dun. Dig. 4523.

8976. Support of insane persons. Subdivision (1). For the purpose of defraying expenses and costs of maintenance of any inmate in a state asylum, detention hospital or hospital for the insane, the state of Minnesota shall have a valid claim for reimbursement to the extent of \$10.00 per month for each such inmate, for all money paid and expenses incurred by the state for such maintenance,—first, against the property or estate of such person so maintained, second, against the relatives of such persons in the following order, to-wit: spouse, children and parents provided, that if the state director of public institutions shall determine that the property or estate of any such insane person is not sufficient to more than care for and maintain the wife and minor children of such inmate, or that the means and property of the classes of persons herein secondarily charged with the liability and cost of the maintenance of such insane person in said institutions, is not more than sufficient to properly provide for themselves and those otherwise dependent upon them, the said director of public institutions shall relieve the estate of such insane person and the relatives of such insane person from a portion or all of such charge or liability as they in their judgment and upon investigation may deem just and proper.

Subdivision (2). In case of increase or decrease in the estate of such insane person, or in the estates of those persons herein secondarily liable for the cost of the maintenance of an insane person in such institutions, or in case of the death of such persons, or either of them, the director of public institutions is hereby authorized to modify or cancel its previous order made in relation thereto, and from time to time make such other and further order with reference thereto as it may seem just and proper. Provided, if an inmate has not dependents the director of public institutions may fix a charge in excess of \$10.00 per month but not to exceed the per capita cost for the previous fiscal year of the institution of which he is an inmate and the state shall have a valid claim against the property or estate of such inmate for the amount so fixed.

Subdivision (3). In all cases under the provision of this act, the property which under the laws of this state, is exempt from attachment or sale on any final process, issued from any court, shall be exempt also to the estates and persons charged with or upon whom any liability is imposed under the provisions of this act. (As amended Act Apr. 18, 1941, c. 313, §1.)

Particular counties, see §8707-5(N).

MINNESOTA PROBATE CODE

ARTICLE I.—POWERS, ETC., OF COURT

8992-2. Powers.

District court, not probate court, has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against estate of a deceased person. *Bulau v. B.*, 294NW845. See Dun. Dig. 2759.

(4).

Probate courts have same power and authority to vacate their orders and judgments as district courts, but no greater. *Woodworth's Estate* 292NW192. See Dun. Dig. 7784.

Probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing because of mistake and inadvertence on the part of the court, and such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. *Henry's Estate*, 292NW249. See Dun. Dig. 7784.

Where parties, for about one year through no fault of theirs, had no knowledge of pendency of probate proceedings or of an order made therein and moved to vacate such order promptly upon discovery of the order, they are not guilty of laches barring right to have order vacated. *Daniel's Estate*, 294NW465. See Dun. Dig. 7784(2).

ARTICLE II.—PERSONNEL

D. REPORTER

8992-21a. Court Reporters for Probate Court in Certain Counties.—The judge of probate of any county now having or which may hereafter have a population of 400,000 inhabitants or over, may appoint a competent stenographer as court reporter and secretary, who shall be paid a salary of \$3,000 per annum; and in addition to said salary the court reporter may also be paid such fees for transcripts of evidence made in relation to probate hearings, as the judge of probate shall fix and allow, and appoint two additional clerks who shall be competent stenographers, who shall each be paid a salary of \$1,200 per annum. (As amended, Act Apr. 10, 1941, c. 179, §1.)

ARTICLE III.—INTESTATE SUCCESSION

8992-27. Descent of homestead.

(c).

An action may now be maintained in district court against representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. *Anderson v. J.*, 293NW 131. See Dun. Dig. 3592a.

8992-28. Allowances to spouse, etc.

Employer must pay to surviving spouse wages earned by a deceased employee prior to death. Laws 1941, c. 408.

8992-29. Descent of property.

Sale of escheated property by State Treasurer, §95-4. Section 9657 is not amended or supplemented by §4272-5(2) so as to affect rights of next of kin, who are not dependents. *Joel v. P.*, 289NW524. See Dun. Dig. 2608.

Where there was a devise of non-homestead real estate to the widow for life, with remainder over, land had to be sold for payment of debts and expenses of administration and after such payment residue is less than value of widow's life estate, having elected to take under will and so surrendering right to renounce, she takes her devise as purchaser and for consideration, and in consequence value of remainder should first have been resorted to for payment of debts and expenses, thereby preferring devise to widow. *Paulson's Estate*, 293NW607. See Dun. Dig. 10285a.

Absence of probate proceedings in estate of owner of a leasehold interest did not bar sole heir from asserting her rights to such interest, including right to remove building constructed by lessee, she having been accepted as a tenant in place of original lessee. *Justen v. O.*, 296NW169. See Dun. Dig. 2722.

(6).

State auditor's certificate of escheated lands located in certain cities of the fourth class, reinstated. Laws 1941, c. 40.

8992-33a. Employer, definition.—For the purposes of this act the word "employer" shall include every person, firm, partnership, corporation, the State of Minnesota, and all municipal corporations. (Act Apr. 24, 1941, c. 408, §1.)

8992-33b. Payment of money owed upon death of employee.—If at the time of the death of any person, his employer is indebted to him for work, labor or services performed, and no executor or administrator of his estate has been appointed, such employer shall upon the request of the surviving spouse forthwith pay said indebtedness, in such an amount as may be due not exceeding the sum of two hundred dollars (\$200), to the said surviving spouse. The employer shall require proof of claimant's relationship to decedent by affidavit, and shall require claimant to acknowledge receipt of such payment in writing. Any payments made by an employer pursuant to the provisions of this act shall operate as a full and complete discharge of the employer's indebtedness to the extent of said payment, and no employer shall thereafter be liable therefor to the decedent's estate, or the decedent's executor or administrator thereafter appointed. Provided, however, that any amount so received by a spouse shall be considered in diminution of the allowance to the spouse under Laws of 1935, Chapter 72, Section 28. (Act Apr. 24, 1941, c. 408, §2.)

