

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  
the  
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**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.

**9149. 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. Stentor 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