

1934 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1934)  
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



Edited by

WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR. }  
R. O. MASON } Assistant Editors  
J. S. O'BRIEN }

CITER- DIGEST CO.  
SAINT PAUL, MINNESOTA.  
1934

terest, if the mortgagor is entitled to such rents, unless there is waste. 173M18, 216NW329.

Complaint against trustee foreclosing mortgage alleging that mortgage had been superseded by trust agreement and asking for receivership, held not to state cause of action. *Monnens v. H.*, 187M100, 244NW410. See Dun. Dig. 6459.

#### 9651. Default to be shown.

Without proof of insolvency or inadequacy of security, nonpayment of taxes, not shown to jeopardize title or security during year of redemption, does not warrant appointment of receiver in action to foreclose mortgage. 176M71, 222NW516.

**9655-1. Postponement of mortgage foreclosure sales.**—Any sale upon the foreclosure of a mortgage upon real estate, either by action or by advertisement, which has heretofore been advertised or which may hereafter be advertised to be held at any date subsequent to the passage and approval of this act and prior to May 1, 1933, may be postponed for a period of not to exceed ninety days to a date subsequent to April 30, 1933, by the sheriff of the county in which such sale is advertised to be held, without the publication of a notice of such postponement in any newspaper; provided, however, such sheriff shall post a notice of such postponement at one of the entrance doors of the court house or county jail of the county where the sale was originally advertised to be held, at least three weeks prior to the date to which said sale shall be postponed. (Act Mar. 2, 1933, c. 44, §1; Mar. 16, 1933, c. 90, §1.)

Laws 1933, c. 44, is constitutional. *State v. Moeller*, 249NW330. See Dun. Dig. 207 to 209, 1628.

Duties of register of deeds as prescribed by Mason's Minn. St. sec 2217 are in no way affected by this law. Op. Atty. Gen., Apr. 3, 1933.

Governor's executive order to officers to desist from foreclosing mortgages expired by limitation on Apr. 30, 1933. Op. Atty. Gen., May 2, 1933.

**9655-2. Posting of notices.**—In all cases where any sheriff has heretofore and subsequent to February 23, 1923, postponed any such mortgage foreclosure sale, the said sheriff may again postpone the sale, provided, however, that the date to which said sale is finally postponed shall be subsequent to April 30, 1933, and shall not be more than ninety days from the date upon which said sale was originally advertised to be held, and provided further, that the said sheriff shall post a notice of such final postponement at one of the entrance doors of the court house or county jail of the county where the sale was originally advertised to be held, at least three weeks prior to the date to which the said sale shall be finally postponed. (Act Mar. 2, 1933, c. 44, §2; Mar. 16, 1933, c. 90, §2.)

**9655-3. Acts legalized.**—Any postponement heretofore made by any sheriff of any such mortgage foreclosure sale, without the publication of a notice of postponement in a newspaper, is hereby validated and is hereby declared to be legal and binding in all respects. (Act Mar. 2, 1933, c. 44, §3; Mar. 16, 1933, c. 90, §3.)

Adjournment of mortgage foreclosure sale by sheriff on Feb. 27, 1933, was validated by curative provision of act of Mar. 2, 1933, Laws 1933, c. 44. *State v. Moeller*, 249NW330.

**9655-4. Provisions separable.**—If any section or part of this act shall be declared unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Mar. 2, 1933, c. 44, §4; Mar. 16, 1933, c. 90, §4.)

## CHAPTER 84

### Actions by or against Personal Representatives and Heirs

#### 9656. What causes of action survive.

##### 1. Held to survive.

Rights under Wisconsin Statutes 1927, §287.01 may be enforced in Minnesota. *Chubbuck v. H.*, 234NW314. See Dun. Dig. 14, 1530.

A right of action accruing to a party under a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of this state. *Chubbuck v. H.*, 182M225, 234NW314. See Dun. Dig. 14, 1530.

Action under Wisconsin Survival Statute, *Chubbuck v. M.*, 182M225, 234NW868.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the wife and the death of the wrongdoer. *Fowlie v. F.*, 184 M82, 237NW846. See Dun. Dig. 14.