ARTICLE IV.—WILLS

8992-34. Requisites.

1. In general.

A beneficiary may devise and bequeath his interest in a trust, if it does not terminate at his death. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 9890, 10279.

2. Mental capacity and undue influence.

A testator has testamentary capacity if, at the time of making will, he comprehends his relation to those who would naturally have claims on his bounty, extent and situation of his property, and effect of will in disposing of it, and is able to hold these things in his mind long enough to form a rational judgment concerning them. *Holmstrom's Estate*, 292NW622. See Dun. Dig. 10208(52, 53, 55).

A testator may be of sound disposing mind and memory sufficient to sustain a will executed by him, though state of his health and consequent mental condition may be unequal to business transactions of a more exacting nature. *Id.*

Evidence held insufficient to show any undue influence in execution of will. *Holmstrom's Estate*, 292NW622. See Dun. Dig. 10243.

Testimony of medical and lay witnesses on issue of testamentary capacity sustains finding that it was absent. *Dahn's Estate*, 292NW776. See Dun. Dig. 10212.

Existence of undue influence is to be determined by ascertaining effect of influence which was, in fact, exerted upon mind of testatrix, considering her physical and mental condition, person by whom it was exerted, and place and all of surrounding circumstances; and not by determining effect which such influence would have had upon mind of the ordinary strong and intelligent person. *Stephens' Estate*, 293NW90. See Dun. Dig. 10208.

3. Construction of will.

Provisions of will and deed of trustee conveying auditorium to city of Red Wing created a gift on condition and not a charitable trust. *Longcor v. C.*, 289NW570. See Dun. Dig. 10287.

Duty of court is to give effect to intention of testator as expressed in language used in will, to be gathered from whole will in light of surrounding circumstances. *Radintz v. N.*, 289NW777. See Dun. Dig. 10257.

Notwithstanding provisions of §8043, 8065, 8091 and 8092, intent of a testator trustor prevails. *Murray's Will*, 290NW312. See Dun. Dig. 10257.

Validity and kind of an estate held by life long resident of Wisconsin under a will of a resident of Minnesota may be determined by law of Wisconsin where land which is greater portion of her holdings is situate, devise by its nature being an individual grant of land, and will accomplishing transfer under laws of Wisconsin. *Ruppert's Will*, 290NW(Wis)122.

Technical words which have a definite and well understood meaning will be presumed to have been used in that sense in absence of surrounding circumstances of context showing different meaning was intended. *Holden's Trust*, 291NW104. See Dun. Dig. 10262a.

Primary purpose of construction of a will is to ascertain meaning and intent of testator, which is to be ascertained from language of will in light of surrounding circumstances, and words may be shown to have been used with a meaning different from their ordinary or technical one. *Id.* See Dun. Dig. 10262a.

Technical words which have a definite and well understood meaning will be presumed to have been used in that sense in absence of surrounding circumstances or context which show that a different meaning was intended. *Norman's Estate*, 295NW63. See Dun. Dig. 10262a.

4. Persons taking and their respective shares.

A will creating trust and providing for payment of \$2,000 to each grandchild arriving at age 25 years held to contemplate payment immediately at becoming 25 years of age, regardless of condition of estate or effect upon younger grandchildren. *Radintz v. N.*, 289NW777. See Dun. Dig. 10266.

Under will leaving property in trust for children and grandchildren, only grandchildren living at remarriage of their mother would take and interest would only vest. *Murray's Will*, 290NW312. See Dun. Dig. 10278.

Where property is given in trust to pay income to a beneficiary for life with remainder to "lawful issue" of life beneficiary, gift in remainder is to a class, which, absent context or circumstances to show a contrary intention, includes adopted children. *Holden's Trust*, 291NW104. See Dun. Dig. 10273.

A gift, devise or bequest to a named person as primary taker and to others as substitute takers in event of primary taker's death contemplates, in absence of specification to the contrary, that primary taker's death shall occur during donor's or testator's lifetime. *First & American Nat. Bank v. H.*, 293NW585. See Dun. Dig. 3163a.

A dividend was paid to a trustee in form of additional stock, which should be apportioned to the life tenant under a provision of a testamentary trust that all dividends on stock comprising corpus of trust, whether paid in form of cash or additional stock, should be paid to life tenant, where trustee exchanged original stock for new stock issued by corporation under arrangement whereby corporation increased its capital by a transfer of earned surplus capital, increased par value of its shares of stock so that existing number of shares represented entire capital as increased and exchanged new stock at increased par value for old stock share for share. *Whitacre's Will*, 293NW784. See Dun. Dig. 9888a.

4½. Vesting of interest.

Where a sale of property is to be made in the future for convenience of estate and not out of considerations personal to legatees, postponement of sale does not prevent vesting of gifts. *First & American Nat. Bank v. H.*, 293NW585. See Dun. Dig. 10298b.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the State of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and super-added words being insufficient to cut it down to a lesser one. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 10278.

5. Contract to make will.

Where services are rendered upon understanding that they are to be compensated for by testamentary disposition, value of a legacy unless otherwise stated in will, shall be applied upon reasonable value of such services either in full satisfaction or pro tanto as case may be. *Cooke's Estate*, 292NW95; *Cooke's Estate*, 292NW96. See Dun. Dig. 10207.

8992-37. Wills made elsewhere.

