

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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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9455-7. Orders, judgments and decrees may be reviewed.—All orders, judgments and decrees under this Act may be reviewed as other orders, judgments and decrees. (Act Apr. 17, 1933, c. 286, §7.)

Supreme court having arrived at same construction of trust agreement as court below from consideration of instrument alone, it is immaterial that incompetent evidence was introduced. *Towle v. F.*, 194M520, 261NW5. See Dun. Dig. 424.

9455-8. Application to court for relief.—Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. (Act Apr. 17, 1933, c. 286, §8.)

9455-9. Issues of fact may be tried.—When a proceeding under this Act involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. (Act Apr. 17, 1933, c. 286, §9.)

9455-10. Costs.—In any proceeding under this Act the court may make such award of costs as may seem equitable and just. (Act Apr. 17, 1933, c. 286, §10.)

In action against trustee by beneficiaries under a trust created in a will, alleging negligence and wrongdoing in administration thereof and requesting a new interpretation of a provision of will and a surcharging of trustee's account, in which trustee prevailed in every respect, trustee was entitled to recover reasonable attorneys' fees paid in conduct of its defense. *Andrist v. F.*, 194M 209, 260NW229. See Dun. Dig. 9944.

9455-11. Parties.—When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In

any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney-General of the State shall also be served with a copy of the proceeding and be entitled to be heard. (Act Apr. 17, 1933, c. 286, §11.)

9455-12. Act to be remedial.—This Act is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered. (Act Apr. 17, 1933, c. 286, §12.)

9455-13. Definition.—The word "person" wherever used in this Act, shall be construed to mean any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever. (Act Apr. 17, 1933, c. 286, §13.)

9455-14. Provisions separable.—The several sections and provisions of this Act except sections 1 and 2, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not effect or render the remainder of the Act invalid or inoperative. (Act Apr. 17, 1933, c. 286, §14.)

9455-15. To make law uniform.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. (Act Apr. 17, 1933, c. 286, §15.)

9455-16. Uniform declaratory judgments act.—This Act may be cited as the Uniform Declaratory Judgments Act. (Act Apr. 17, 1933, c. 286, §16.)

Sec. 17 of act Apr. 17, 1933, cited, provides that the act shall take effect from its passage.

CHAPTER 78

Juries

9458. Number to be drawn.

Trial court did not abuse discretion in discharging entire jury panel and drawing new venire in murder case. *State v. Waddell*, 187M191, 245NW140. See Dun. Dig. 5239a.

9460. How drawn and summoned.

Laws 1929, c. 7, repeals Sp. Laws 1883, c. 314, as to making up jury lists in Washington county.

9468. Selection of jurors.—The county board, at its annual session in January, shall select, from the qualified voters of the county, seventy-two persons to serve as grand jurors, and one hundred and forty-four persons to serve as petit jurors, and make separate lists thereof, which shall be certified and signed by the chairman, attested by the auditor, and forthwith delivered to the clerk of the district court. If in any county the board is unable to select the required number, the highest practicable number shall be sufficient. In counties where population exceeds ten thousand no person on such list drawn for service shall be placed on the next succeeding annual list, and the clerk shall certify to the board at its annual January session the names on the last annual list not drawn for service during the preceding year, nor shall any juror at any one term serve more than thirty days and until the completion of the case upon which he may be sitting; provided however that the Court may with the consent of any such juror or jurors and with the consent of any parties having matters for trial after such 30 day period has expired hold and use such jurors so consenting to try and determine any jury cases remaining to be tried at such term between parties so consenting. And in counties having two or more terms