##### 2. Held not to survive.

Under deed from parents to son conditioned upon payment of annuity to grantors or survivor and reserving lien on land, right to enforce lien was personal to grantors, and it could not be enforced by administrator. *Gamble v. M.*, 187M640, 246NW368. See Dun. Dig. 2678a, 3667.

##### 3. Cause of action arising in another state.

Jurisdiction of estate of deceased tort-feasor may be acquired by service on personal representative as in case of surviving liability for torts committed here. *Kertson v. J.*, 185M591, 242NW329. See Dun. Dig. 3669.

#### 9657. Action for death by wrongful act.

##### 2. Construction and application of statute.

The next of kin of a deceased person are persons interested in the outcome of an action to recover damages for causing the death of such deceased person. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 10316.

##### 9. Defences.

That one defendant in action for death of guest in automobile was son of decedent and would benefit by recovery did not prevent recovery by personal representative for benefit of other beneficiaries, though reduction or apportionment because of negligence might be made. *Anderson v. A.*, 248NW35. See Dun. Dig. 2616.

##### 11. Limitation of actions.

Action for death against city must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

#### 16. Damages.

Where the action is brought to recover for death by wrongful act, and the defense is contributory negligence by one or more of the next of kin or beneficiaries, the proper practice is to require the jury to assess the value of the loss of the life to all the next of kin and by special verdict determine who, if any, of the next of kin was guilty of contributory negligence. *Harrington v. A.*, 183M74, 235NW534. See Dun. Dig. 2616(7).

\$2,564, held not excessive for death of child. 179M528, 229NW784.

Measure of damages for wrongful death is money value to surviving spouse, if any, and next of kin, of continuance of decedent's life, measured by money value of what evidence shows decedent probably, or with reasonable certainty, would have contributed to them in money, property, or services, during remainder of his life. *Wiester v. K.*, 247NW237. See Dun. Dig. 2617.

Verdict for \$7,500 was not excessive for death of woman 52 years of age leaving 10 children. *Anderson v. A.*, 248NW35. See Dun. Dig. 7157.

#### 16a. Disposition of proceeds.

It cannot be said that children of parent not engaged in any gainful occupation, but who has means or income by which he contributes to them, will suffer no pecuniary loss by his death, though they will inherit his property. *Wiester v. K.*, 247NW237. See Dun. Dig. 2617.

#### 16b. Negligence.

Negligence of defendant held not the proximate cause of death. 171M486, 214NW763.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the wife and the death of the wrongdoer. *Fowlie v. F.*, 184 M82, 237NW846. See Dun. Dig. 14.

#### 17. Evidence.

Evidence of financial condition of next of kin, held admissible. 179M528, 229NW784.

Person killed in an accident in the absence of eyewitnesses is presumed to have exercised due care. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 2616(12).

It was not error to refuse to receive in evidence the general inventory filed in probate court in decedent's estate, as bearing upon the amount of damages resulting from his death. *Quinn v. Z.*, 184M589, 239NW902. See Dun. Dig. 2619.

In action to recover for death by wrongful act, directed verdict for defendant is proper, where evidence of causal connection between defendant's wrongful act

and death is merely conjectural and speculative. *Peter-son v. L.*, 186M101, 242NW549. See Dun. Dig. 2620.

In an action for wrongful death of wife, evidence of plaintiff's use of intoxicants, coupled with testimony indicating that wife, because thereof, was contemplating a separation and possible divorce, is relevant. *Peter-son v. P.*, 186M583, 244NW68. See Dun. Dig. 2617.

Evidence held to sustain finding that death from lobar pneumonia 52 days after automobile accident was caused by it. *Anderson v. A.*, 248NW35. See Dun. Dig. 2620, 6999.

**9661. Next of kin—Liability for debts.**  
32F(2d)665.

## CHAPTER 85

### Official and Other Bonds—Fines and Forfeitures

#### 9677. Bonds, etc.

City officials should furnish new bond at beginning of each term of office, and a renewal certificate of bonding company is insufficient. Op. Atty. Gen., Jan. 24, 1933.

Reelected township officials are required to furnish new bonds instead of renewal certificates. Op. Atty. Gen., June 5, 1933.

**9677-1. State may take fidelity insurance.**—The comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employes in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commission shall direct, insuring the fidelity of such department employes in the respective amounts so required, upon a form to be prescribed by the comptroller. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the Commission shall require. The surety upon the bonds of all state officers and state employes required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form and generally by the comptroller, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state. (Laws 1929, c. 263, §1; Apr. 20, 1931, c. 233, §1.)

