

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions 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 digest of all common law decisions.



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its expenses, shall exceed the sum of Two Thousand Dollars (\$2,000.00), all moneys in excess thereof shall be paid to the State Board of Control and used in accordance with the provisions of Section 6 of this act. (Act Jan. 28, 1933, c. 7, §14.)

3260-15. Failure to report to commission.—Whenever any individual or organization shall fail to make a report of receipts of any contest at the time prescribed by the State Athletic Commission or to pay the fee herein provided, or whenever such report is unsatisfactory to the state auditor, the state auditor may examine, or cause to be examined, the books and records of such individual or organization, and subpoena and examine under oath officers and other persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest and the amount due pursuant to the provisions of this act, which amount he may, upon and as the result of such examination, fix and determine. In case of default in the payment of any amount so ascertained to be due, together with the expense incurred in making such examination, for a period of twenty days

after notice to such delinquent individual or organization of the amount at which the same may be fixed by the state auditor, such delinquent shall, ipso facto, forfeit and shall be thereby disqualified from receiving any new license or any renewal of license; and shall in addition forfeit to the state of Minnesota the sum of Five Hundred Dollars (\$500.00), which may be recovered by the Attorney General in the name of the state of Minnesota in the same manner as other penalties are by law recovered. (Act Jan. 28, 1933, c. 7, §15.)

3260-16. Acts repealed.—Mason's Minnesota Statutes of 1927, Sections 3251 to 3260, inclusive, are hereby repealed. (Act Jan. 28, 1933, c. 7, §16.)

3260-17. Acts repealed.—Mason's Minnesota Statutes of 1927, Section 10286 so far as inconsistent with this Act is hereby repealed. (Act Jan. 28, 1933, c. 7, §17.)

3260-18. Effective May 1, 1933.—This act shall take effect and be in force from and after May 1, 1933. (Act Jan. 28, 1933, c. 7, §18.)

CHAPTER 17

Illegitimate Children—Bastards

3261. Complaint—Where filed—Warrant.

At common law the father was not charged with the support of his illegitimate child, and the bastardy statute charges the father with the support of such child and furnishes the only remedy. 175M547, 221NW911.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. *State v. Soyka*, 181M533, 233NW300. See Dun. Dig. 10312.

Bastardy proceeding is civil in character rather than criminal. *State v. Hanson*, 187M235, 244NW809. See Dun. Dig. 827.

Bastardy proceedings are civil in nature rather than criminal. *State v. Thompson*, 193M364, 258NW527. See Dun. Dig. 827.

Bastardy proceeding is civil in essence, though presenting a criminal aspect in some of its forms. *State v. Oslund*, 199M604, 273NW76. See Dun. Dig. 827.

An illegitimacy proceeding is civil in nature rather than criminal and state is not liable for costs to a defendant receiving a favorable verdict. *Op. Atty. Gen.* (199a-1), Oct. 9, 1935.

3262. Action, how entered—Proceedings.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. *State v. Jeffrey*, 188M476, 247NW692. See Dun. Dig. 827(76).

3265. Trial—Exclusion of public, etc.

State v. Strong, 192M420, 256NW900; note under §3268. Verdict in bastardy case held not sustained by evidence. 173M294, 217NW118.

Evidence held sufficient to sustain a conviction. 173M627, 218NW110.

Where defendant was adjudged father of illegitimate child and was directed to pay certain sums for its support to a child welfare board which agreed to pay such sums to the plaintiff for boarding and caring for the child, plaintiff could sue the welfare board for sums received by it. *Salvas v. E.*, 175M484, 221NW719.

Exclusion of evidence of intercourse with third person at indefinite prior time, held proper, and evidence of promise to marry during period of illicit relation was admissible. 179M80, 228NW335.

Evidence held to support conviction. 179M436, 229NW564.

Defendant in filiation proceeding held not entitled to dismissal for lack of speedy trial because of his own conduct contributing to delay. *State v. Hanson*, 187M235, 244NW809. See Dun. Dig. 842, 2469.

Mother of illegitimate is not entitled to recover from adjudged father money expended by her in care and support of child, father having been ordered by district court to make periodical payments to a county welfare board. *Lawson v. M.*, 189M93, 248NW658.

Evidence in bastardy proceeding held to sustain verdict that defendant was father of child. *State v. Rasmussen*, 193M374, 258NW503. See Dun. Dig. 840.

Delay in telling of pregnancy and who is father of child is only a fact to be considered by jury in judging the truth of the charge. *State v. Thompson*, 193M364, 258NW527. See Dun. Dig. 840.

In a bastardy case state need not prove its case beyond a reasonable doubt, but only by a fair preponderance of evidence. *Id.* See Dun. Dig. 837.

In bastardy proceeding, evidence held to sustain jury's

finding of defendant's guilt. *Id.* See Dun. Dig. 840.

Credibility of witnesses in bastardy case is for jury. *State v. Thorson*, 193M382, 258NW575. See Dun. Dig. 840.

Weight to be given testimony of witnesses in bastardy proceeding is for jury. *Id.*

Although a bastardy proceeding has some of the features of a criminal trial, it is substantially a civil action, and, after a verdict of not guilty, court may grant a new trial. *State v. Reigel*, 194M308, 260NW293. See Dun. Dig. 827, 2425.

A defendant in a bastardy proceeding is entitled to prove good character as to chastity and morality. *State v. Oslund*, 199M604, 273NW76. See Dun. Dig. 839.

Evidence held to sustain a verdict against defendant. *Id.* See Dun. Dig. 840.

Guardian of illegitimate child may claim payments after death of father but only those that had matured at time of death. *Op. Atty. Gen.*, Aug. 21, 1933.

County attorney cannot charge for his services in suing on bonds in bastardy proceedings. *Op. Atty. Gen.* (121b-11), May 31, 1935.

County is responsible for lying in expenses and doctor bills of mother of illegitimate child. *Op. Atty. Gen.* (339d-3), July 6, 1936.

3266. Father to pay all expenses.

Lawson v. M., 189M93, 248NW658; note under §3265. Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

3267. Application for discharge from imprisonment.

State v. Strong, 192M420, 256NW900; note under §3268.

3268. Hearing—Judgment.

Conviction of bastardy, held free from error. 181M374, 232NW624. See Dun. Dig. 827.

Father of a bastard cannot be punished for contempt in not obeying an order to pay money which it is not in his power to obey. *State v. Strong*, 192M420, 256NW900. See Dun. Dig. 850, 1703.

Finding of paternity held sustained by evidence. *State v. Van-Guilder*, 199M214, 271NW473. See Dun. Dig. 890.

3270. Procedure—Warrant.

Indication by court that instructions given were requested by one of the parties, held error. 181M374, 232NW624. See Dun. Dig. 9776(13).

3272.

Lawson v. M., 248NW658; note under §3265.

(a) State board of control or guardian may make settlement.

Paternity proceedings should be instituted regardless of property settlement between mother and father of illegitimate. *Op. Atty. Gen.* (121b-11), Sept. 3, 1935.

(c) Records private.

Confidential information given to child welfare board should be classed as privileged and its disclosure would be contrary to public interest. *Op. Atty. Gen.*, Dec. 29, 1933.

Justice of peace records are open to inspection of public except illegitimacy proceedings. *Op. Atty. Gen.* (851), July 1, 1935.