PART VI

CONSTRUCTION AND PUBLICATION OF STATUTES; CURATIVE ACTS; EXPRESS REPEALS

CHAPTER 645

INTERPRETATION OF STATUTES

GENERAL NOTE.

As an interpretative or constructive statute, General Statutes 1923, Chapter 107, and as found in Mason's Supplement, 1940, was unsatisfactory. In revision, nearly 50 per cent of the sections were deleted as obsolete, executed, or unnecessary, and the remaining sections were rewritten. Many new sections were added and the suggested revision was enacted, being Laws 1941, Chapter 492. The annotations to this chapter embody the Minnesota decisions relating to such sections as are derived from prior compilations; and as to new sections the references are explanatory of the sources from which the sections were derived.

GENERAL PROVISIONS

645.01 WORDS AND PHRASES.

HISTORY. 1941 c. 492 s. 1.

Approval of bills by the governor; action on non-approval. Minnesota Constitution, Article 4, Section 11.

"Legislature" defined. Smiley v Holm, 285 US 355.

The constitutional requirement of an enacting clause is mandatory. Minnesota Constitution, Article 4, Section 13; Sjöberg v Security Savings, 73 M 203, 75 NW 1116.

Words and phrases which have acquired an established meaning by judicial construction are deemed to be used in the same sense in a subsequent statute relating to same subject matter. A similar rule applies to bankruptcy acts. Jones v Fiesel, 204 M 333, 283 NW 535.

If a statute contains a clear and official declaration of the legislative will and policy, it is valid, no matter how imperfectly drawn. State ex rel v Probate Court, 205 M 549, 287 NW 297.

A litigant may be heard to question the constitutionality of a statute only when and so far as it is about to be applied to his disadvantage. State ex rel v County of Steele, 181 M 427, 232 NW 737.

Taxing statutes are generally construed with strictness. Webber v Knox, 97 F(2d) 921.

A court may disregard punctuation or repunctuate a statute, if necessary, to arrive at the natural meaning of the language used. Great Atlantic v Ervin, 23 F. Supp. 70.

Re-enactment of a statute will not validate an erroneous interpretation thereof by the collector of internal revenue, an administrative official. Hanson v Landy, 24 F. Supp. 535.

The purposes and objects of an act may be gathered from the committee hearings, committee reports, and debates in the legislative body when the act was being considered, together with all other legislative history. Twin Ports v Pure Oil Co. 26 F. Supp. 366.

The purpose of the legislature in enacting Laws 1939, Chapter 283, was to permit the owner of the land who had lost it to the state through forfeiture for tax delinquency, an opportunity to reacquire through repurchase that which he had so lost. 1942 OAG 318, Jan. 13, 1942 (311-F).

Construction of tax laws. 23 MLR 107.

645.02 EFFECTIVE DATE AND TIME OF LAWS.

HISTORY. 1849 c. 1; R.S. 1851 c. 2 s. 2; P.S. 1858 c. 3 s. 3; G.S. 1866 c. 4 s. 2; G.S. 1878 c. 4 s. 2; G.S. 1894 s. 257; R.L. 1905 s. 5510; G.S. 1913 s. 9408; G.S. 1923 s. 10928; M.S. 1927 s. 10928; 1941 c. 492 s. 2.

Provisions to the same effect are found in the statutes of Arizona, Connecticut, New Hampshire, New Jersey, North Dakota, Pennsylvania, Rhode Island, and Virginia.

Laws 1871, Chapter 52, approved March 6, 1871, by its terms became effective one year after date, consequently the limitation became operative on March 7, 1872. Duncan v Cobby, 32 M 460, 21 NW 714.

Where a statute provides that it shall take effect "from and after its passage" in computing the time when it takes effect, the day of the passage is excluded. Parkinson v Brandenberg, 35 M 294, 28 NW 919; Mushell v Board, 152 M 269, 188 NW 555; 1934 OAG 770, June 24, 1933 (280b).

