1941 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.

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Mere membership in the general public does not entitle one to maintain a suit for a declaratory judgment as to the validity of a patent. Zachs v. Aronson, (DC-Conn), 49FSupp696. See Dun. Dig. 4988a.

The rule regarding necessary parties is not relaxed in action brought to obtain declaratory relief. Lloyd v. L., 107Pac(2d)(Cal)622.

Statute allows joinder only of those persons legally affected and does not enlarge procedure as to joining parties defendant. Schriber Sheet Metal & Roofers v. S., 28NE(2d)(Ohio)699.

Where a daughter as trustee, brought an action for a declaratory judgment to determine the rights to property given to her as trustee for benefit of certain beneficiaries, administrator of father's estate, executor of mother's estate, and sister named as sole beneficiary were properly joined as defendants. State v. Waltner, 145SW(2d)(Mo)152.

A daughter who as trustee held certain property given to her by her father for distribution among designated beneficiaries after his decease, was a proper party to petition for declaratory judgment in determining rights and shares of beneficiaries in property. Id.

In a declaratory action to determine legitimacy of child all persons interested or likely to be affected by determination should be joined or impleaded as parties, and infant, whose rights are paramount, should be made a party in the manner provided by law, and guardian ad litem appointed to protect its interests. Melis v. D., 24NYS(2d)51, 260AppDiv772, aff'g 18NYS(2d)432.

Court will not pass on constitutionality of a statute in a declaratory action, unless attorney general has been served with a copy of the proceedings. Day v. Ostergard, 146PaSuper27, 21Atl(2d)586.

Under Utah Declaratory Judgment Act attorney general has right to be and should be served where statute for state franchise or permit is alleged to be invalid. Hemenway & Moser Co. v. F., 106Pac(2d)(Utah)779.

Prayer for declaratory judgment cannot be considered where all parties in interest have not been made parties in action, and executors and trustees are interested parties in the matter of probate and construction of will. State v. Farr, 236Wis323, 295NW21.

9455-12. Act to be remedial.

Nature of action for declaratory relief is neither legal nor equitable but sui generis. Great Northern Life Ins. Co. v. Vince, (CCA6), 118F(2d)232. Cert. den. 62SCR71.

This is a remedial statute and should be liberally construed. Continental Casualty Co. v. N., (DC-Wis)32F Supp849.

The Federal Declaratory Judgment Act is merely a procedural statute which provides an additional remedy available in respect to justiciable controversies of which the federal courts otherwise have jurisdiction, but it does not draw into the federal courts all controversies *of a justiciable nature.* *Bradford v. City of Somerset,* (DC-Ky), 47FSupp171. See Dun. Dig. 4988a.

Purpose of act is to settle and afford relief from uncertainty with respect to rights status, and other legal relations; and it should be liberally construed. Peterson v. C., 107Pac(2d)(Ariz)205.

The only new right created by the declaratory judgment act is to make disputes as to rights or titles justiciable without proof of a wrong. Gitsis v. T., 16Atl(2d)(NH)369.

CHAPTER 78

Juries

9458-1. Alternate jurors.—When in the opinion of the trial judge in any case pending in the district court, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made on the minutes of the court, and immediately after the jury is impaneled and sworn, may direct the calling of not more than two additional jurors, to be known as alternate jurors.

Such jurors must be drawn and have the same qualifications as the jurors already sworn, and be subject to the same examinations and challenges; except, the prosecution or plaintiff shall be entitled to one peremptory challenge and the defendant to two.

Alternate jurors shall be seated near, with equal facilities for seeing and hearing the proceedings, and shall take the same oath as the jurors already selected. They must attend at all times upon the trial of the cause in company, and be admonished and kept in custody with the other jurors.

Alternate jurors shall be discharged upon the final submission of the case to the jury, unless, before the final submission of the case, a juror dies, or becomes ill so as to be unable to perform his duty, the court may order such a juror to be discharged and draw the name of an alternate, who shall then take his place in the jury box and become a member of the jury as though he had been selected as one of the original jurors. (Act Apr. 16, 1941, c. 256, §1.) [546.095]

9468. Selection of jurors.

Names of persons drawn for jury service should be stricken from jury list even though it was discovered there were no jury cases and jurors were told not to report for service. Op. Atty. Gen. (260a-8), Sept. 18, 1943.

CHAPTER 79

Costs and Disbursements

9470. Agreement as to fees of attorney—Etc.

½. In general.

Agreement in application for executor's bond providing for indemnification for counsel fees "by reason or in consequence of its having executed said bond" does not entitle surety to recovery of attorneys' fees incurred in action against principal to recover expenses of a prior suit by third person against principal. U. S. Fidelity & Guaranty Co. v. Falk, 214M138, 7NW(2d)398. See Dun. Dig. 2219.

Fees of attorneys cannot be recovered by plaintiff in any action on contract without a specific agreement to that effect or unless such fees are authorized by statute. Id. See Dun. Dig. 2219, 2523.