County court of Wisconsin, in which ancillary proceedings for administration of estate were commenced after will had been admitted to probate in Minnesota, had authority to construe will as to validity and kind of estate held by life long Wisconsin resident, and greater portion of holdings being Wisconsin land, though guardian or trustee has reduced land to money pursuant to a power. *Ruppert's Will*, 290NW(Wis)112.

8992-45. Quantity devised.

A gift, devise or bequest to a named person as primary taker and to others as substitute takers in event of primary taker's death contemplates, in absence of specification to the contrary, that primary taker's death shall occur during donor's or testator's lifetime. *First & American Nat. Bank v. H.*, 293NW585. See Dun. Dig. 10297.

An absolute interest in personalty will pass under a will by language which would pass a fee of realty in a similar case notwithstanding superaddition of unnecessary words of inheritance. *Id.*

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the State of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and super-added words being insufficient to cut it down to a lesser

one. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 10272a.

8992-47. Renunciation and election.

Where there was a devise of non-homestead real estate to the widow for life, with remainder over, land had to be sold for payment of debts and expenses of administration and after such payment residue is less than value of widow's life estate, having elected to take under will and so surrendering right to renounce, she takes her devise as purchaser and for consideration, and in consequence value of remainder should first have been resorted to for payment of debts and expenses, thereby preferring devise to widow. *Paulson's Estate*, 293NW607. See Dun. Dig. 10285a.

ARTICLE VII.—ESTATES OF NONRESIDENTS

8992-64. Wills proved elsewhere.

Rule in restatement of conflict of laws that if testator appoints as trustee a trust company of another state, presumptively his intention is that trust shall be administered in latter state and according to its laws held not applicable in absence of any language in the will or other circumstances justifying such presumption. *Johnston's Estate*, 14Atl(2d)(NJ)469.

8992-66. Administration.

County court of Wisconsin, in which ancillary proceedings for administration of estate were commenced after will had been admitted to probate in Minnesota, had authority to construe will as to validity and kind of estate held by life long Wisconsin resident, and greater portion of holdings being Wisconsin land, though guardian or trustee has reduced land to money pursuant to a power. *Ruppert's Will*, 290NW(Wis)112.

ARTICLE VIII.—GENERAL ADMINISTRATION

8992-68. Persons entitled.

A petition for administration may be granted whenever an estate is left unadministered in whole or in part. *Daniel's Estate*, 294NW465. See Dun. Dig. 3558.

There is no statutory limitation on time within which administration may be granted. *Id.* See Dun. Dig. 7783.

ARTICLE X.—DETERMINATION OF DESCENT

8992-79. Essentials.—Whenever any person has been dead for more than five years and has left real estate or any interest therein, and no will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate nor administration had in this state; or whenever real estate or any interest therein has not been included in a final decree, any person interested in the estate or claiming an interest in such real estate may petition the probate court of the county of the decedent's residence or of the county wherein such real estate or any part thereof is situated to determine its descent and to assign it to the persons entitled thereto. (As amended Act Apr. 25, 1941, c. 444, §1.)

8992-80. Contents of petition.—Such petition shall show so far as known to the petitioner:

1. The name of the decedent, the date and place of his death, his age and address at such date, and whether testate or intestate.

2. The names, ages, and addresses of his heirs, executors, legatees, and devisees.

3. That no will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate nor administration had in this state; or if a will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate or administration had, that real estate or some interest therein was not included in the final decree.

4. A description of the real estate, and if a homestead, designated as such, the interest therein of the decedent, the value thereof at the date of his death, and the interest therein of the petitioner.

5. If the decedent left a will which has not been admitted to probate in this state; such will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved shall be filed and the petition shall contain a prayer for its admission to probate.

If a will or authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved has been admitted to probate or if administration has been had, certified copies of such instruments in the prior administration as the court may direct shall be filed. (As amended Act Apr. 25, 1941, c. 444, §2.)

8992-81. Decree of descent.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Upon proof of the petition and of the will if there be one, or upon proof of the petition and of an authenticated copy of a will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved if there be one, the court shall allow the same and enter its decree assigning the real estate to the persons entitled thereto pursuant to the will or such authenticated copy if there be one, otherwise pursuant to the law of intestate succession in force at the time of the decedent's death. No decree shall be entered until after the determination and payment of inheritance taxes. (As amended Act Apr. 25, 1941, c. 444, §3.)

ARTICLE XI.—BONDS

8992-82. Condition.

A joint control agreement by an administrator, his surety and depository by its terms limited to special administration covers the administrator's bank account as general administrator, where the evidence shows that such was the intention and understanding of the parties, and bank was liable to surety for permitting withdrawal by check without counter signature of surety. *Fidelity & Casualty Co. of New York v. P.*, 290NW305. See Dun. Dig. 783.

An order allowing final account of an executor binds surety on bond of executor although not cited personally to appear at hearing. *Woodworth's Estate*, 292NW192. See Dun. Dig. 3580f.

Sureties on bond of a special administrator are not liable for costs and disbursements, awarded against him in an action brought by him in his representative capacity, where there were no assets in estate. *Minneapolis St. Ry. Co. v. R.*, 293NW256. See Dun. Dig. 3580s.

ARTICLE XII.—MANAGEMENT OF ESTATE

B.—COLLECTION OF ASSETS

8992-89. Possession.

While investments of cash in hands of an executor are ordinarily not proper, circumstances govern, as where there is statutory authority, power given in a will, or an extended administration and order of court. *Adams*, (CCAS), 110F(2d)578, rev'g 39BTA1239.

In trial of claim against estate of a decedent based upon alleged oral trust as to money deposited in bank, court held not to err in granting estate new trial for insufficiency of evidence to support verdict. *Halweg's Estate*, 290NW577. See Dun. Dig. 3586g.