A statute enacted without the usual declaration as to the time it shall take effect, but which acts upon certain specified classes or persons at different dates, as to some from date of enactment and as to others at a future date, goes into effect as an entirety, and at the time prescribed by law for the taking effect of statutes after approval by the governor. State ex rel v Lincoln, 133 M 178, 158 NW 50.

The amendment did not specifically provide when it was to take effect. Held to become operative from and after its approval. County of Mille Lacs v Town of Leigh, 202 M 331, 278 NW 581.

A tax statute, like any other statute, will not be given a retrospective effect in the absence of an express command or a necessary implication. Board v Anderson, 205 M 77, 285 NW 80.

Rule against retroactive legislation. 20 MLR 775.

645.03 SESSION LAWS NOT AFFECTED.

HISTORY. R.L. 1905 s. 5504; G.S. 1913 s. 9398; G.S. 1923 s. 10918; M.S. 1927 s. 10918; 1941 c. 492 s. 3.

This is General Statutes 1923, Section 10918 as rewritten.

Revised Laws 1905, Section 5504, exempting laws passed at the 1905 session from revision. Williams v State Board, 120 M 316, 139 NW 500; Telford v McGillis, 130 M 397, 153 NW 758; Spear v Noonan, 131 M 332, 155 NW 107; State ex rel v Board, 139 M 96, 165 NW 880; Hill v Village of Aurora, 157 M 469, 196 NW 465; Ebeling v Independent Co. 187 M 608, 246 NW 373.

645.04 FORMER LAWS NOT REVIVED.

HISTORY. G.S. 1866 c. 121 ss. 3, 4; G.S. 1878 c. 121 ss. 3, 4; G.S. 1894 ss. 7514, 7515; R.L. 1905 s. 5505; G.S. 1913 s. 9399; G.S. 1923 s. 10919; M.S. 1927 s. 10919; 1941 c. 492 s. 4.

This section modifies the language found in General Statutes 1923, Section 10919.

The repeal of the act of February 3, 1862, by the General Statutes of 1866, did not restore any right or lien divested or determined by said act. Grace v Donovan, 12 M 580 (503); Stine v Bennett, 13 M 153 (138).

After the adoption of General Statutes 1866, Chapter 66, Section 24, General Statutes 1866, Chapter 121, Section 4, did not save the operation of Public Statutes 1858, Chapter 60, Section 24, upon a payment to take a case out of the statute of limitations, the full time not having run; but General Statutes 1866, Chapter 66, Section 24, applied to the case. Brisbin v Farmer, 16 M 215 (187).

The provisions of General Statutes 1866, allowing suit on an administrator's bond in the name of the creditor instead of the judge of probate, applies to past bonds; it affects only the remedy and is constitutional. Lanier v Irvine, 24 M 116, 122. The right of refundment through Revised Statutes 1851, Chapter 12, Section 74, Public Statutes 1858, Chapter 9, Section 95, was not impaired by the repealing clause in General Statutes 1866, Chapter 122. State v Foley, 30 M 352, 15 NW 375.

General Statutes 1878, Chapter 66, Section 82, relating to the computation of time, was intended to establish a uniform rule, applicable to the construction of statutes as well as to matters of practice and applies to General Statutes 1878, Chapter 66, Section 293, fixing the time that judgments survive. Spencer v Haug, 45 M 231, 47 NW 794.

The right to apply for and have a second certificate of sale upon execution from the officer making such sale in certain cases, which was given by Laws 1862, Chapter 19, survived the repeal of that chapter, and was saved to the purchaser by General Statutes 1866, Chapter 121, Section 4. Olsen v Peterson, 53 M 522, 55 NW 815.

Revised Statutes 1851, Chapter 80, Section 1, abolished the writ of quo warranto. General Statutes 1866, repealed Revised Statutes 1851, Chapter 80, Section 1. This had the effect of reviving the writ as a common law remedy. State ex rel v Otis, 58 M 278, 59 NW 1015.

Laws 1860, Chapter 17, was repealed by General Statutes 1866, Chapter 122, but such repeal did not affect any act done or any right accruing or accrued or established under the statute before its repeal. Lane v Minnesota, 62 M 179, 64 NW 382.

