

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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36-106, 30+402; 52-433, 54+482; 65-64, 67+805; 66-66, 68+771; 70-346, 73+175; 76-109, 78+964). A receiver should not be appointed where the creditor has a mortgage amply sufficient to satisfy the whole debt (65-64, 67+805). A receiver may be appointed although the only property disclosed is an interest in real estate situated in another state, and the debtor may be required to convey such interest to the receiver (35-231, 28+254). A receiver may be appointed immediately after granting an order for the examination of the debtor (25-263). The receiver may maintain an action to avoid a fraudulent conveyance of real estate by the judgment debtor, although there has been no transfer of the title to him (35-543, 29+349; 36-106, 30+402). In bringing an action the receiver must allege his appointment with sufficient fullness to show that he has authority (39-527, 40+831; 67-24, 69+475; 73-198, 75+1053). A judgment in favor of defendant in action by receiver binding on creditor at whose instance he was appointed (103-283, 114+961).

3. In general.

There is no power in the district court to authorize a receiver, appointed in proceedings supplementary to execution, to collect the official salary to be earned in the future by the judgment debtor. 166-363, 207+736.

Whether a receiver shall be appointed rests in the discretion of the trial court, and this court interferes only when necessary to correct an abuse of discretion. 209+754.

Whether a receiver shall be appointed in a proceeding supplementary to execution, is largely within the discretion of the trial court. 212+455.

9454. Adverse claimants, etc.—If it appears that

any person alleged to have property of, or to be indebted to, the judgment debtor, claims an adverse interest therein, or denies the debt, such interest or debt may be recovered only in an action against such person by the receiver; but the judge may by order forbid a transfer or other disposition of such property or interest until a sufficient opportunity is given to the receiver to prosecute the action to judgment and execution, and may vacate or modify such order at any time on such security as he may direct. (4324) [7958]

22-452.

9455. Person indebted may be examined—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, upon proof, by affidavit or otherwise, to the satisfaction of the judge, that any person has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may require such person, or any officer thereof if a corporation, upon such notice to any party as may seem proper, to appear and answer concerning the same. (4325) [7959]

30-487, 16+398; 66-66, 68+771.

CHAPTER 78

JURIES

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9456. Petit jury—A petit jury is a body of twelve men or women, or both, impaneled and sworn in the district court to try and determine, by a true and unanimous verdict, any question or issue of fact in a civil or criminal action or proceeding, according to law and the evidence as given them in court. (R. L. '05 § 4326, G. S. '13 § 7960, amended '21 c. 365 § 1)

65-196, 68+53; 192+194.
213+545 note under § 9468.

9457. No sex disqualification—Laws relating to jury service to apply to both women and men—The provisions of statute relating to the qualifications of jurors in all cases, as well as those relating to exemption from jury duty, are hereby amended to include women as well as men, and any and all sex qualification is hereby removed. ('21 c. 365 § 3)

213+545, note under § 9468.

9458. Number to be drawn—Except as hereinafter provided, a number of petit jurors, not less than twenty-four, shall be drawn for each general term of the

district court; but in his discretion the judge, by order filed with the clerk at least thirty days before any term, may direct that a greater number be drawn, not exceeding thirty-six in all, or that no petit jury be drawn for such term. (4327) [7961]

9459. Qualifications, disabilities, and exemptions—The qualifications, disabilities, and exemptions of petit jurors shall be the same as those prescribed by law in the case of grand jurors. (4328) [7962]

40-65, 41+459; 155-37, 192+194.

9460. How drawn and summoned—Petit jurors shall be drawn and summoned at the same time and in the same manner as is provided by law in the case of grand jurors. They shall be summoned to appear on the second day of the term, unless the judge or judges, by an order filed with the clerk at least fifteen days before the term, fix a different day in the term for their appearance, in which case they shall be summoned for the day so fixed. And the court in any district may fix such day, for any or all counties therein, by orders which shall remain in force until altered or annulled. (4329) [7963]

16-282, 249; 195+890.