A representative of an estate is a fiduciary, and while he is not an insurer, he must honestly exercise that degree of care which men of common prudence ordinarily exercise in their own affairs. *Baker's Estate*, 294NW222. See Dun. Dig. 3565.

Amount recovered for one's death is no part of his estate, and probate court has no jurisdiction to control action in which recovery is had or to direct the distribution of fund after it is recovered. *Daniel's Estate*, 294NW465. See Dun. Dig. 3586k.

Liability exists against representative of estate of a deceased in his individual capacity under a contract made by him with a creditor who becomes such through dealings with him, unless in plain language such contract expressly states that creditor agrees to seek his remedy against estate and not against representative in his capacity as such. *Pittsburgh Coal Co. v. W.*, 296NW178. See Dun. Dig. 3569.

8992-90. Liability.

Self or double dealing by a fiduciary renders transaction voidable by beneficiary, but where facts were fully disclosed to court, and action of guardian was on advice of independent counsel whose only duty was to, and whole whole interest was that of, the ward, and transaction was approved by court, it cannot thereafter be disaffirmed by ward. *Fiske's Estate*, 291NW289. See Dun. Dig. 4110.

Administrator was negligent in permitting land to be lost through mortgage foreclosure and redemption by a creditor, and was liable therefor to the estate. *Baker's Estate*, 294NW222. See Dun. Dig. 3579i.

8992-91. Accord with debtor.

Consent by administratrix to allowance of a claim filed by her against another estate in a definite amount

does not prevent heir in former estate who contends that claim should have been allowed in a large sum from appealing to the district court from order of allowance. *Owens v. O.*, 292NW89. See Dun. Dig. 7735a.

Pledgee of a chose in action, under extreme circumstances indicating that loss to all concerned would have resulted if it had not accepted exchange of securities provided for by reorganization in bankruptcy of debtor, held properly to have accepted exchange as a compromise where procedure resulting in exchange was participated in by representatives of pledgor's estate without objection either to procedure or result. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 3579a.

Section does generally make prerequisite to an effective compromise approval of probate court, but does not vest in that tribunal right arbitrarily to withhold approval, and where issue has been litigated in district court, mere absence of probate court approval is not fatal to judgment. *Id.*

8992-96. Property converted.

Statute applies where one in possession of a decedent's property before appointment of representative for the estate disposes of the property, though he does not use the property himself. *Owens v. O.*, 292NW89. See Dun. Dig. 3583.

Where embezzlement and alienation of property of a decedent was fraudulent, statute of limitations did not begin to run until discovery of cause of action. *Id.* See Dun. Dig. 3583.

Section 8992-96, giving double damages for conversion of property of a deceased person, is not a penal statute since it gives same right as existed at common law and merely increases damages payable to party aggrieved, and §9192 does not apply. *Id.* See Dun. Dig. 5657.

Findings that shares of stock were converted by deceased during his lifetime from the estate of his father, another deceased, and market value thereof, held sustained by evidence. *Id.* See Dun. Dig. 3599.

8992-98. Continuation of business.

An executor or administrator cannot bind estate he represents by any new contract he may make for it. *Pittsburgh Coal Co. v. W.*, 296NW178. See Dun. Dig. 3569.

C.—CLAIMS

8992-101. Filing of claims.

Only claims arising on contract are to be determined by probate court in administering estates of decedents. *Burton's Estate*, 289NW66. See Dun. Dig. 3591b.

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. *Sickmann's Estate*, 289NW832. See Dun. Dig. 3593i.

Execution of a promissory note by claimant to deceased created a presumption that payee was not indebted to maker, and this presumption was especially strong where note was given for borrowed money with no suggestion that a liability of any kind existed against lender. *Id.* See Dun. Dig. 3599.

In hearing on claim against estate of a decedent for value of improvements made by child upon deceased mother's farm, evidence offered to prove how profitably claimant had operated farm for deceased was properly excluded, having no bearing on alleged contract to pay therefor. *Id.* See Dun. Dig. 3599.

In hearing on claim for improvements made by son on farm of deceased mother, evidence concerning other farms of mother was immaterial on issue of existence of contract to pay for improvements. *Id.* See Dun. Dig. 3599.

The probate court has no jurisdiction to allow claims after the time fixed by the probate code. *Paulson's Estate*, 293NW607. See Dun. Dig. 3592a.

Debts to be allowed and paid out of estate of deceased person must be such as were incurred, or such as arise on obligations entered into, by him, and a claim arising later, such as one for goods sold by a third party to representative, must be worked out through representative as an item of administration expense. *Pittsburgh Coal Co. v. W.*, 296NW178. See Dun. Dig. 3569.

8992-103. Claims barred.

Evidence sustains findings that claim on check did not accrue within six years next preceding date of death of decedent against whose estate claim was sought to be enforced. *Burton's Estate*, 289NW66. See Dun. Dig. 3593j.

If plaintiff's claim (as holder and payee of a check made and delivered as a gift) be considered an implied trust, the statute of limitations began to run from time when act was done by which decedent (maker of check) became chargeable as trustee. *Id.* See Dun. Dig. 3593i.

8992-104. Adjudication on claim.

Findings that shares of stock were converted by deceased during his lifetime from the estate of his father, another deceased, and market value thereof, held sustained by evidence. *Owens v. O.*, 292NW89. See Dun. Dig. 3599.

Where services are rendered upon understanding that they are to be compensated for by testamentary disposition, value of a legacy unless otherwise stated in will, shall be applied upon reasonable value of such services

either in full satisfaction or pro tanto as case may be. *Cooke's Estate*, 292NW95; *Cooke's Estate*, 292NW96. See Dun. Dig. 3602.

