

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

Edited by
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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.

Court has no authority to release a psychopathic personality patient on bond before commitment. *Op. Atty. Gen.* (248B-11), Dec. 26, 1941.

Due process, equal protection, and indefinite legislation. 24MinnLawRev687.

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.)

Though probate court acquired jurisdiction of estate on filing of petition for administration as an intestate estate, it could not proceed to probate a will without complying with §8992-53, requiring that upon filing of a petition for probate of a will court shall fix time and place of hearing thereof, notice of which shall be given pursuant to §8992-188. *Stenzel's Estate*, 210M509, 299NW 2. See *Dun. Dig.* 3562c, 10245.

Mandamus lies to compel judge of probate by order to fix time and place of hearing on a petition for probate of a will that notice thereof might be given pursuant to statute. *Id.* See *Dun. Dig.* 5766.

Notice by mail which formerly was only a requirement by rule is now made mandatory by this section. *Id.* See *Dun. Dig.* 7783h.

While failure to give notice required by statute does not affect jurisdiction of probate court, it does affect regularity of proceedings so as to render them voidable and subject to be set aside on motion or appeal. *Id.* See *Dun. Dig.* 7783h, 10245.

A probate notice involving estate of a decedent born in Germany, or the heirs, devisees, or legatees of such decedent, living in Germany, should be forwarded to German ambassador at Washington, to be then governed by federal law and federal regulations. *Op. Atty. Gen.* (346B), Jan. 2, 1942.

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.)

[647.48]

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.)

8992-196. Repeal.

In counties where no special act prevails, salaries of clerks and employees shall be fixed by judge of probate, and this duty cannot be delegated to county board. *Op. Atty. Gen.* (348A), Aug. 4, 1941.

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*, 206M446, 288 NW845. 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*, 208M342, 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.

8999. Action, where brought.

Justice of the peace at a county seat has jurisdiction if defendant is a non-resident and is served within the county, and defendant has no right to a change of venue to the county of his residence, but if an appeal is taken from the justice's decision to a municipal or district court, then a change of venue may be taken to the county of defendant's residence upon compliance with statute. *Op. Atty. Gen.* (266b-11), Nov. 10, 1943.

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.

Justice of the peace at a county seat has jurisdiction if defendant is a non-resident and is served within the county, and defendant has no right to a change of venue to the county of his residence, but if an appeal is taken from the justice's decision to a municipal or district court, then a change of venue may be taken to the county of defendant's residence upon compliance with statute. Op. Atty. Gen. (266b-11), Nov. 10, 1943.

TRIAL BY JURY

9034. Demand for jury.

Where a justice of the peace denies a jury trial in a civil action to a party who is entitled to it, party has an adequate remedy by appeal and is not entitled to a writ of mandamus to compel enforcement of the right. State v. Delaney, 213M217, 6NW(2d)97. See Dun. Dig. 5300.

Right of justice of the peace and a sheriff or constable to advance payment of their fees when jury trial is demanded in justice court. Id.

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, page I, this volume.

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.

APPEALS

9093. Requisites.

Editorial note.—Affidavits and notices are now to be filed in district court.

3. Miscellaneous.

On appeal from conviction under municipal ordinance of village of Golden Valley, clerk of district court may not accept a cash deposit in lieu of a bond but may accept a bond signed by appellant himself with a cash deposit as security, and failure of appellant to file a bond and to deposit two dollars with the clerk is fatal to jurisdiction. Op. Atty. Gen. (266b-1), June 30, 1943.

4. Fees.

On appeal from conviction under municipal ordinance of village of Golden Valley, clerk of district court may not accept a cash deposit in lieu of a bond but may accept a bond signed by appellant himself with a cash deposit as security, and failure of appellant to file a bond and to deposit two dollars with the clerk is fatal to jurisdiction. Op. Atty. Gen. (266b-1), June 30, 1943.

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.

Municipal court has no power to issue search warrant for search of premises in another county. Op. Atty. Gen. (306b), Apr. 12, 1941.

Successor to office entitled to enforce sentence of conviction of predecessor and collect fines remaining unpaid upon docket. Op. Atty. Gen. (266b-11), July 11, 1942.

(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, 208M342, 294NW370. See Dun. Dig. 5340.

9111. Same—To try and determine.

Municipal court has no power to issue search warrant for search of premises in another county. Op. Atty. Gen. (306b), Apr. 12, 1941.

Justices of the peace have no jurisdiction over gross misdemeanor cases nor can jurisdiction be conferred by consent. Op. Atty. Gen. (208g-11), May 24, 1943.

9113. Entries in docket.

After criminal trial has started justice may continue it from day to day or week to week, but after all evidence is in he loses jurisdiction by continuing the case

without entering sentence for purpose of permitting defendant to enter the military service. Op. Atty. Gen. (266b-11), Sept. 9, 1942.