The revision of a statute, the same being a continuation of existing laws, does not at common law abrogate or terminate proceedings pending when the amendment or revision goes into effect. State ex rel v McDonald, 101 M 349, 112 NW 278.

The statute creating the liability here sought to be enforced was repealed by Revised Laws 1905, prior to the organization of the town of Norman. Town of Kettle River v Town of Bruno, 106 M 58, 118 NW 63.

Although the statute under which claim is made was repealed by Revised Laws 1905, such repeal did not affect payments ratified and validated by Revised Laws 1905, Section 5505. Nordlund v Dahlgren, 130 M 467, 153 NW 876.

645.05 CONTINUATION OF FORMER LAWS.

HISTORY. R.L. 1905 s. 5508; G.S. 1913 s. 9402; G.S. 1923 s. 10922; M.S. 1927 s. 10922; 1941 c. 492 s. 5.

This is General Statutes 1923, Section 10922, with necessary changes.

The law relating to the service of mesne process upon foreign corporations approved Feb. 28, 1866, controls General Statutes 1866, Chapter 66, Sections 48, 56, and the delivery of a copy of the summons to the general or managing agent of a foreign corporation, as provided therein is sufficient service. Guernsey v American Ins. 13 M 278 (256).

General Statutes 1866, Chapter 66, Section 254, limiting the lien of judgments to ten years, has no application to prior judgments. Such judgments were saved by General Statutes 1866, Chapter 121, Section 4, and the lien preserved by compliance with the provisions of Laws 1862, Chapter 27. Davidson v Gaston, 16 M 230 (202).

Laws 1858, Chapter 52, Section 1, as amended and re-enacted, General Statutes 1866, Chapter 40, Section 21, is not retroactive and, in so far as it provides that every conveyance not recorded shall be void as against attachment and judgment creditors, does not apply to conveyances executed prior to the passage of the act in 1858. Gaston v Merriam, 33 M 271, 22 NW 614.

Rule for construing revised statutes permits reference to and examination of prior statutes to ascertain intent of legislature, when the revised statute is ambiguous or susceptible of two constructions. State v Stroschein, 99 M 248, 109 NW 235; Becklin v Becklin, 99 M 307, 109 NW 243; Northwestern Trust v Bradbury, 112 M 76, 127 NW 386.

Changes will not be regarded as altering law, unless clear that such was the intention. Becklin v Becklin, 99 M 307, 109 NW 243; State v Ledbeter, 111 M 110, 126 NW 477; Northwestern Trust Co. v Bradbury, 112 M 76, 127 NW 386; Lockey v Lockey, 112 M 512, 128 NW 833; Duluth Terminal v City of Duluth, 113 M 459, 130 NW 18.

Statute in Revised Laws 1905, where complete in all its details and unambiguous, must be construed without reference to prior laws. State v Hovorka, 100 M 249, 110 NW 870.

The provision relating to continuation of existing statutes is plain and explicit, and entitled to reasonable construction, such as will give effect to the intention of the legislature. State ex rel v McDonald, 101 M 349, 112 NW 278.

Revised Laws 1905, Section 1594, and Revised Laws 1905, Section 1703, construed together prohibit the sale of endowments by fraternal beneficiary associations. National Protective Legion v O'Brien, 102 M 15, 112 NW 1050.

General Statutes 1894, Section 4808, was not altered by the revision of 1905. Glaser v Kaiser, 103 M 241, 114 NW 762.

Revised Laws 1905, Section 936, is a revision and restatement of Laws 1902, Chapter 2, Section 52, and reference to lands forfeited under Revised Laws 1905, Section 936, is in legal effect a reference to lands forfeited under Laws 1907, Chapter 2, Section 52. Minnesota Debenture v Scott, 106 M 32, 119 NW 391.