Where there are no assets with which to pay claims through no fault of administrator in collecting the same, neither representative nor sureties on his bond are liable for non-payment of claims against estate, administrator not being liable beyond the assets which he represents. *Minneapolis St. Ry. Co. v. R.*, 293NW256. See Dun. Dig. 3580s.

8992-107. Actions precluded.

An action may now be maintained in district court against representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. *Anderson v. J.*, 293NW 131. See Dun. Dig. 3592a.

The probate court has no jurisdiction to allow claims after the time fixed by the probate code. *Paulson's Estate*, 293NW607. See Dun. Dig. 3592a.

ARTICLE XIII.—ACCOUNTING AND DISTRIBUTION

8992-115. Hearing and decree.

Laws 1941, c. 79, validates certain probate proceedings and orders and conveyances and decrees of distribution made therein.

An order adjusting and allowing final account of an executor is equivalent of a judgment or decree adjudging amount due estate from executor, and may not be vacated, after expiration of time for appeal therefrom, except under §§9283 or 9405. *Woodworth's Estate*, 292NW 192. See Dun. Dig. 3649a.

Probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing because of mistake and inadvertence on the part of the court, and such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. *Henry's Estate*, 292NW249. See Dun. Dig. 7784.

8992-118. Allowance to representative.

Burden of proof as to amount executors were entitled to deduct for expenses of administration and as to allowable character of deductions claimed in determining federal estate tax was upon them, and hence upon reversal of determination of Board of Appeals disallowing claimed deduction, case would be remanded to afford opportunity to prove that the administration expenses claimed as deductions were allowable as such. *Adams*, (CCA8)110F(2d)578, rev'g 39BETA1239.

Expenditures by executors in locating assets of large estates held deductible as administration expenses, and disallowance of deductions on ground that such expenses were incurred in prolonging administration to provide funds for testamentary trusts and in carrying on a business by the executors for profit was improper, nor was such disallowance justified on ground that the deductions claimed were also claimed in connection with income taxes of the estate. *Id.*

Defendant as representative of her mother's estate and as representative of the estate of her brother occupies two distinct positions, and she cannot, at least in her representative capacities, cast into a hotchpot expenditures or obligations created or suffered by her in the two proceedings, as affecting attorney fees in one of them. *Shapiro v. L.*, 289NW48. See Dun. Dig. 3644c.

Compensation for representative's services is to repay him for time, labor, and responsibility involved, and to reward him for fidelity with which he discharges his trust, and court was justified in refusing to allow any compensation to a representative who negligently permitted land to be lost through foreclosure. *Baker's Estate*, 294NW222. See Dun. Dig. 3646.

It is proper for court to credit executor with amount paid by him for coal used to maintain property of estate. *Pittsburgh Coal Co. v. W.*, 296NW178. See Dun. Dig. 3644d.

8992-124. Discharge of representative.

Where there are no assets with which to pay claims through no fault of administrator in collecting the same, neither representative nor sureties on his bond are liable for nonpayment of claims against estate, administrator not being liable beyond the assets which he represents. *Minneapolis St. Ry. Co. v. R.*, 293NW256. See Dun. Dig. 3580s.

Approval of final account and discharge of an executor or administrator is not conclusive that estate has been fully administered so as to preclude further administration upon unadministered assets. *Daniel's Estate*, 294NW 465. See Dun. Dig. 7777a.

Probate court's denial of petition to reopen estate does not constitute *res judicata* on issue of fraud in inducing a party not to file a claim against estate of a deceased person because probate court did not have jurisdiction to determine such issue. *Bulau v. B.*, 294NW845. See Dun. Dig. 5194a.

8992-125. Summary proceedings.

An action may now be maintained in district court against representatives and heirs of a deceased person

to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. *Anderson v. J.*, 293NW 131. See Dun. Dig. 3592a.

Probate court did not have power summarily to close estate without general administration if there were assets subject to such administration in fact. *Daniel's Estate*, 294NW465. See Dun. Dig. 3650.

8992-126. Unclaimed money.—If any part of the money on hand has not been paid over because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If the money on hand exceeds the sum of \$2,000, the court may direct the representative to purchase with said money bearer bonds of the United States government or of the State of Minnesota or any of its political subdivisions, which bonds shall be deposited with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court, and the county treasurer shall collect the interest on said bonds as it becomes due, and the money so collected or deposited shall be credited to the county revenue fund. Upon application to the probate court within 21 years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto his warrant for the amount of the money so on deposit including the interest collected on bonds and in the case of bonds, the county auditor shall issue to the person entitled thereto his order upon the county treasurer to deliver said bonds. No interest shall be allowed or paid thereon, except as herein provided, and if not claimed within such time no recovery thereof shall be had. The county treasurer, with the approval of the probate court, may make necessary sales, exchanges, substitutions, and transfers of bonds deposited as aforesaid, and may present the same for redemption and invest the proceeds in other bonds of like character. (Amended Act Apr. 15, 1941, c. 231, §1.)

Where money of a missing heir has been deposited with county treasurer and heir has not been heard from for more than 7 years, proper procedure for distribution to heirs of such person is to have an administrator appointed for him, who may proceed under this section. *Op. Atty. Gen.* (346-B), July 22, 1940.

ARTICLE XV.—GUARDIANSHIPS

8992-129. Persons subject.

If a guardian is appointed, domicile of an infant remains within state of appointment. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 4107b.

Where decree of divorce is silent with respect to support of a child, divorced mother has cause of action against divorced father quasi ex contractu for support furnished child arising out of natural and legal duty of father. *Quist v. Q.*, 290NW561. See Dun. Dig. 7302.

Presumption as to parents' fitness to have care of their child held not overcome nor does evidence require a finding that best interests of child will be served by leaving her with grandparents. *State v. Sorenson*, 293 NW241. See Dun. Dig. 7297.