10. Contract with attorney.

Evidence held to sustain finding that attorney, who as dictator of a lodge, with approval of and in response to solicitation of national organization, undertook and over a three-year period successfully completed job of liquidating financial distress of local organization, was entitled to proceed against national organization upon an implied contract to recover reasonable value of services. High v. Supreme Lodge of World, Loyal Order of Moose, 210M471, 298NW723. See Dun. Dig. 698a.

Legality of contingent fee contracts to procure "favor" as distinguished from "debt" legislation. 24MinnLaw Rev412.

9471. Costs in district court.

6. See in general.

In a suit in district court for recovery of money where amount sued for and recovered is less than $100 but more than $50, plaintiff, upon entry of a default judgment by the clerk, is entitled to have taxed and included his costs and his disbursements, but plaintiff cannot have his costs and disbursements in an uncontested suit to recover less than $50 where, if case had been contested, he could not have taxed the same. Op. Atty. Gen. (144B-5), Mar. 12, 1942.

9473. Disbursements—Taxation and allowance.—In every action in a district court, the prevailing party shall be allowed his disbursements necessarily paid or incurred. Provided that in actions for the recovery of money only, of which a municipal court has jurisdiction, the plaintiff, if he recover no more than fifty dollars, shall not recover any disbursements. (As amended Act Apr. 20, 1943, c. 508, §1.)

4. When justice has jurisdiction.

In a suit in district court for recovery of money where amount sued for and recovered is less than $100 but more than $50, plaintiff, upon entry of a default judgment by

the clerk, is entitled to have taxed and included his costs and his disbursements, but plaintiff cannot have his costs and disbursements in an uncontested suit to recover less than $50 where, if case had been contested, he could not have taxed the same. Op. Atty. Gen. (144B-5), Mar. 12, 1942.

9477. Interest on verdict, etc.

Personal property and money and credits taxes, upon which penalties have already been imposed, do not bear interest prior to judgment. Op. Atty. Gen., (421-2-8), Jan. 16, 1941.

9481. To defendant after tender.

A tender is unnecessary where it would be an idle ceremony, as where owner of a dog demanded at a pet hospital and delivery was refused solely because demand was made outside of office hours, there being no dispute as to the amount owing at the time. Morgan v. Ibberson, 215M293, 10NW(2d)222. See Dun. Dig. 9612.

A tender is waived when the tenderee assumes any position which would render it, so long as such position is maintained, a vain and idle ceremony. Id. See Dun. Dig. 9620.

9482. Chargeable on estate or fund.

An administrator is not personaly liable for costs and disbursements for bringing an action in his representative capacity, except where judgment awarding such costs and disbursements expressly provide that he shall be personally liable or that it shall be enforced against him personally. Minneapolis St. Ry. Co. v. R., 208M187, 293NW256. See Dun. Dig. 3673.

Rule seems to be that a favorable issue in first instance is decisive that proceeding was not groundless. Id.

Sureties on bond of a special administrator are not liable for costs and disbursements, awarded against him in an action brought by him in his representative capacity, where there were no assets in estate. Minneapolis St. Ry. Co. v. R., 208M187, 293NW256. See Dun. Dig. 3580s.

9483. Relator entitled to, and liable for.

Board, having acted in behalf of school district in discharge of governmental functions, is not liable for costs or disbursements of mandamus action. State v. School Board of Consol. School Dist. No. 3, 206M63, 287NW625. See Dun. Dig. 2207.

9485. In criminal proceedings.

Jury fee is a part of disbursements of a prosecution which municipal court of Faribault may add to and include in penalty in criminal prosecution. Op. Atty. Gen. (199a-3), Sept. 28, 1942.

9486. Supreme court—Costs and disbursements.

½. In general.

On hearing of an order to show cause questioning authority of attorneys for appellants to take an appeal in which proper authority was found to exist, motion by appellants' attorneys for costs and disbursements was denied. Larson v. Dahlstrom, 213M595, 6NW(2d)636. See Dun. Dig. 2226.

No statutory costs were allowed plaintiff appellants in an automobile accident case because of their failure to comply with admonition of supreme court in printed calendar in the matter of including in the record a plat or diagram of the scene of the accident. Lee v. Zaske, 213M244, 6NW(2d)793. See Dun. Dig. 2238.

Where vendor of real estate petitioned for declaratory judgment that option to defendant who purchased land had been withdrawn and cancelled, defendant could file petition in same action asking for supplementary relief by decree holding the withdrawal unjustified and ordering sale. Lowe v. Harmon, 167Ore128, 115Pac(2d) 297.

1. Statutory.

Appellant was denied statutory costs on appeal where he provided an abridged record which omitted portions of settled case but appeared as though it reflected all testimony received. Palm's Estate, 210M87, 297NW765 (2nd case). See Dun. Dig. 2238.