Where two inconsistent statutes, relating to the same subject-matter, but passed at different times, are both incorporated into revision, the court will, in construing them, inquire as to dates of respective enactments and give effect to latest expression of the legislature. State ex rel v District Court, 107 M 437, 120 NW 894; State ex rel v District Court, 113 M 298, 129 NW 514; Syndicate Printing Co. v Cashman, 115 M 446, 132 NW 915.

A provision incorporated into the revision is a continuation of the original act. State v Barnes, 108 M 230, 122 NW 11.

Where two inconsistent statutes are approved on the same day, it is presumed that they were approved in their numerical order. Syndicate Printing Co. v Cashman, 115 M 446, 132 NW 915.

The statutes embodied in a general revision of the laws are presumed not to have changed the prior laws, unless such intention clearly appears; and in ascertaining the intention of the legislature recourse may be had to the report of the revising commission taken in connection with the history of the law, the purpose sought to be accomplished by it, and the action of the legislature in changing or not changing the act as reported to them. Wipperman v Jacobson, 133 M 326, 158 NW 606.

Laws 1897, Chapter 94, as amended by Laws 1901, Chapter 270, was divided into sections 2028 and 2029 by Revised Laws 1905. Laws 1907, Chapter 54, amends section 2028. It is clear that the law indicates a legislative intent to refer to a station doing a certain amount of business rather than the fact of the incorporation of the village. Hines v Minnesota Ry. 151 M 402, 186 NW 797.

General Statutes 1894, Sections 4466, 4468, and 4711 were consolidated into Revised Laws 1905, Section 3701. It was clearly not the intent of the revisors to change the law, but rather to condense and simplify the then existing statute. "An intent to change the law will not be lightly inferred from a mere change of phraseology in a revision." In re Gilroy, 193 M 355, 258 NW 584.

A revision of existing statutes is presumed not to have changed their meaning, even if there be phraseological alterations, unless an intention to change clearly appears from the language of the revised statute when considered in connection with the subject matter of the act and its legislative history. State ex rel v Montague, 195 M 278, 262 NW 684.

In re-enacting a statute, intention to change meaning may as clearly appear from the omission of provisions as by adding new language. Wenger v Wenger, 200 M 439, 274 NW 517.

The presumption is that no change is intended in existing law by a revision unless the contrary appears from its language. The change in headline of act in 1905 revision did not indicate intention to change the law, since headlines are not a part of the act. Wangensteen v Northern Pacific, 218 M 324, 16 NW(2d) 50.

645.06 PUBLISHED LAWS AS EVIDENCE.

HISTORY. 1905 c. 185 s. 5; G.S. 1913 s. 9406; 1923 c. 95 ss. 5, 10; G.S. 1923 ss. 10926, 10945, 10950; M. S. 1927 ss. 10926, 10945, 10950, 10950-2, 10950-4, 10950-5, 10950-6, 10950-7, 10950-8; 1941 c. 492 s. 6.

This is Mason's Statutes, Sections 10926, 10945, 10950-2, 10950-4, 10950-5, 10950-6, 10950-7, 10950-8, and includes a new provision covering Mason's Supplement of 1940.

The statutes embodied in a general revision of the laws are presumed not to have changed the prior laws, unless such intention clearly appears; and in ascertaining the intention of the legislature recourse may be had to the report of the revising commission taken in connection with the history of the law, the purpose sought to be accomplished by it; and the action of the legislature in changing or not changing the act as reported to them. Wipperman v Jacobson, 133 M 326, 158 NW 606.

645.07 UNIFORM STANDARD TIME.

HISTORY. 1927 c. 157 s. 1; M.S. 1927 s. 10933-1; 1941 c. 492 s. 7; 1945 c. 393 s. 1.

This is Mason's Statutes Section 10933-1, somewhat modified.

CONSTRUCTION OF WORDS AND PHRASES

645.08 CANONS OF CONSTRUCTION.

HISTORY. R.S. 1851 c. 2 s. 1; 1852 Amend. p. 5; P.S. 1858 c. 3 s. 2; G.S. 1866 c. 4 s. 1; G.S. 1878 c. 4 s. 1; G.S. 1894 s. 255; R.L. s. 5513; G.S. 1913 s. 9411; G.S. 1923 s. 10932; M.S. 1927 s. 10932; 1941 c. 492 s. 8.