8992-135. Guardian's duties.—A guardian shall be subject to the control and direction of the court at all times and in all things. A general guardian of the person shall have charge of the person of the ward. A general guardian of the estate shall (1) pay the reasonable charges for the support, maintenance, and education of the ward in a manner suitable to his station in life and the value of his estate; but nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children, (2) pay all just and lawful debts of the ward and the reasonable charges incurred for the support, maintenance, and education of his wife and children, and upon order of the court pay such sum as the court may fix as reasonable for the

support of any person unable to earn a livelihood who is or may become legally entitled to support from the ward, (3) possess and manage the estate, collect all debts and claims in favor of the ward, or with the approval of the court compromise the same, and invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in such securities as are authorized by G. S. 7714 and approved by the court, except as provided in G. S. 7735. (As amended Act Apr. 23, 1941, c. 395, §1.)

In action for injuries in collision suffered by motorcyclist and his ward who was riding with him, it was error, so far as guardian was concerned to exclude his pleading as to how accident happened where it was inconsistent with testimony on behalf of plaintiffs, but such exclusion was not erroneous as to ward, since guardian could not make admissions affecting substantial rights of minor. *Stolte v. L.*, (CCA8), 110F(2d)226.

Self or double dealing by a fiduciary renders transaction voidable by beneficiary, but where facts were fully disclosed to court and action of guardian was on advice of independent counsel whose duty was to, and whose whole interest was that of, the ward, and transaction was approved by court, it cannot thereafter be disaffirmed by ward. *Fiske's Estate*, 291NW289. See *Dun. Dig.* 4110.

Florida Uniform Veterans' Guardianship Act—Investments. *McBride v. McBride*, 195So(Fla)602.

Tennessee cases construing Uniform Veterans' Guardianship Act generally hold guardian to strict compliance with statutory provisions with respect to authorized investment of ward's funds. *State v. Meek*, 146SW(2d) (TennApp)961.

Approval of annual report of guardian by county judge does not operate to make investment legal or lawful under Uniform Veterans' Guardianship Act. *Id.*

8992-143. Restoration to capacity.

Parole or discharge of patients with psychopathic personality is governed by same provisions as dangerously insane. *Op. Atty. Gen.*, (248B-11), March 19, 1940.

In proceeding for restoration to capacity of a man committed to state hospital as insane notice should be given both to director of social welfare and to director of public institutions if patient is on parole, but only upon director of public institutions if patient is an actual inmate of state hospital. *Op. Atty. Gen.*, (248B-8), May 9, 1940.

Services of notices of restoration to capacity of five classes of mentally defective patients following Reorganization Act of 1939 stated. *Op. Atty. Gen.* (640), July 17, 1940.

ARTICLE XVI.—SALES, ETC., OF REALTY

8992-146. Reasons for sale, mortgage, lease.

Where there was a devise of non-homestead real estate to the widow for life, with remainder over, land had to be sold for payment of debts and expenses of administration and after such payment residue is less than value of widow's life estate, having elected to take under will and so surrendering right to renounce, she takes her devise as purchaser and for consideration, and in consequence value of remainder should first have been resorted to for payment of debts and expenses, thereby preferring devise to widow. *Paulson's Estate*, 293NW607. See *Dun. Dig.* 10285a.

ARTICLE XVII.—APPEALS

8992-164. Appealable orders.—An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

1. An order admitting, or refusing to admit, a will to probate.
2. An order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian.
3. An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate.
4. An order directing, or refusing to direct, a conveyance or lease of real estate under contract.
5. An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counter-claim in whole or in part when the amount in controversy exceeds one hundred dollars.
6. An order setting apart, or refusing to set apart property, or making, or refusing to make, an allowance for the spouse or children.

7. An order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue.

8. An order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds one hundred dollars.

9. An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds one hundred dollars.

10. An order adjudging a person in contempt.

11. An order vacating a previous appealable order, judgment, or decree; an order refusing to vacate a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect.

12. A judgment or decree of partial or final distribution.

13. An interlocutory decree entered pursuant to Article XIII, Section 115.

14. An order granting or denying restoration to capacity.

15. An order made pursuant to Section 118 directing or refusing to direct the payment of representatives' fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to take such appeal.

16. An order determining, or refusing to determine, inheritance taxes upon a hearing on a prayer for reassessment and redetermination; but nothing herein contained shall abridge the right of direct review by the supreme court.

17. An order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative. (As amended, Act Apr. 24, 1941, c. 411, §1.)

(11).

Probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing because of mistake and inadvertence on the part of the court, and such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. *Henry's Estate*, 292NW249. See *Dun. Dig.* 7784.

8992-166. Requisites.

A party entitled to join in an appeal may do so by entering a voluntary appearance in appellate court after appeal has been perfected. *Owens v. O.*, 292NW89. See *Dun. Dig.* 7788.

Consent by administratrix to allowance of a claim filed by her against another estate in a definite amount does not prevent heir in former estate who contends that claim should have been allowed in a large sum from appealing to the district court from order of allowance. *Id.* See *Dun. Dig.* 7785a.

A bond which does not fulfill requirements because not conditioned to prosecute appeal with due diligence to a final determination is ineffective to perfect an appeal where no move is made to supply a proper bond. *Nelson's Estate*, 294NW221. See *Dun. Dig.* 7791.

8992-169. Trial.

Right of appeal from orders and decisions of probate court to district court and to trial there de novo is statutory, not constitutional. *Burton's Estate*, 289NW66. See *Dun. Dig.* 7794.

On appeal from probate court to district court it is duty of district court to render such judgment as probate court ought to have rendered, but its jurisdiction is appellate, not original. *Id.* See *Dun. Dig.* 7795(93).