2. No costs to defeated party.

Plaintiff on appeal from a judgment denying a divorce was allowed attorney's fees and disbursements, though she was unsuccessful, where appeal appeared to be made in good faith and upon reasonable grounds. Rhoads v. R., 208M61, 292NW760. See Dun. Dig. 2804.

8. Discretionary—when not allowed.

Where woman obtaining divorce was awarded $650.00 as expense money to procure transcript and pay for necessary printing in presentation of her case on appeal, and there was much needless printing in record that easily could have been avoided in view of narrow issues properly brought up, no statutory costs or disbursements were allowed on appeal. Burke v. B., 208M1, 292NW426. See Dun. Dig. 2238.

Appellant was denied statutory costs on appeal where reversal was had upon a theory not raised in the court below. Rigby v. N., 208M88, 292NW751. See Dun. Dig. 2238.

Successful appellant was denied statutory costs where it appeared he failed to bring in party or parties needed for a final determination of issues in case. Braman v. Wall, 210M548, 299NW243. See Dun. Dig. 2238.

Statutory costs were denied for excessive length of brief, due to lengthy and repetitious quotations from, rather than brief summary of, testimony and authority, and temptation to further deny otherwise taxable expense of printing respondent's brief was resisted because fault may have been invited by similar dereliction on part of counsel for appellant. Bergquist's Estate, 211M 380, 1NW(2d)418. See Dun. Dig. 2238, 2239.

Where counsel for the parties have stated that all that parties want is a construction of the law rather than any personal vindication as to a few dollars involved, no statutory costs should be taxed. Perszyk v. School Dist. No. 32, 212M513, 4NW(2d)321. See Dun. Dig. 2226.

CHAPTER 80

Appeals in Civil Actions

9490. Appeal from district court.

Appellate jurisdiction may not be enlarged by consent of the litigant. Simon v. L., 207M605, 292NW270. See Dun. Dig. 286.

Appellate jurisdiction cannot be conferred by consent. Bulau v. B., 208M529, 294NW845. See Dun. Dig. 286.

Right to appeal is statutory. State v. Rock Island Motor Transit Co., 209M105, 295NW519. See Dun. Dig. 283.

A judgment of the municipal court of Duluth may not be reviewed by certiorari. Warner v. A. G. Anderson, Inc., 212M610, 3NW(2d)673. See Dun. Dig. 1404.

Certiorari is a proper method to review judgment of municipal court of Duluth rendered on removal from the conciliation court. Warner v. A. G. Anderson, Inc., 213 M376, 7NW(2d)7, overruling 212M610, 3NW(2d)673. See Dun. Dig. 1400.

9491. Title of action on appeal.

A party entitled to join in an appeal may do so by enering a voluntary appearance in appellate court after appeal has been perfected. Owens v. O., 207M489, 292 NW89. See Dun. Dig. 311.

Where a city was brought into case as an additional defendant and appeared specially and objected to jurisdiction of court elsewhere than in county where city was located, attention of counsel for city securing an alternative writ of mandamus from supreme court was called to Supreme Court Rule II, providing that all cases under review shall be entitled as in court below. Scaife Co. v. Dornack, 211M349, 1NW(2d)356. See Dun. Dig. 310.

9492. Requisites of appeal.

3. On whom served.

Failure of appellants to serve notice of appeal on a party affected by judgment from which appeal was taken is remedied when such party files in supreme court his consent to be bound by disposition of case. Kavli v. L., 207M549, 292NW210. See Dun. Dig. 320.

Codefendants in ordinary negligence case are not adversary parties under statute requiring service of notice of appeal. Olson v. Neubauer, 211M218, 300NW613. See Dun. Dig. 320.

3½. Bond.

A new appeal bond without an attorney as surety filed after motion to dismiss was made obviated objection that attorney was surety in bond. Hanson v. Emanuel, 210M51, 297NW176. See Dun. Dig. 328, 329.

Court may permit substitution of a good for a defective or void supersedeas bond. Mixed Local, etc. v. Hotel & Restaurant Employees International Alliance, 211M 616, 1NW(2d)133. See Dun. Dig. 328.

6. Amendment.

Substitution of bond. Mixed Local, etc. v. Hotel & Restaurant Employees International Alliance, 211M616, 1NW (2d)133; note 3½.

9493. Return to Supreme Court.

1. In general.

While a memorandum not expressly made a part of an order granting a new trial unless plaintiff consents to reduction in verdict may be referred to for purpose of throwing light upon or explaining the decision, it may not be referred to for purpose on impeaching, contradicting or overcoming express findings or conclusions necessarily following from decision, but may be referred to to ascertain that verdict was not result of passion or prejudice. Ross v. D., 207M157, 290NW566; 207M648, 291 NW610. Cert. den. 61SCR9. See Dun. Dig. 394.

Where there has been a general appearance by defendant below, it is improper to include summons in