of court in one year, after the jurors have been drawn for any term of such court, the clerk shall strike from the original list the names of all persons who were drawn for such term, and notify the board thereof, which at its next session shall likewise select and certify an equal number of new names, which shall be added by such clerk to the names in the original list. If such list is not made and delivered at the annual meeting in January, it may be so made and delivered at any regular or special meeting thereafter. Whenever at any term there is an entire absence or deficiency of jurors whether from an omission to draw or to summon such jurors or because of a challenge to the panel or from any other cause, the court may order a special venire to issue to the sheriff of the county, commanding him to summon from the county at large a specified number of competent persons to serve as jurors for the term or for any specified number of days, provided that before such special venire shall issue the jurors who have been selected by the county board and whose names are still in the box provided for in Section 9462 of said Mason's Minnesota Statutes, shall first be called and upon an order of the court the number of names required for such special venire shall be drawn from said box in the manner required by law and the jurors so drawn, shall be summoned by the sheriff as other jurors; and as additional jurors are needed successive drawings shall be ordered by the court, until the names contained in said box have been exhausted. (R. L. '05, §4336; G. S. '13, §7971; '17, c. 485, §1; Feb. 13, 1929, c. 13; Apr. 20, 1931, c. 218.)

Where party to cause was member of jury panel it was error to deny continuance or the calling in of other jurors not on panel. 179M557, 230NW91.

Statute contemplates the striking of the names drawn without regard to actual service. *Op. Atty. Gen.*, April 30, 1931.

9469-1. Juries in certain cities.—In all counties of this state now or hereafter having a population of more than 400,000 the jury in civil actions shall consist of six persons; provided, that any party may have the right to increase the number of jurors to twelve by paying to the clerk a jury fee of two dollars at any time before the trial commences. Failure to pay such jury fee shall be deemed a waiver of a jury of twelve.

(27, c. 345, §1, eff. May 1, 1927; Apr. 18, 1929, c. 236, §1.)

9469-2. Same—Jury of six.

The text of this and the next succeeding section is reenacted by Laws 1929, c. 236, but the title of the act purports to amend "section 1, chapter 345, Laws of 1927," set forth ante as §9469-1. Inasmuch as no change is made in sections 2 and 3, except that the closing words of section 2 are "the jury," instead of "a jury," the insufficiency of the title is probably immaterial.

9469-3. Same—Challenges.

See note under §9469-2.

CHAPTER 79

Costs and Disbursements

9470. Agreement as to fees of attorney—Etc.

Costs were unknown at common law and depend upon statutory authority. *State v. Tift*, 185M103, 240NW354. See *Dun. Dig.* 2226.

10. Contract with attorney.

Burden was upon attorney to prove that his services were rendered under circumstances from which a promise to pay should be implied. *Ertsgaard v. B.*, 183M339, 237NW1. See *Dun. Dig.* 702(93).

9471. Costs in district court.

1. Who prevailing party.

173M559, 218NW730.

3. Several parties.

Interveners appearing separately, each represented by his own attorneys, plaintiff having joined issue on each complaint in intervention, held severally entitled to tax statutory costs. *Pesis v. B.*, 190M563, 252NW454. See *Dun. Dig.* 4007.

When a principal employs competent attorneys to defend an action brought by a third party against agent and principal for alleged false representations in a business deal, transacted by agent for principal, agent is not entitled to reimbursement for amounts paid or incurred to additional attorneys hired by agent to protect him in litigation; there being no showing of antagonistic defenses or of a failure of attorneys employed by principal to make a proper defense for agent. *Adams v. N.*, 191M55, 253NW3. See *Dun. Dig.* 207.

6. In general.

A party who succeeds and is awarded and paid his taxable costs and disbursements has no further claim against his adversary for attorney's fees and expenses in excess of taxable costs. 181M322, 232NW515. See *Dun. Dig.* 2194(4).

Judgment creditor waived payment of dollar fee charged upon writs of execution by stipulation for satisfaction of judgments and discharging them of record. *Stebbins v. F.*, 185M336, 241NW315.

In action by state in its proprietary as distinguished from its sovereign capacity it is liable for costs the same as individuals, but it is not liable when sued, though in its proprietary capacity. *Op. Atty. Gen.*, March 3, 1933.

Plaintiff suing to recover in excess of \$100 but only recovering \$100 is entitled to \$10 costs in county where there is no municipal court. *Op. Atty. Gen.*, July 5, 1933.

7. State as party.

State is not liable for costs and disbursements in civil action, whether brought by or against it, in its sovereign capacity, but is liable in actions brought in its proprietary capacity. *Op. Atty. Gen.*, Mar. 3, 1933.

9473. Disbursements—Taxation and allowance.

173M559, 218NW730.

