

1934 Supplement
To
Mason's Minnesota Statutes
1927

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

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



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Language in a notice of appeal from probate court held merely descriptive of the order appealed from and as not attempting to limit the appeal to that portion of the order unfavorable to appellant. *Parcker's Estate*, 182M191, 236NW206. See Dun. Dig. 7789.

Statute requires that notice of appeal from probate to district court be served and filed with proof of service within 30 days after notice of decision appealed from. *Otting v. P.*, 247NW804. See Dun. Dig. 7783(47).

Where no written notice of filing of decision is given, but notice of appeal is served, appellant must be considered as having had notice, or to have waived notice, not later than day on which notice of appeal was served. *Id.* See Dun. Dig. 7788, 7789.

8986. Return.

Probate court cannot charge fee for making return. *Op. Atty. Gen.*, Apr. 30, 1929.

8988. Notice of trial, etc.

On an appeal from an order of the probate court admitting a will to probate, burden is on proponent to prove testamentary capacity of testator. 172M217, 214NW892.

Court should make findings of fact, but this may be waived where the decision necessarily decided the question of fact involved. 172M217, 214NW892.

On appeal the issue is the same as it was in the probate court. If the order was right when made, it cannot be reversed. 172M231, 215NW223.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Dismissal for failure to file appeal in district court is discretionary. 181M217, 232NW1. See Dun. Dig. 7787a.

On appeal to district court from an order of the probate court amending a final decree of distribution after the time for appeal from such decree had expired the trial is de novo, and, there being no pleadings in the district court, that court must determine the right to

amendment upon the petition filed in the probate court and the proof in support thereof. 181M528, 233NW305. See Dun. Dig. 7794(76).

The recitals or findings in the order appealed from cannot serve as proof of the existence of the facts averred in the petition. 181M528, 233NW305. See Dun. Dig. 7794.

Order of district court dismissing appeal from probate court is not appealable. *In re Ploetz' Will*, 186M395, 243NW383. See Dun. Dig. 294.

8989. Proceedings in certain cases—Trial.

Order of probate court settling account of administrator is conclusive on sureties on bond. 42F(2d)266. See Dun. Dig. 3580f.

District court is without jurisdiction of settlement of accounts of administrator except on appeal. 42F(2d)266. See Dun. Dig. 2759(28).

District court, on appeal from order of probate court, has inherent equity power and jurisdiction to permit or compel a set-off on equitable grounds. An agreement for a set-off is one ground for allowing it in equity. *Browning v. E.*, 249NW573. See Dun. Dig. 7795.

8990. When judgment affirmed—When reversed.

42F(2d)266; note under §8989.
Exercise of judicial discretion by the probate court will not be reversed on appeal, except for a clear abuse thereof. *Fults' Estate*, 177M311, 225NW152.

Weight of inferences and findings of fact by court in a proceeding involving construction of ambiguous will. 177M311, 225NW156.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Practice in district court of moving for a new trial after a trial de novo and findings made affirming the probate court, and in appealing from the order denying the new trial is not commended. *Walker's Estate v. M.*, 183M325, 236NW485. See Dun. Dig. 294, 300, 7795.

CHAPTER 75

Courts of Justices of the Peace

GENERAL PROVISIONS

8993. Jurisdiction limited to county.

Justice of peace may hold also office of city assessor. *Op. Atty. Gen.*, Apr. 18, 1932.

8994. Place of holding court.

Does not authorize justice to regularly hold court in another town so as to usurp the office of the local justice. *Op. Atty. Gen.*, Mar. 19, 1929.

COMMENCEMENT OF ACTIONS

9005. Summons—Service.

174M608, 219NW452; note under §9110.

PLEADINGS AND TRIAL

9029. Title to real estate—Case certified.

Removal to district court from municipal court forcible entry and detainer case. 178M282, 226NW847.

REPLEVIN

9072. Writ—When returnable.

A writ of replevin issued pursuant to Laws 1895, c. 229, §22, is valid. 178M174, 226NW405.

APPEALS

9092. May be taken, when.

Where an appeal is taken on questions of law and the judgment is reversed, the suit is no longer pending so as to bar a second suit on the same cause of action. 173M29, 216NW252.