9461. How drawn and summoned in counties having more than 200,000 inhabitants—The judge or judges of any judicial district may, by order filed with the clerk of the court of any county having a population of more than two hundred thousand, where a term of court is to be held at least fifteen days before the sitting of such court, direct that the petit jurors for such or any subsequent term or terms be summoned for any day of the term fixed by such order other than the day now fixed by law. Such order may be at any time modified or vacated by the court by an order in like manner made and filed with the clerk at any time. When such order has been made, the clerk of the district court in such county shall, in the presence

of a judge thereof, at least ten days before the general term of said district court, under the direction of the judge or judges of said court, draw from the names in the list of persons selected to serve as petit jurors, made, certified and prepared for drawing, the names of as many persons as the court or judge shall direct, to serve as petit jurors for a period of two weeks in such terms, commencing with the day of such term named in said order; and shall then continue in like manner to draw the names of other persons for each panel for as many successive panels of petit jurors as the court or judge may direct for successive periods of two weeks, covering the time that petit jurors are expected to be needed during such general term. Such clerk shall forthwith issue to the proper officers venire for such panels of petit jurors, returnable on the proper days as to each, respectively at ten o'clock in the forenoon, and the officer shall forthwith thereafter, as soon as may be, serve all such venires and summon all such jurors and shall be entitled to the same mileage, and no more, that would be the case if the names of all the jurors in all the venires were contained in a single venire. If there be a deficiency of petit jurors, the clerk shall, in open court, under the direction of the judge, draw from the box containing the names on the petit jury list the names of additional persons to supply such deficiency; and writs of venire facias shall issue summoning such persons, and returnable at such time as the judge of the court may direct. Provided, that in all districts consisting of one county only, in which but one term of court is held annually, petit jurors may be drawn from time to time during such term, as the court may direct for the successive panels. The clerk of the court in such counties shall in like manner issue venires for such petit jurors returnable at such hour as a judge, or the judges of said court may direct. ('07 c. 35 § 1, amended '09 c. 221 § 3) [7964]

Previously amended by 1909 c. 200.

9462. Ballots—At the opening of the court the clerk shall prepare separate ballots, containing the names of the persons summoned as petit jurors, which shall be folded as nearly alike as possible, and so that the name cannot be seen, and be deposited in a sufficient box. (4330) [7965]

9463. Trial of indictments—Proceedings—When an indictment is called for trial, and before the jury is drawn, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court, in its discretion, may wait or not for the return of the attachment. (4331) [7966]

9464. Ballots, how drawn—Before the name of any person is drawn the box shall be closed and so shaken as to intermingle the ballots therein. The clerk shall then, without looking at the ballots, draw them from the box through a hole in the lid so large only as conveniently to admit the hand. (4332) [7967]

9465. Ballots, how kept—When a jury is completed the ballots containing the names of the jurors sworn shall be kept apart from the ballots containing the names of the other jurors until the jury so sworn is discharged, when the ballots containing their names shall be again folded and returned to the box, and so on as often as a trial is had. (4333) [7968]

9466. Juror absent or excused—If a juror is absent when his name is drawn, or is set aside or excused from serving on the trial, the ballot containing his name shall be folded and returned to the box as soon as the jury is sworn. (4334) [7969]

9467. Talesmen—When, by reason of challenge or other cause, a sufficient number of jurors, drawn and summoned, cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the bystanders, or from the county at large, to complete the panel. Such persons shall be qualified to serve as jurors, and shall be returned by the sheriff or his deputy, or by the coroner, or by any disinterested person appointed by the court. (4335) [7970]

16-282, 249; 124-165, 144+752; 195+890.

157-181, 195+890, note under § 9468.

9468. Jurors, selection—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 shall be included in two successive annual lists, 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 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 9101 of said General 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, amended '17 c. 485 § 1)

Explanatory note—Laws 1917, c. 485, § 2 repeals G. S. '13, § 166.

The reference to § 9101 is erroneous and should read § 9462.

145-468, 177+764, 195+890.

Does not prevent the court, in the event that a sufficient number of jurors for the trial of a case cannot be obtained from those regularly drawn and summoned, from completing the jury by causing jurors to be drawn from the bystanders or from the county at large. 157-181, 195+890.

A challenge to the panel of jurors will not lie unless the objection affects the entire panel. 210+65.