9114. Action, when tried.

After criminal trial has started justice may continue it from day to day or week to week, but after all evidence is in he loses jurisdiction by continuing the case without entering sentence for purpose of permitting defendant to enter the military service. Op. Atty. Gen. (266b-11), Sept. 9, 1942.

9118. On plea of guilty.

Case cannot be reopened after commitment has been issued on a plea of guilty. Op. Atty. Gen. (266b-3), Aug. 20, 1942.

9127. Judgment on conviction.—When the accused is tried under the provisions of this chapter 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 as the nature of the case may require. When the facts of the case so warrant the justice may suspend sentence or place the defendant on probation for a period not exceeding one year or, where a fine has been imposed, order such fine to be paid in instalments over a period not exceeding one year. (As amended Apr. 9, 1943, c. 354, §1.)

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

Justice of the peace has no right to stay execution of sentence to allow defendant to pay his fine, and he may not issue a bench warrant, but he can enforce judgment and sentence by issuing an "order of commitment". Op. Atty. Gen. (266b-27), June 12, 1941.

A justice of the peace may fine a defendant \$100 or ninety days in jail and then suspend \$50 of the fine and 45 days in jail on good behavior for one year and issue a commitment if defendant breaks terms of suspension. Op. Atty. Gen. (266b-21), July 15, 1941.

Justice of the peace may suspend sentence and place defendant on probation for a period not exceeding one year under reasonable terms and conditions. Id.

A justice of the peace may not give both a fine and a jail sentence. Id.

Power of justice of the peace to suspend a sentence must be exercised at the time of imposition. There is no power to suspend on conviction for a third offense. Op. Atty. Gen. (266b-21), Nov. 6, 1941.

A village justice has authority to suspend sentence in case of a violation of a village ordinance, and village is required to pay fees. Op. Atty. Gen. (266B-8), Jan. 2, 1942.

9128. Acquittal—Judgment for costs.

If justice in prosecution under a village ordinance does not certify that complaint was wilful and malicious and without proper cause, costs cannot be assessed against complainant. Op. Atty. Gen. (199a-3), Nov. 18, 1941.

9129. Appeal—Requisites.

Right to appeal from conviction is waived by payment of fine. Op. Atty. Gen. (208G), Feb. 27, 1942.

On appeal to district court by a person convicted of a violation of a city traffic ordinance, case is tried in district court as if originally commenced therein, if upon questions of law and fact, but only upon return of justice or municipal court if appeal was on questions of law only. Op. Atty. Gen. (6h), May 12, 1942.

On appeal from conviction under municipal ordinance of village of Golden Valley, clerk of district court may not accept a cash deposit in lieu of a bond but may accept a bond signed by appellant himself with a cash deposit as security, and failure of appellant to file a bond and to deposit two dollars with the clerk is fatal to jurisdiction. Op. Atty. Gen. (266b-1), June 30, 1943.

9130. Allowance of appeal.

License of one convicted of driving while under influence of liquor should not be revoked until appeal is determined. Op. Atty. Gen. (291f), Dec. 8, 1941.

9131. How tried.

On appeal to district court by a person convicted of a violation of a city traffic ordinance, case is tried in district court as if originally commenced therein, if upon questions of law and fact, but only upon return of justice or municipal court if appeal was on questions of law only. Op. Atty. Gen. (6h), May 12, 1942.

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.

9137. Report to county attorney.

Section does not apply to municipal court of city of Little Falls. Op. Atty. Gen. (121B-17), Jan. 21, 1942.

9140. Want of final jurisdiction—Proceedings.

Justices of the peace have no jurisdiction over gross misdemeanor cases nor can jurisdiction be conferred by consent. Op. Atty. Gen. (208g-11), May 24, 1943.

9142. Judgment on conviction—Commitment—Execution.

After criminal trial has started justice may continue it from day to day or week to week, but after all evidence

is in he loses jurisdiction by continuing the case without entering sentence for purpose of permitting defendant to enter the military service. Op. Atty. Gen. (266b-11), Sept. 9, 1942.

Where sentence imposes a fine of \$100.00, payable in installments, or ninety days in jail, and defendant has paid only half of the fine, justice may commit defendant to jail for ninety days without credit for part of fine paid. Op. Atty. Gen. (266b-11), Sept. 9, 1942.

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 page I, this volume.

9140. Recovery of possession.**2. Nature and object of action.**

An incompetent's guardian who, contrary to provisions of a will giving incompetent exclusive use of certain rooms in testator's dwelling, consents to use and occupancy of rooms by a member of his own household under a rental arrangement cannot maintain an action of trespass against occupant, latter's entry not having been forcible or unlawful. *Martin v. Smith*, 214M9, 7NW(2d) 481. See Dun. Dig. 5448.

9152. Summons—How served.

Order denying motion to vacate and set aside restitution judgment of municipal court in unlawful detainer for lack of jurisdiction upon grounds of want of service or defective service of summons is conclusive on that question. *Ferch v. Hiller*, 210M3, 297NW102. See Dun. Dig. 5194a.

