

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 Library  
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

infringement suits against members of the association. *National Hairdressers' & Cosmetologists' Ass'n v. P.* (DC-Del), 34FSupp264.

In action by Brotherhood of Locomotive Engineers asking for construction of mediation agreement entered into by plaintiff and defendant railway, Brotherhood of Firemen and Enginemen was permitted to intervene where, because of the interconnection between the two brotherhoods, any change in the engineers' rules, or the interpretation thereof, which would increase the number of miles or days that each engineer might work during the month, would effect a corresponding reduction of the opportunity of firemen to work as engineers. *Brotherhood of L. Engineers v. C.*, (DC-Wis), 34FSupp594.

In action by Federal Deposit Insurance Corporation with respect to liability on claims asserted against it by alleged depositors in closed bank, joinder of the several claimants as defendants was authorized. *Federal Deposit Ins. Corp. v. R.*, (DC-Mo), 34FSupp600.

The rule regarding necessary parties is not relaxed in action brought to obtain declaratory relief. *Lloyd v. L.*, 107Pac(2d) (Cal) 622.

Statute allows joinder only of those persons legally affected and does not enlarge procedure as to joining parties defendant. *Schriber Sheet Metal & Roofers v. S.*, 28NE(2d) (Ohio) 699.

Where a daughter as trustee, brought an action for a declaratory judgment to determine the rights to property given to her as trustee for benefit of certain beneficiaries, administrator of father's estate, executor of mother's estate, and sister named as sole beneficiary were properly joined as defendants. *State v. Waltner*, 145SW (2d) (Mo) 152.

A daughter who as trustee held certain property given to her by her father for distribution among designated beneficiaries after his decease, was a proper party to petition for declaratory judgment in determining rights and shares of beneficiaries in property. *Id.*

In a declaratory action to determine legitimacy of child all persons interested or likely to be affected by determination should be joined or impleaded as parties, and infant, whose rights are paramount, should be made a party in the manner provided by law, and guardian ad litem appointed to protect its interests. *Melis v. D.*, 24NYS(2d) 51, 260AppDiv772, aff'g 18NYS(2d) 432.

Under Utah Declaratory Judgment Act attorney general has right to be and should be served where statute for state franchise or permit is alleged to be invalid. *Hemenway & Moser Co. v. F.*, 106Pac(2d) (Utah) 779.

Prayer for declaratory judgment cannot be considered where all parties in interest have not been made parties in action, and executors and trustees are interested parties in the matter of probate and construction of will. *State v. Farr*, 295NW (Wis) 21.

#### 9455-12. Act to be remedial.

This is a remedial statute and should be liberally construed. *Continental Casualty Co. v. N.*, (DC-Wis) 32F Supp849.

Purpose of act is to settle and afford relief from uncertainty with respect to rights status, and other legal relations; and it should be liberally construed. *Peterson v. C.*, 107Pac(2d) (Ariz) 205.

The only new right created by the declaratory judgment act is to make disputes as to rights or titles justiciable without proof of a wrong. *Gitsis v. T.*, 16Atl (2d) (NH) 369.

## CHAPTER 78

### Juries

**9458-1. Alternate jurors.**—When in the opinion of the trial judge in any case pending in the district court, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made on the minutes of the court, and immediately after the jury is impaneled and sworn, may direct the calling of not more than two additional jurors, to be known as alternate jurors.

Such jurors must be drawn and have the same qualifications as the jurors already sworn, and be subject to the same examinations and challenges; except, the prosecution or plaintiff shall be entitled to one peremptory challenge and the defendant to two.

Alternate jurors shall be seated near, with equal

facilities for seeing and hearing the proceedings, and shall take the same oath as the jurors already selected. They must attend at all times upon the trial of the cause in company, and be admonished and kept in custody with the other jurors.

Alternate jurors shall be discharged upon the final submission of the case to the jury, unless, before the final submission of the case, a juror dies, or becomes ill so as to be unable to perform his duty, the court may order such a juror to be discharged and draw the name of an alternate, who shall then take his place in the jury box and become a member of the jury as though he had been selected as one of the original jurors. (Act Apr. 16, 1941, c. 256, §1.)

## CHAPTER 79

### Costs and Disbursements

#### 9470. Agreement as to fees of attorney—Etc.

**10. Contract with attorney.**  
Legality of contingent fee contracts to procure "favor" as distinguished from "debt" legislation. 24MinnLaw Rev412.

#### 9477. Interest on verdict, etc.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. *Op. Atty. Gen.*, (421-2-8), Jan. 16, 1941.

#### 9482. Chargeable on estate or fund.

An administrator is not personally liable for costs and disbursements for bringing an action in his representative capacity, except where judgment awarding such costs and disbursements expressly provide that he shall be personally liable or that it shall be enforced against him personally. *Minneapolis St. Ry. Co. v. R.*, 293NW 256. See Dun. Dig. 3673.

Rule seems to be that a favorable issue in first instance is decisive that proceeding was not groundless. *Id.*

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.

#### 9483. Relator entitled to, and liable for.

Board, having acted in behalf of school district in discharge of governmental functions, is not liable for costs or disbursements of mandamus action. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 2207.

#### 9486. Supreme court—Costs and disbursements.

**2. No costs to defeated party.**  
Plaintiff on appeal from a judgment denying a divorce was allowed attorney's fees and disbursements, though she was unsuccessful, where appeal appeared to be made in good faith and upon reasonable grounds. *Rhoads v. R.*, 292NW760. See Dun. Dig. 2804.

#### 8. Discretionary—when not allowed.

Where woman obtaining divorce was awarded \$650.00 as expense money to procure transcript and pay for necessary printing in presentation of her case on appeal, and there was much needless printing in record that easily could have been avoided in view of narrow issues properly brought up, no statutory costs or disbursements were allowed on appeal. *Burke v. B.*, 292NW426. See Dun. Dig. 2238.

Appellant was denied statutory costs on appeal where reversal was had upon a theory not raised in the court below. *Rigby v. N.*, 292NW751. See Dun. Dig. 2238.