

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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MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1938

Each group seeking to establish relationship to decedent must carry burden of proof of showing such and cannot rely upon weakness of claims of opposing group. Id.

In a contest between two groups of claimants to an estate, evidence sustains finding that petitioners were decedent's next of kin and as such entitled to estate. Id.

8992-190. Escheat returned.—After the determination of the inheritance tax, the State Auditor shall recommend in writing to the Legislature an appropriation for payment, or if the escheat was of realty, a conveyance thereof to the persons designated in such final decree. After such appropriation or authorization for conveyance by the Legislature, and upon payment of the inheritance tax, the auditor shall draw his warrant on the State Treasurer, or execute a proper conveyance of the realty, to the persons designated in such final decree. (G. S. 8728) (Act Mar. 29, 1935, c. 72, §190.)

8992-191. Disclosure proceedings.—Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent, or of any instruments in writing relating to such property, the court, upon such notice as it may direct may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court. (G. S. 8804, 8805) (Act Mar. 29, 1935, c. 72, §191.)

8992-192. No abatement.—No action or proceedings commenced by a representative shall abate by reason of the termination of his authority. (Act Mar. 29, 1935, c. 72, §192.)

8992-193. Murderer disinherited.—No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the

person upon whose life such policy or certificate is issued. (G. S. 8734) (Act Mar. 29, 1935, c. 72, §193.)

8992-194. State patents.—Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life. (G. S. 8721) (Act Mar. 29, 1935, c. 72, §194.)

8992-195. Federal patents.—Whenever any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees," the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate insofar as the same may be applicable, shall pertain to and govern the procedure in the action provided for in this section. (G. S. 8733, 8733-1; L. 1921, c. 36, Sec. 2) (Act Mar. 29, 1935, c. 72, §195.)

8992-196. Repeal.—Chapter 74, Mason's Minnesota Statutes of 1927, Chapter 74, the 1934 Supplement to Mason's Minnesota Statutes of 1927 (except laws relating to salaries and clerk hire, curative laws, G. S. 8833, 8976 as amended by Laws 1931, c. 301, 8977, 8979, 8980, 8981, 8982), G. S. 7581, Laws 1931, c. 33, Laws 1931, c. 259, and all other laws inconsistent herewith are repealed. (Act Mar. 29, 1935, c. 72, §196.)

8992-197. G. S. Defined.—Unless the context otherwise indicates, the term "G. S." as used in this act means "Mason's Minnesota Statutes of 1927, Section." The term (G. S.—) or (L.— c.—) at the end of a Section indicates its origin only. (Act Mar. 29, 1935, c. 72, §197.)

8992-198. Constitutionality.—If any part of this act be declared unconstitutional, no other part shall be affected thereby. (Act Mar. 29, 1935, c. 72, §198.)

8992-199. Name of act.—This act may be cited as the Minnesota Probate Code. For convenience only, the table of contents immediately preceding Article I shall be appended to and printed with this act immediately preceding Article I. (Act Mar. 29, 1935, c. 72, §199.)

8992-200. Date of effect.—This act shall take effect and be in force from and after 12:01 A. M., July 1, 1935. (Act Mar. 29, 1935, c. 72, §200.)

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.

8996. Powers—Laws applicable.

2. Practice generally.

A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct 4, 1934.

Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

9000. Docket—Contents.

1. In general.

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

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.

In action in justice court under unlawful detainer statute, cause is not removable to district court, on ground that title to real estate is involved, unless and until such title comes in issue on evidence presented in that court. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig 3784.

EXECUTION

9069. Executions and transcripts where court discontinued.

On adoption of municipal court in city of Springfield all books and records of discontinued justice court are

delivered to municipal court which may issue all necessary executions and transcripts. Op. Atty. Gen., Mar. 17, 1934.

REPLEVIN

9072. Writ—When returnable.

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

ATTACHMENT

9084. Where defendant resides in another county.

See Laws Sp. Ses. 1935-36, c. 88, establishing municipal court for St. Cloud.

APEALS

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. 173 M29, 216NW252.

9093. Requisites.

1/2. 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.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justice of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

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.

4. Fees.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

9096. Appeals, how tried—Judgment.

1. Appeals on questions of law and fact.

Where defendant appeals from a judgment rendered by a justice court to a superior court for trial de novo, such appeal constitutes a general appearance in action and amounts to a waiver of any previous want of jurisdiction. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig. 476, 479.

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, 234 NW453. See Dun. Dig. 6900b(63).

Justice court has no jurisdiction where penalty exceeds three months' imprisonment. Op. Atty. Gen. (266b-21), July 15, 1937.

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.

9115. Bail—Commitment.

Justice of the peace cannot accept cash bail. Op. Atty. Gen. (266a-2), Aug. 28, 1934.

9117. Arraignment.

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

9119. Plea of not guilty.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

9127. Judgment on conviction.—Whenever the accused is tried under the preceding provisions of this sub-division and found guilty, or is convicted on a plea of guilty, the justice shall render judgment thereon and inflict such punishment, either by fine or imprisonment or both as the nature of the case may require, provided, however, that when the facts of the case so warrant the justice shall have power in his discretion to suspend sentence or place the defendant on probation for a period not exceeding one year, or where a fine has been imposed to order such fine to be paid in installments over a period not exceeding one year. (As amended Mar. 8, 1937, c. 60, §1.)

9129. Appeal—Requisites.

A cash bond may not be posted with justice of peace in lieu of recognizance with sureties. Op. Atty. Gen. (266b-1), May 29, 1934.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Id.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justices of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

Where city charter is silent on appeal from convictions of violation of ordinance in municipal court, appeals may be taken under this section. Op. Atty. Gen. (6h), June 11, 1937.

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. On appeal from a conviction in a justice court of violation of a municipal ordinance, district court has no jurisdiction to try and convict defendant for a crime against a statute which is beyond jurisdiction of justice court, there having been no new and original proceeding against defendant in district court. State v. Kartak, 195M188, 262NW221. See Dun. Dig. 5349.

Defendant may enter plea of guilty in district court on appeal from justice court conviction. Op. Atty. Gen. (341b), June 4, 1937.

9136. Certificate of conviction, etc.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

9137. Report to county attorney.

Where grand larceny case against a number of boys was transferred from justice court to juvenile court, references to such case should be left entirely out of report unless boys were remanded to custody of justice court for the purpose of binding them over to district court. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

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.