1944 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)32FSupp849.

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