On trial of a claim against estate based upon a trust relationship, neither party was entitled to a jury as a matter of right. *Halweg's Estate*, 290NW577. See *Dun. Dig.* 7794.

Even if probate court had no jurisdiction of a claim based upon a trust relationship, district court had jurisdiction on appeal where parties acquiesced in trial in both courts. *Id.* See *Dun. Dig.* 7786.

Permitting amendment of propositions of law and fact to conform to evidence and findings of fact as made was within discretion of trial court. *Owens v. O.*, 292NW89. See *Dun. Dig.* 7794.

Failure to comply with a condition contained in order permitting a party to serve and file propositions of law and fact on appeal to district court from order of probate court held waived by answering propositions of law and fact and failing to raise question of omission to comply with condition. *Id.* See *Dun. Dig.* 7794.

Inasmuch as appeal from probate court, presenting an issue as to compensation of administrator, requires a trial de novo, there can be no affirmance where there is absence of evidence upon which to base a finding. *Paulson's Estate*, 293NW607. See *Dun. Dig.* 7794.

8992-172. Direct appeal to supreme court.

It would be highly improper for supreme court to disturb finding of trial court in will contest of lack of testamentary capacity. *Dahn's Estate*, 292NW776. See Dun. Dig. 411.

ARTICLE XVIII.—COMMITMENTS**8992-174. Institution of proceedings.**

It is proper for superintendent of inebriate hospital or other hospital attaches to petition probate court of county wherein patient is situated to have him committed to the state hospital for insane, costs to be borne by county of settlement. Op. Atty. Gen. (248B-6), Dec. 17, 1940.

8992-175. Examination.

A doctor appointed by a court commissioner to act as examiner in an insanity proceeding and to report his findings to court is a quasi-judicial officer and as such immune from civil suit for acts performed by him in connection with such proceeding. *Linder v. F.*, 295NW299. See Dun. Dig. 4959.

8992-176. Commitment.

Probate court has authority to issue dual warrants of commitment to state hospitals and to veterans' hospital of patients committed under the Psychopathic Personality Law, by original order or by amendment thereof. Op. Atty. Gen., (248B-3), Nov. 21, 1939.

Services of notices of restoration to capacity of five classes of mentally defective patients following Reorganization Act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

8992-177. Payment of fees.

County attorney cannot charge fee for services in hearing for a nonresident against county of his legal settlement, but county auditor can bill county of legal settlement and collect all expenses of the proceedings, such as court costs, sheriff's fees, examiner's fees, etc. Op. Atty. Gen., (248B-5), Nov. 10, 1939.

Where four petitions are presented in feeble-minded proceedings and will all be heard the same day, an examining physician is entitled to a single fee of \$5 if persons examined are related and the petitions are combined and disposed of in one hearing, but if persons covered by petitions are unrelated, law requires a separate hearing on each with separate fee. Op. Atty. Gen., (248B-2), Nov. 23, 1939.

Fees of all witnesses, expert and otherwise, in a proceeding under 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.

County of settlement must pay costs of commitment. Op. Atty. Gen. (248B-3), Dec. 17, 1940.

It is proper for superintendent of inebriate hospital or other hospital attaches to petition probate court of county wherein patient is situated to have him committed to the state hospital for insane, costs to be borne by county of settlement. Op. Atty. Gen. (248B-6), Dec. 17, 1940.

Settlement of a person who is not dependent or a pauper cannot be changed from one county to another in less than 2 years, as affecting liability of county for expenses of commitment for an insane person. Op. Atty. Gen. (248B-3), Jan. 10, 1941.

8992-179. Release after commitment.

Provision for release if state board of control shall consent or if bond be given for safe-keeping of patient is discretionary with state board and not mandatory. *State v. Carlgren*, 296NW573. See Dun. Dig. 4523.

Patients committed under the Psychopathic Personality Law may be paroled. Op. Atty. Gen., (248B-3), Nov. 21, 1939.

Parole or discharge of patients with psychopathic personality is governed by same provisions as dangerously insane. Op. Atty. Gen., (248B-11), March 19, 1940.

8992-180. Detention.

Provision giving the state board of control discretionary power with respect to release of patient is not unconstitutional. *State v. Carlgren*, 296NW573. See Dun. Dig. 4523.

Services of notices of restoration to capacity of five classes of mentally defective patients following Reorganization Act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

An inebriate may not be transferred to hospital for insane without a new proceeding for commitment. Op. Atty. Gen. (248B-6), Dec. 17, 1940.

8992-183. Restoration of feebleminded and epileptics.

Services of notices of restoration to capacity of five classes of mentally defective patients following Reorganization Act of 1939 stated. Op. Atty. Gen. (640) July 17, 1940.

8992-184. Appeal.

Services of notices of restoration to capacity of five classes of mentally defective patients following Reor-

ganization Act of 1939 stated. Op. Atty. Gen. (640), July 17, 1940.

8992-184a. Psychopathic personality—Definition.
Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

8992-184b. Same—Laws relating to insane persons, etc., to apply to psychopathic personalities.

Minnesota v. Probate Court, 309US270, 60SCR523, aff'g 205Minn545, 287NW297.

Probate court has authority to issue dual warrants of commitment to state hospitals and to veterans' hospital of patients committed under the Psychopathic Personality Law, by original order or by amendment thereof. Op. Atty. Gen., (248B-3), Nov. 21, 1939.

Patients committed under the Psychopathic Personality Law may be paroled. *Id.*

Parole or discharge of patients with psychopathic personality is governed by same provisions as dangerously insane. Op. Atty. Gen., (248B-11), March 19, 1940.

Fees of all witnesses, expert and otherwise, in a proceeding under 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.