In the selection of jurors to pass upon the liberty and property of citizens, there must be no discrimination against any particular class because of race, sex, or occupation. 213+545.

9469. Jurors, when and how selected in counties having more than 100,000 inhabitants—In all counties having a population of more than 100,000, judges of the district court or a majority thereof of the district embracing such county or counties shall, annually, in the month of December of each year, at the court house in said county, select from the qualified electors of said county 125 persons properly qualified to serve as grand jurors, and 2,000 persons properly qualified to serve as petit jurors, and shall make out and certify separate lists thereof, and forthwith deliver such lists to the clerk of the district court of said county; and from said lists of persons to serve as grand jurors and as petit jurors shall respectively be drawn all grand jurors and petit jurors at any time required for the transaction of business in the district court of said county; provided, that if in any year such selection and lists shall not be made in the month of December, the same may be done at any time thereafter that any judge of said court may designate; and if from any cause there shall be a deficiency of persons resident in said county and properly qualified in either of such lists, such judges or a majority thereof, may, at any time designated by them, select from such qualified electors of said county other persons to cover such deficiency, and in like manner may certify and deliver to such clerk lists of the persons so selected, which supplementary or additional lists shall thereafter stand as parts of the original list; and provided, further, that the validity or legality of such selection or lists shall not be affected by the fact that any person or persons so selected may be disqualified from serving as grand or petit jurors, or by the selection of a greater or less number of persons than as specified in this act; provided, further, that the first selection and lists hereunder may be made at any time after the passage of this act. ('07 c. 2 § 1) [7972]
 Cited (101-334, 112+409). Application (134-312, 159+790).

9469-1. Juries in counties with population of more than 400,000—Jury of six—Increase to jury of twelve by paying additional jury fee—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 an additional jury fee of three dollars at any time before the trial commences. Failure to pay such additional jury fee shall be deemed a waiver of a jury of twelve. The jury fee for a jury of six shall be one dollar. ('27, c. 345, § 1, effective May 1, 1927)

9469-2. Same—Jury of six—Drawing—Challenges—When a jury of six is to be drawn the clerk shall, unless a majority of the judges of the judicial district in which said county is situated shall otherwise provide by rule, draw ten names from the jury box in the first instance, who shall then be examined as to their qualifications to sit as jurors in the action, and if any one of said ten are excused for any reason then another may be called in his place until there are ten jurors in the box qualified to sit in the action. The parties shall have the right to exercise their peremptory challenges as to those ten. When the peremptory challenges have been exhausted, of the remaining persons the six first called shall constitute a jury. ('27, c. 345, § 2, effective May 1, 1927)

9469-3. Same—Challenges—The provisions of Section 9294, General Statutes 1923 as to challenges shall not be affected by this act, except that when cases are tried by juries of six there shall be two peremptory challenges allowed instead of three. ('27, c. 345, § 3, effective May 1, 1927)

CHAPTER 79

COSTS AND DISBURSEMENTS

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may be allowed to the prevailing party for expenses in an action, which are termed costs. (4337) [7973]

½. In general.
 210+854.

Agent, particularly an attorney at law, who is unfaithful to his trust, and guilty of fraud on his principal or client, thereby forfeits his right to compensation. 156-478, 195+455.

Although there were no counter affidavits, in determining the reasonable value of the attorneys' services the court was at liberty to consider facts disclosed by the record in the trial of the case, as well as the facts stated in the affidavit. 160-122, 199+579.

1. Definition—The term "costs" as used in our statutes generally includes disbursements (16-249, 221; 23-71; 84-267 87+846). The costs of the statute are commonly termed statutory costs (32-206, 20+142). 138-291, 164+980.

2. Right to costs statutory—16-249, 221; 23-372; 34-1, 24+458; 46-162, 48+770.

3. An incident of the judgment—Costs are a mere incident of the judgment and go as a matter of course with every judgment in an action of a legal nature without special directions and regardless of the regularity or correctness of the judgment (66-74, 68+770). A judgment is not affected by the taxation of costs until they are entered in it (16-38, 24).

4. Legislative control—29-425, 13+673; 34-216, 25+347; 63-384, 65+652).

5. Application to special proceedings—16-249, 221; 23-372; 46-162, 48+770.