**9677-2. Payment of premium.**—The premiums upon the bonds of all state officers and the premiums on all fidelity insurance placed under the provisions of this act shall be paid out of the appropriation for the maintenance of the department for which such bond or insurance is required, and such fidelity insurance, when placed in lieu of individual bond, shall be deemed full compliance with any provision of law requiring any such official or employe to give bond to the state for the faithful discharge of duty. If schedule or position insurance is provided covering the personnel of any department or agency all individual fidelity bonds covering such officers or employes theretofore bonded shall be canceled and a proportionate part of the premiums paid therefor refunded. (Laws 1929, c. 263, §2; Apr. 20, 1931, c. 233, §2.)

**9677-3. Inconsistent acts repealed.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Laws 1929, c. 263, §3; Apr. 20, 1931, c. 233, §3.)

#### 9687. State and county officers—Uniform bond.

Village treasurer and surety on official bond were not relieved from liability for money of village deposited in a bank that failed, where there was no compliance with statute. *Village of Hallock v. P.*, 250NW4. See Dun. Dig. 8022.

Interest cannot be recovered of the surety until notice of breach and demand to make good default of treasurer. *Id.* See Dun. Dig. 4884.

Sureties on bond of school district treasurer cannot withdraw therefrom until the expiration of the term or by consent of all parties concerned. Op. Atty. Gen., Nov. 5, 1931.

#### 9689. Surety companies.

Surety company held to have breached bond by failing to establish and maintain mortgage as lien prior to mechanic's liens. *Danielski v. P.*, 186M24, 242NW342. See Dun. Dig. 9107c.

In action on lien priority bond, evidence held to sustain finding that plaintiff suffered damages through failure of surety to establish and maintain mortgage as lien prior to mechanic's liens. *Danielski v. P.*, 186M24, 242NW342.

#### 9692. Undertaking in lieu of bond.

174M56, 218NW444.

State is not required to furnish a bond in order to procure a temporary writ of injunction. *State v. Nelson.* 248NW751. See Dun. Dig. 4499.

Where county issued auditor's warrant to Minnesota State Sanitarium and it was lost in the mail, the county auditor could issue a duplicate without a bond of the estate. Op. Atty. Gen., Aug. 20, 1931.

**9693. Cost of surety bonds to be expense of receivers.**—Any receiver, assignee, trustee, committee, guardian, executor, administrator, or other fiduciary, required by law to give bond as such, may include as a part of his lawful expenses such actual sum paid for such suretyship, not exceeding ten dollars per annum when the amount of the bond is not more than one thousand dollars, and not more than one per cent per annum on the excess when over one thousand dollars, as the head of the department, court, judge, or officer by whom or the court or body by which he is appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein the reasonable fees of such company for executing or guaranteeing any bond or undertaking therein. The several county and town boards, and the governing body of any city, village, or school district, may allow the treasurer of the municipality such reasonable sum, not exceeding the amount herein specified, as may have been paid by him for such suretyship, to be paid out of the general revenue fund of the municipality. Provided, that the officers required by law to approve such bill may first designate the surety company to be employed, if its charges be as low as those offered by any other responsible company. (R. L. '05, §4528; G. S. '13, §8238; Apr. 17, 1933, c. 311.)

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1933.

#### 9694. Bonds, by whom approved.

(3).

A supersedeas bond may be approved and filed in the Supreme Court after an appeal has been perfected and jurisdiction acquired. *Barrett v. S.*, 184M107, 237NW881. See Dun. Dig. 325(74).

#### 9695. Place of filing bonds.

Village treasurer's bond need not be filed or recorded with register of deeds, and county is under no obligation to pay expense of recording. Op. Atty. Gen., May 1, 1933.

**9700. Contractors bonds.**—No contract with the State, or with any municipal corporation or other public board or body thereof, for the doing of any public work, shall be valid for any purpose, unless the contractor shall give bond to the state or other body contracted with, for the use of the obligee and of all persons doing work or furnishing skill, tools, machinery or materials or insurance premiums or equipment or supplies for any camp maintained for the feeding or keeping of men and animals engaged under, or for the purpose of, such contract, conditioned for the