Costs were unknown at common law and depend upon statutory authority. *State v. Tift*, 185M103, 240NW354. See *Dun. Dig.* 2226.

½. In general.

Objectors to testamentary trustee's account were entitled to costs and disbursements as the prevailing party. *Rosenfeld's Will*, 185M425, 241NW573. See *Dun. Dig.* 2206.

No costs or disbursements should be taxed against secretary of state unsuccessfully defending mandamus proceeding. *State v. Holm*, 186M331, 243NW133. See *Dun. Dig.* 2207.

9475. In equitable actions—Several defendants.

Attorney's fees and expenses were allowed unsuccessful party in probate proceedings. *Butler v. B.*, 249NW38. See *Dun. Dig.* 699.

9478. Taxation—Objections and Appeal.

1. Time.

Costs cannot be taxed and judgment entered where a verdict has been vacated and a new trial granted. 178M232, 226NW700.

2. Notice.

Costs and disbursements may be taxed after entry of judgment without notice. *Wilcox v. H.*, 186M220, 243NW709. See *Dun. Dig.* 2221.

9481. To defendant after tender.

Grill v. B., 249NW194; note under §9323.

9483. Relator entitled to, and liable for.

Prevailing defendant was entitled to costs and disbursements without specific directions by the court, and court did not err in denying motion to amend conclusions of law. 178M164, 226NW709.

9485. In criminal proceedings.

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.

9486. Supreme court—Costs and disbursements.

Prevailing party may collect the expense of the record and briefs only when they are printed. *State v. Tift*, 185M103, 240NW354. See *Dun. Dig.* 2239(8).

Whether taxation of costs and disbursements is opposed or not, it is the duty of the clerk to satisfy herself that the items are correct and taxable. *State v. Tift*, 185M103, 240NW354. See *Dun. Dig.* 2226.

2. No costs to defeated party.

An appellant may not dismiss his appeal and tax costs and disbursements against a respondent. *Ridgway v. M.*, 192M618, 256NW521. See *Dun. Dig.* 2227.

3. Who is prevailing party.

Where supreme court reduced verdict because of error in instruction on damages, defendant should not be allowed statutory costs of \$25 where no exception was taken at trial to the instruction nor in motion for new trial was amount of excessive damages pointed out. *Hackenjos v. K.*, 193M37, 258NW433. See *Dun. Dig.* 2228.

4. Several prevailing parties.

Where there were three cases by different parties against same defendant, cost of printing evidence which was common to three cases was properly divided and allocated. *Larson v. T.*, 185M652, 242NW378. See *Dun. Dig.* 2229.

8. Discretionary—When not allowed.

Statutory costs denied a successful appellant because of excessive length of his brief. *Peterson v. P.*, 186M583, 244NW68. See *Dun. Dig.* 2238.

A proceeding to vacate public grounds against a town is a special proceeding, but costs and disbursements may be taxed against unsuccessful plaintiff. *Schaller v. T.*, 193M604, 259NW826. See *Dun. Dig.* 2198, 2239.

Statutory costs denied because of deliberate and extended reference in brief for respondents to facts outside record, said to have occurred since hearing. *Whaling v. I.*, 194M302, 260NW299. See *Dun. Dig.* 2226.

9. Disbursements allowable.

Only where transcript is prepared exclusively for use on appeal and is in fact so used can it be taxed or allowed in supreme court. *Larson v. T.*, 185M652, 242NW378. See *Dun. Dig.* 2239.

When transcript is obtained and necessarily used in lower court in motion for amended findings, matter of expense thereof being allowed as disbursement is before lower court and not before supreme court. *Larson v. T.*, 185M652, 242NW378. See *Dun. Dig.* 457a.

Costs should not be taxed for two appeal bonds where there was no need for two bonds and supersedeas should have been given in first place. *Hackenjos v. K.*, 193M37, 258NW433. See *Dun. Dig.* 2239.

10. Liability of United States.

Where Director of United States Veterans' Bureau brought proceeding against guardian of incompetent veteran and unsuccessfully appealed from an adverse order, the guardian was not entitled to tax costs. *Hines v. T.*, 185M650, 241NW796. See *Dun. Dig.* 2207.