9093. Requisites.

1. Time for appeal.

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. *Anderson v. G.*, 183M336, 236NW483. See Dun. Dig. 486(74).

2. Notice of appeal.

Notice of appeal from municipal court cannot be served by mail. 178M366, 227NW200.

3. Miscellaneous.

Though notice of appeal served by mail was ineffective, the district court obtained jurisdiction where appellee moved there for judgment against garnishee. 178M366, 227NW200.

9099. Return or amendment compelled, when.

Amendment of defective record on appeal from municipal court. *Op. Atty. Gen.*, Dec. 9, 1930.

CRIMINAL PROCEEDINGS

9110. Jurisdiction.

Justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in Minneapolis. 174M608, 219NW452.

Waiver gives no such jurisdiction. *Id.*

Village justices and constables have jurisdiction under criminal acts committed outside village boundaries except offenses committed within the limits of any city or village wherein a municipal court is organized and existing. *Op. Atty. Gen.*, May 19, 1931.

9111. Same—To try and determine.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. *State ex rel. Ryan v. M.*, 182M368, 234NW453. See Dun. Dig. 6900b(63).

9112. Complaint—Warrant.

Labeling complaint and warrant as though state of Minnesota were plaintiff was mere irregularity that did not affect jurisdiction of justice, and additional language "against the form of the statute in such case made and provided," when charging a violation of an ordinance, was mere surplusage. 177M617, 225NW286.

It is sufficient to state the facts and identify the ordinance by number. 177M617, 225NW286.

Section is not applicable where the charge constitutes a felony. *Op. Atty. Gen.*, Aug. 5, 1930.

9117. Arraignment.

Right of defendant to appeal after plea of guilty in municipal court. *Op. Atty. Gen.*, Dec. 9, 1930.

9130. Allowance of appeal.

Where there is an appeal from conviction in justice court for violation of game and fish laws, revocation of defendants license is ineffective until conviction on appeal. *Op. Atty. Gen.*, Dec. 19, 1929.

9131. How tried.

Roehrs v. T., 185M154, 240NW111; note under §9277.

9142. Judgment on conviction—Commitment—Execution.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine.

but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

Justice of the peace must see that fines are paid or defendant committed to jail, but fines may be collected by execution. Op. Atty. Gen., Aug. 15, 1933.

Successor of deceased justice is not compelled to issue commitment on four-year-old judgment. Op. Atty. Gen., Oct. 3, 1933.

9145. Fines—How collected and paid over.

A justice of the peace, where the prescribed punishment is in the alternative as between a fine or jail

sentence, may impose a straight jail sentence without the option of a fine, but where a defendant is sentenced to pay a fine and an alternative jail sentence is imposed in default of payment of the fine, the commitment should so state because the defendant is entitled to pay his fine to the sheriff any time after he is committed, and thereupon be released. Op. Atty. Gen., Feb. 28, 1931.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

CHAPTER 76

Forcible Entry and Unlawful Detainer

9148. Unlawful detention of lands or tenements subject to fine.

In forcible entry and detainer, exclusion of evidence of defendants of nondelivery of quitclaim deed to plaintiffs, held not error in absence of showing that it affected plaintiff's actual possession. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3244.

Evidence that plaintiff had been in actual possession of building for over a year and that defendant entered unlawfully, warranted directed verdict for restitution. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3783.

It is not necessary to prove that detention was forcible, but it is sufficient to prove it to be unlawful. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3783.

In forcible entry and detainer, court did not err in excluding from evidence decree to which defendants were not parties or privies. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 5156.

9149. Recovery of possession.

Minn! Bldg. & Loan Ass'n. v. C., 182M452, 234NW872.

4. When action will lie.

Force is not a necessary element to authorize action. 178M282, 226NW847.

To render a constructive eviction a defense tenant must abandon or surrender premises on account thereof. Leifman v. P., 186M427, 243NW446. See Dun. Dig. 5425.

Description of property in lease and in contract for deed held substantially same and sufficient to readily identify property. Gruenberg v. S., 248NW724. See Dun. Dig. 3785.

Mortgagee in possession is entitled to hold it as against mortgagor in action of forcible entry and detainer, mortgagor being in default. Schmit v. D., 249NW580. See Dun. Dig. 6242.