9155. Judgment—Fine—Execution.

Judgment of restitution of municipal court in unlawful detainer action is conclusive not only of right of possession but fact upon which such right rested, and where plaintiff claimed title and right of possession as owner and defendant claimed right of possession under a contract for deed which owner claimed was duly cancelled, judgment for plaintiff was res judicata as to fact of cancellation of contract. *Ferch v. Hiller*, 210M3, 297NW102. See Dun. Dig. 3784.

9158. Appeal.

Where attempted appeal from a judgment in an unlawful detainer case was premature cause taken before entry of judgment, and appellee promptly obtained dismissal of appeal, defendant is liable independently of appeal bond for any damage caused plaintiff by the attempted appeal, though he and the surety are not liable as obligors under the appeal bond. *Hampshire Arms Hotel Co. v. St. Paul Mercury & Indem. Co.*, 215M60, 9NW(2d)413. See Dun. Dig. 462a.

CHAPTER 77

Civil Actions

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

In quo warranto instituted by attorney general to test corporate existence of a newly organized village, proceedings are governed by common law rules in the absence of any legislation or any controlling consideration to the contrary. *State v. Village of North Pole*, 213M297, 6NW(2d)458. See Dun. Dig. 1503.

As authorized by our constitution and statutes, quo warranto is not the old common law writ, but rather the information in the nature of quo warranto as left by the changes brought about by St. 9 Anne, c. 20, and came into this country by adoption in that form as a part of our common law. *Id.* See Dun. Dig. 8059.

Since quo warranto is an extraordinary legal remedy, procedure is not governed by requirements of service of notice of trial applicable in ordinary civil actions, for reasons that upon respondents in such a case rests burden of showing, before a court of competent jurisdiction at a stated time and place designated in the writ, by what warrant they exercised powers claimed by them. *Id.* See Dun. Dig. 8072.

Court attached no importance to exact common-law classification of plaintiff's purported cause of action, the common-law forms of action having been abolished in this state. *Martin v. Smith*, 214M9, 7NW(2d)481. See Dun. Dig. 94.

COMMON LAW
DECISIONS RELATING TO ACTIONS
IN GENERAL**1/2. In general.**

Fact that plaintiff receiving personal injuries from negligence seeks only part of damages recoverable does not change nature of his cause of action. *Eklund v. Evans*, 211M164, 300NW617. See Dun. Dig. 14, 94.

Every cause of action consists of plaintiff's primary right and defendant's corresponding duty and an invasion of that right or a breach of that duty by defendant by some wrong or delict. *Id.* See Dun. Dig. 84a.

A cause of action is to be distinguished from the remedial rights arising therefrom and remedies by which such rights are enforced, cause of action being legal wrong done to plaintiff by defendant, and remedy being legal process by which remedial right is consummated or satisfied. *Id.* See Dun. Dig. 85.

A single wrongful act affecting only one person gives rise to but a single cause of action. *Id.* See Dun. Dig. 94.

Remedial right for personal injuries caused by negligence is recovery of compensatory damages, and right to damages is effect or consequence of cause of action. *Id.* See Dun. Dig. 6969.

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.*, 206M288, 288NW393. See Dun. Dig. 2914.

In action by Sunday School teacher against church for injuries suffered when a stack of folding chairs toppled due to activities of pupils, striking a concealing screen which in turn struck teacher, negligence of church was for jury. *Logan v. Hennepin Avenue Methodist-Episcopal Church*, 210M96, 297NW333. See Dun. Dig. 6996.

That purchaser of automobile unsuccessfully sought rescission after discovery of fraud did not bar subsequent action for damages for deceit, after subsequently completing contract. *Kohanik v. Beckman*, 212M11, 2NW(2d) 125. See Dun. Dig. 8612.

2. Conflict of laws.

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

In diversity of citizenship cases, the federal courts must follow the conflict of laws rules prevailing in the states in which they sit. *Klaxon v. Stator Electric Mfg. Co.*, 313US487, 61SCR1020, 85LED1477. See Dun. Dig. 3748.

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.

In action by United States against a California county for specific performance of a contract respecting operation of bridges over a canal constructed by United States no question respecting federal government's control over navigable waters was involved, and hence state court decision holding contract to be void for lack of mutuality was binding on federal court. *Alameda County v. U. S.*, (CCA9), 124F(2d)611. See Dun. Dig. 3748.

State law to be controlling in federal courts need not be declared by highest court in state, but must be accepted in federal courts when declared by intermediate courts of state unless there is "convincing evidence that the law of the state is otherwise." *Id.*

State law to be applied by federal court on review, is that existing at time of its decision, even though it may differ from that which existed when case was tried below. *Id.*

Act of Congress authorizing turning over bridge to county did not make federal law applicable where