Nineteen Hundred Thirty-One

Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

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

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CHAPTER 78
Juries

§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. (As amended 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. (As amended Apr. 18, 1929, c. 236, §1.)

§9469-2. Same—Jury of six.

The text of this and the next suceeding 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.

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., 237NW1. See Dun. Dig. 702(93).

§9471. Costs in district court.

1. Who prevailing party.

173M559, 218NW730.

6. See 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).

§9473. Disbursements—Taxation and allowance.

173M559, 218NW730.

§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.

§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, 226NW 709.

CHAPTER 80

Appeals in Civil Actions

§9490. Appeal from district court.

An order permitting defendant to pay the amount into court and directing another claimant to be substituted as defendant does not finally determine any substantial right of plaintiff and is not appealable. 176M11, 222NW295.

The order must finally determine the action or some positive legal right of the appellant relating thereto. 176M11, 222NW295.

§9492. Requisites of appeal.

Jurisdiction on appeal cannot be conferred by consent of counsel or litigants. The duty is on appellant to make jurisdiction appear plainly and affirmatively from the printed record. Elliott v. R., 233NW316. See Dun. Dig. 286.

§9493. Return to Supreme Court.

1. In general.

In reviewing orders pursuant to motions, and orders to show cause, and other orders based upon the record, the rule of Radel v. Radel, 123 M299, 143NW741, and prior cases, requiring a settled case, bill of exceptions, or a certificate of the trial court as to the papers considered, or a certificate of the clerk of the trial court that the return contains all the files and records in the case, is no longer the rule when all the original files are returned to this court. 181M 392, 232NW740. See Dun. Dig. 344a.

4. Settled case or bill of exceptions.

Upon an appeal from an order overruling a demurrer there is no place for a bill of exceptions. 174M66, 218NW234.

Findings of court presumed to be correct in absence of settled case. 176M588, 224NW245.

Affidavits not presented by settled case or bill of exceptions cannot be considered. 180M 580, 230NW472.

The certification of the pleadings, findings, motion for new trial, and order denying it does not make a settled case. Upon such a record we can review the sufficiency of the findings but not the sufficiency of the evidence to sustain them. Rea v. K., 235NW910. See Dun. Dig. 344 (87), 344a(88).

6. Assignments of error.

Supreme Court cannot consider assignments of error involving questions not included in the motion for new trial. 174M402, 219NW546.

On appeal theory of case may not be shifted from that at trial. 174M434, 219NW552.

Conclusion of law, not expressly assigned as error, was so closely related to other conclusions assigned as error that it should not be permitted to stand. 177M189, 224NW852.

A ground of negligence not pleaded, not raised in the trial by request to charge or otherwise, and not raised on the motion for a new trial, cannot be presented for the first time on appeal. Arvidson v. S., 237NW12. See Dun. Dig. 384.

§9494. Powers of appellate court.

1. In general.

The fixing and allowance of fees of an attorney for a receiver are largely in the discretion of the trial court and will not be disturbed except for an abuse of such discretion. 173M619, 216NW784.

Supreme court cannot conclude that judge below failed to exercise the judicial power and discretion reposed in him in regard to matter presented by motion for new trial. 175M346, 221NW424.

On appeal from a judgment after trial by the court, no motion for a new trial having been made, and no errors in rulings or proceedings at the trial being involved, the questions for review are limited to a consideration of sufficiency of evidence to sustain the decision. 177M53, 224 NW461.

An order striking portions of answer is not reviewable on appeal from an order denying motion for new trial. 177M103, 224NW700.

Fact that, in motion to amend findings and conclusions, plaintiff asked for less relief than she was entitled to does not limit the relief that may be granted on an appeal. 177M189, 224NW 852.

An order overruling a demurrer to the complaint and an order denying a motion to strike out certain portions of the complaint are not reviewable on an appeal from an order denying an alternative motion for judgment notwithstanding the verdict or for new trial. 177M240, 225 NW84.

Scope of review in absence of bill of exceptions or settled case. Wright v. A., 227NW357.

On appeal from judgment any order or part of order subsequent to verdict and effecting the judgment may be reviewed. 180M540, 231NW222.

Case was remanded where all of the issues had not been tried. 181M606, 233NW870. See Dun. Dig. 440.

Affidavits on motion for amended findings and conclusions of law or for a new trial on the ground of newly discovered evidence are considered on appeal only on the motion for a new trial. Wheaton v. W., 234NW14. See Dun. Dig. 300(76), 395.

Supreme Court yields somewhat to trial court's judgment that it erred in its instructions, on review of granting of new trial. Hector v. R., 234NW643. See Dun. Dig. 394.

Errors assigned upon parts of the charge not excepted to when given nor challenged in the motion for new trial are not reviewable on appeal. Harrington v. A., 235M535. See Dun. Dig. 388a(27).

In action on fire policy by lessee to recover for betterments and loss of use of premises, a verdict finding loss nearly twice amount of cost of restoration and repairs held contrary to evidence and law. Harrington v. A., 235NW535. See Dun. Dig. 415(47).

Where it is clear that the court has considered and definitely decided an issue of fact, the case will not be reversed or remanded for more definite findings thereon. Buro v. M., 237 NW186. See Dun. Dig. 435.

A defect in the complaint, not challenged in the lower court, cannot be urged here after an interposed defense has been litigated on the merits as if no such defect existed—the question of liability having been so voluntarily litigated. Gleason v. D., 237NW196. See Dun. Dig. 384.

2. Dismissal of appeal.

It appearing that appeal could serve no purposes other than those of delay, it was dismissed. 174M401, 219NW457.

3. Affirmance.

After affirmance on ground that alleged error was not presented to the court below the trial court is without power to amend the judgment to cure such error. 179M589, 229NW882.

4. Reversal.

Inadvertent failure of court to include small item in computing the amount due was not ground for reversal. 171M461, 214NW288.

Order consented to cannot be reversed. 173M 621, 217NW114.

Matter of opening default lies almost wholly in discretion of trial court. Johnson v. H., 225 NW283.