5. Who may maintain.

Lessee held real party in interest as against one in possession of property holding over after cancellation of a contract for deed. Gruenberg v. S., 248NW724. See Dun. Dig. 3783.

Sheriff may maintain action against tenant on land bid in by state for non-payment of taxes. Op. Atty. Gen.

6. Parties defendant.

Husband of person holding under contract for deed could be ejected in separate action against him alone. 178M282, 226NW847.

In forcible entry, evidence held to sustain finding that defendant was mortgagee in possession. Schmit v. D., 249NW580. See Dun. Dig. 6238.

7. Demand—notice to quit.

Where a tenant is in default in the payment of rent, the landlord's right of action for forcible entry and unlawful detainer is complete notwithstanding the lease contains a right to terminate optional with the landlord and effective upon sixty days' notice. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 5440(88).

9155. Judgment—Fine—Execution.

Judgment in previous action for wrongful detainer, held not estoppel in second action for same relief. Steinberg v. S., 186M640, 244NW105. See Dun. Dig. 5159, 5163, 5167.

9157. Writ of restitution.

Defendant evicted from premises under a writ of restitution has a right to appeal and have a trial de novo. 178M460, 227NW656.

9158. Appeal.

178M460, 227NW656; note under §9157. Roehrs v. T., 185M154, 240NW111; note under §9277.

CHAPTER 77

Civil Actions

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

A private school held not negligent as to a spectator at a football game injured when players accidentally rolled out of bounds. Ingerson v. S., 185M16, 239NW667. See Dun. Dig. 6988, 8673.

In an action to recover damages for the failure of a bank to perform an agreement with a customer to pay, out of funds placed in its hands, an existing mortgage upon the customer's real property, general damages for injury to the customer's credit standing and for mental suffering are not recoverable. Swanson v. F., 185M89, 239NW900. See Dun. Dig. 2559-2569.

1. Election of remedy.

Election of remedies. 171M65, 212NW738.

Action to recover on an express contract, held not an election of remedies so as to bar a subsequent action in conversion. 178M93, 226NW417.

A judgment entered on a verdict directed for the defendant on the ground that the defendant was not authorized by the law under which it was organized to execute the promissory notes alleged as causes of action by the receiver of the payee bank is not a bar to action for money had and received. Turner v. V., 182M115, 233NW856. See Dun. Dig. 5169.

Where the party defrauded has performed his contract to a substantial extent before discovering the fraud, he may elect to continue performance and sue for the fraud, without attempting to rescind. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 10092(61), (62).

If the defrauded party relies solely on a guaranty or warranty, there can be no recovery on the ground of fraud, but that is ordinarily a question of fact. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 10100(55).

2. Conflict of laws.

See notes under §154.

3. Contract or tort.

Where defendant counterclaims for money or property wrongfully obtained, he waives tort and elects to

rely on implied contract of plaintiff to repay money or pay value of property taken. Kubat v. Z., 186M122, 242NW477. See Dun. Dig. 88.

4. Criminal acts.

That defendant's conduct is criminal does not preclude civil remedy by injunction. State v. Nelson, 248NW751. See Dun. Dig. 4190, 7271.

5. Abatement of actions.

Abatement of action for former action pending. 172M8, 214NW669.

Where laundry building was leased and personal property therein concurrently sold under conditional sales contract, pendency of replevin action and retaking of personal property did not abate unlawful detainer under lease. Steinberg v. S., 186M640, 244NW105. See Dun. Dig. 5.

6. Common counts.

An action for money had and received did not lie to recover money paid to purchaser at foreclosure, but owner could recover from such purchaser money received by the latter from the sheriff on a subsequent redemption by a creditor who was entitled to the land because the owner failed to file his certificate. 177M563, 225NW815.

Where a contract is completed, an action will lie on the common counts for the balance due. 178M275, 226NW933.

7. Equitable remedies.

In an action for equitable relief on account of the breach of a contract for maintenance and care of an aged person, given to him in consideration of a deed of his property, the court may grant such relief as the facts will in equity and good conscience justify. Johnson v. J., 183M262, 238NW483. See Dun. Dig. 3142(60).

Where relief is sought for alleged excessive corporation salaries, and plaintiff is barred by covenant not to sue for original corporate act fixing such salaries, equity will not afford relief against their continuance.