1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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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(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings. (Act Apr. 17, 1933, c. 286, §4.)

9455-5. Not restricted.—The enumeration in Sections 2, 3, and 4 does not limit or restrict the exercise of the general powers conferred in Section 1, in any proceeding where declaratory relief is sought, in which judgment or decree will terminate the controversy or remove an uncertainty. (Act Apr. 17, 1933, c. 286, §5.)

9455-6. Court may refuse to enter decree.—The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. (Act Apr. 17, 1933, c. 286, §6.)

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.

Order amending complaint so as to make city a party plaintiff instead of a party defendant was not an order involving merits of cause of action or any part thereof *and is not appealable, neither is order denying motion* to vacate order granting amendment. Gilmore v. C., 198 M148, 269NW113.

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.)

Appellant's motion to vacate an order amending complaint so as to make defendant city a party plaintiff instead of a party defendant was timely under Barrett v. Smith, 183M431, 237NW15, and U. S. Roofing & Paint Co. v. Melin, 160M530, 200NW807. Gilmore v. C., 198M148, 269 NW113.

Upon ex parte application for a declaratory judgment for unpaid alimony and for execution trial court may, in its discretion, require notice of application to be given to other party to proceedings, even though statutes do not require giving of notice in such cases. Kumlin v. K., 273NW253. See Dun. Dig. 2811.

Courts do not hesitate to declare unconstitutional a statutory provision which arbitrarily and without reasonable justification prohibits a person from pursuing a lawful calling. Johnson v. E., 285NW77. See Dun. Dig. 1655.

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.

½. In general.

Costs will not be allowed against corporation in a representative suit. Keough v. S., 285NW809. See Dun. Dig. 2207a.

Where a representative suit by minority stockholder was consolidated for trial with a stock division suit, separate statutory costs should be allowed in the two suits. Id. See Dun. Dig. 2207a.

2. Right to costs statutory.

Costs were unknown at common law and depend upon statutory authority. State v. Tifft, 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).

Fact that court directed payment of attorney's fees to plaintiffs' attorneys instead of to them for plaintiffs was not error nor important. Regan v. B., 196M243, 264NW 803. See Dun. Dig. 699.

The sovereign may not be sued without its consent, but where government recognized existence of legal claims founded upon obligations imposed by virtue of Transportation Act and while Director General of Railroads was in charge, a remedial act passed to reimburse property owners who had suffered losses because of negligent operation of railroad is "debt legislation" not "favor legislation," as affecting validity of contracts for contingent attorney fees in obtaining such legislation. Hollister v. U., 199M269, 271NW493. See Dun. Dig. 664, 666, 698a.

There is a clear distinction in law respecting contingent fee contracts between an attorney and his client where same relates to "favor legislation" and legislation which provides means for settlements of debts or obligations founded upon contract or violation of a generally recognized legal right, latter being generally referred to as "debt legislation." If a contract comes within second class mentioned, it is generally recognized as a valid obligation. Id.

In contracts between attorneys and clients, usual test to apply is whether contract can by its terms be performed lawfully. If so, it will be treated as legal, even if performed in an illegal manner. On other hand, a contract entered into with intent to violate law is illegal, even if parties may, in performing it, depart from contract and keep within law. Id.

Under common-law rule in England, contracts for contingent fees between an attorney and his client were condemned as champertous, but general rule in this country is that great weight of authority recognizes validity of such contracts for contingent fees, provided they are not in contravention of public policy, and it is only when attorney has taken advantage of claimant by reason of his poverty, or surrounding circumstances, to exact an unreasonable and unconscionable proportion of such claim that it is condemned. Id.

Where plaintiff and defendants in good faith, but without knowledge or consent of plaintiff's attorney, settled their differences upon a basis whereby plaintiff waived all of her claims for damages arising out of an automobile collision on condition that defendants' insurers pay a given sum to settle five other personal injury actions arising out of the same accident, and payment was duly made pursuant to agreement, and intervenor, plaintiff's attorney, claimed an attorney's lien under express contract whereby he was to receive 25 per cent "of any sums received in settlement" of the cause, court erred in finding value of plaintiff's cause of action to be $5,000 as of date of settlement and awarding intervener $1,250 plus interest and costs. Krippner v. M., 287NW19. See Dun. Dig. 699a.

A client has the right, as an implied condition of the contract under the law, to discharge his attorney, with or without cause, but attorney may recover reasonable value of services rendered but he cannot recover damages as for breach of contract. Id. See Dun. Dig. 669a.

Amount of recovery where contract was entered into during existence of relationship. 20MinnLawRev429.

9471. Costs in district court.

1. Who prevailing party.

173M559, 218NW730.

2. On dismissal.

An assignee subrogated to part of a plaintiff's claim or alleged cause of action is not liable for costs and disbursements in a suit brought in the name of the assignor. Dreyer v. O., 287NW13. See Dun. Dig. 2195.

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