Due process, equal protection, and indefinite legislation. 24MinnLawRev637.

8992-184c. Same—Not to constitute defense.

One committed to a state hospital may be brought back to county to be tried for criminal offense. Op. Atty. Gen., (248B-3), Nov. 1, 1939.

ARTICLE XIX.—MISCELLANEOUS**8992-185. Definitions.**

A woman does not become of legal age when she marries. Op. Atty. Gen. (33B-9), Sept. 28, 1940.

8992-188. Notice.—Whenever notice of hearing is required by any provision of this act by reference to this section, such notice shall be given once a week for three consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending; or if no such designation be made, in any legal newspaper in such county; or if the city or village of the decedent's residence is situated in more than one county, in any legal newspaper in such city or village. The first publication shall be had within two weeks after the date of the order fixing the time and place for the hearing.

At least 14 days prior to the date fixed for the hearing, the petitioner, his attorney, or agent, shall mail a copy of the notice to each heir, devisee, and legatee, whose name and address are known to him, and in the case of notice required by Sections 53 and 70, shall mail two copies of the notice to the commissioner of taxation at St. Paul, Minnesota; and if the decedent was born in any foreign country, or left heirs, devisees, or legatees, in any foreign country, to the consul or representative referred to in Section 68, or if there be none, to the chief diplomatic representative of such country at Washington, D. C., or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative.

Proof of such publication and mailing shall be filed before the hearing. No defect in any notice, nor in the publication or service thereof, shall invalidate any proceedings. (As amended Act Apr. 24, 1941, c. 422, §1.)

8992-188a. Validation of certain proceedings as to defective notices.—That every probate proceeding had in this state prior to the passage of this act and otherwise legally conducted according to statute, except that a copy of the notice of any hearing, or hearings, in said proceedings was not mailed to each heir, devisee and legatee, or to the consul or representative of the country of decedent's birth, or to the chief diplomatic representative of such country, or to the secretary of state at St. Paul, Minnesota, or that proof of mailing such notice was not filed in the probate court, shall be of the same force and effect as though such mailed notice had been given and proof thereof filed as provided by statute; and every

order made in said probate proceedings and every conveyance of real estate made pursuant thereto and every decree of distribution made therein are hereby legalized and validated, as against the objection that a copy of the notice of any hearing, or hearings in said proceedings, was not mailed as above provided, or that proof of mailing such notice was not

filed in the probate court. (Act Mar. 28, 1941, c. 79, §1.)

8992-188b. Same—Proceedings prior to June 1, 1939.—Nothing herein contained shall apply to any probate proceedings held subsequent to June 1, 1939, or affect any action now pending to determine the validity of any instrument validated hereby. (Act Mar. 28, 1941, c. 79, §2.)

CHAPTER 75

Courts of Justices of the Peace

GENERAL PROVISIONS

8993. Jurisdiction limited to county.

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, 288NW845. See Dun. Dig. 5263.

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. State v. Weed, 294NW370. See Dun. Dig. 5263.

8994. Place of holding court.

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.

COMMENCEMENT OF ACTIONS

9002. Actions, how commenced.

When a complaint is made to a justice for purpose of having a summons issued, issuance of summons is a ministerial duty, and it is not his duty at such time to determine whether or not a cause of action exists, though he may refuse to issue summons if the action is not one within his jurisdiction. Op. Atty. Gen., (266B-4), Oct. 31, 1940.

9003. Security for costs.

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.

9012. Transfer of action.

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.

JUDGMENTS

9046. Time of entry.

Editorial note.—The Soldiers' and Sailors' Civil Relief Act of March 8, 1918, has been revived. See Soldiers' and Sailors' Civil Relief Act of 1940, Mason's U. S. C. A., current pamphlet, Title 50. For cases under the old act see Mason's U. S. C. A., Appendix 1, Act 2151.

9047. For costs on dismissal.

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.

CRIMINAL PROCEEDINGS

9110. Jurisdiction.

Justice of peace has no right to specify type of labor to be performed by prisoner. Op. Atty. Gen., (266B-20), March 6, 1940.

(4).

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. State v. Weed, 294NW370. See Dun. Dig. 5340.

9127. Judgment on conviction.

Power to suspend sentence must be exercised at time of imposition of sentence. Op. Atty. Gen., (266B-21), Feb. 5, 1940.

9136. Certificate of conviction, etc.

Taxing jurors' fees as items of costs to be charged against county where jury failed to agree on verdict and justice dismissed case, discussed. Op. Atty. Gen., (266B-8), Dec. 28, 1939.

Municipal court need not file certificate of conviction under this section. Op. Atty. Gen., (306a), Aug. 9, 1940.

CHAPTER 76

Forcible Entry and Unlawful Detainer

Editorial note.—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13, and the Soldiers' and Sailors' Civil Relief Act of 1940. See Mason's U. S. Code, October, 1940, Pamphlet, Title 50.

CHAPTER 77

Civil Actions

9164. One form of action—Parties, how styled.

COMMON LAW DECISIONS RELATING TO ACTIONS IN GENERAL

1. Election of remedy.

A frustrated attempt to pursue a wrong remedy is not an election which will bar one otherwise right. Heibel v. U., 288NW393. See Dun. Dig. 2914.

2. Conflict of laws.

Nat'l Sur. Corp. v. Wunderlich, (CCA8)111F(2d)622, rev'g on other grounds 24FSupp640.

Question whether court erred in denying motion for a directed verdict in action for personal injuries in federal district court of Minnesota must be determined by the law of Minnesota. Champlin Refining Co. v. W., (CCA8), 113F(2d)844.

The substantive rights of parties to an action are governed by the lex loci, that is, the law of the place where