Clause (1)
Clause (2)
Clause (3)
Clause (4)
Clause (5)
(6) Generally

Clause (1)

This is Mason's Statutes, Section 10932 as amended. The language of this clause is used in 18 states. In California, Idaho, and Kansas the word "context" is used instead of "common."

Construction of the words "property, money, and effects." Banning v Sibley, 3 M 389 (282).

A watch is not "wearing apparel," nor "household furniture," nor "an instrument used and kept by the debtor for the purpose of carrying on" his trade. Rothschild v Boelter, 18 M 361 (331).

"The Northwestern Reporter," a law weekly, is not a "newspaper" so as to qualify for the publication of a summons. Beecher v Stephens, 25 M 146.

Meaning and use of the word "delegate." Distinction between "mass convention" and "delegate convention." Manston v McIntosh, 58 M 525, 533, 60 NW 672.

Constructive and historical statutory use of the words "legacy or distributive share." State ex rel v Willrich, 72 M 165, 75 NW 123.

Construction of the term "malt liquors"; defined as "an alcoholic liquor, or beer, ale or porter prepared by fermenting an infusion of malt." State v Gill, 89 M 502, 95 NW 449.

The term "legal voters" defined. Oppegaard v Board, 120 M 443, 139 NW 949.

The language of a statute is to be construed in harmony with the ordinary rules of grammar, except only when such construction will lead to a result obviously contrary to the intention of the legislature. State v Minneapolis Milk Co. 124 M 34, 144 NW 417.

An amendment of a statute, "to read as follows" repeals everything in the old statute not embodied in the new. State ex rel v District Court, 134 M 132, 158 NW 798.

"Prostitution" defined. State v Marsh, 158 M 111, 196 NW 930.

When a state adopts a foreign statute it presumably adopts the construction already given it by the state where it was first adopted. Congdon v Congdon, 160 M 343, 200 NW 76.

There is abundant authority for the construction, so as to accomplish the purpose of the document or act and avoid absurdity. In that process and to that end, literal meaning frequently suffers. City of Marshall v Gregoire, 193 M 196, 259 NW 377.

The word "position" must be interpreted in accordance with the "common and approved usage" of the word. State ex rel v Board of Education, 213 M 583, 7 NW(2d) 544.

To give effect to legislative purpose, the word "and" is construed in a disjunctive sense. Maytag Co. v Commissioner of Taxation, 218 M 460, 17 NW(2d) 37.

The fact that the witness labeled his conclusion as "speculative" did not make it so in an objectionable sense. It is the intrinsic quality of the conclusion that matters, and not the label or characterization. Words mean what they manifest. Their meaning may vary. Hiber v City of St. Paul, 219 M 92, 16 NW(2d) 878.

Application of rules of statutory construction, Sections 645.08 (1), 645.16 (5, 7, 8), and 645.17 (4) to the power of eminent domain as authorized under Sections 117.02 and 161.03. Petition of Burnquist, 220 M —, 19 NW(2d) 407.

Clause (2)

This is a re-write of Mason's Statutes, Section 10932, and is similar to the provisions in 17 states.

Construction of the words "party" and "parties" relating to the transfer of an interest in real estate. McPheeters v Ronning, 95 M 167, 103 NW 889.

In a notice of a foreclosure of a mortgage by advertisement, the name of each assignee must be specified. Moore v Carlson, 112 M 433, 128 NW 578.

Words importing the singular number may extend and be applied to several persons and things. 1942 OAG 261, April 16, 1942 (434A-6).

Clause (3)

This clause is based upon supreme court rulings.

Rule of Ejusdem Generis. 23 MLR 545.

Clause (4)

This is based upon Mason's Statutes, Section 10932, and follows the language used in 22 states.

Admission to practice medicine upon the consent of "seven of the nine members of the board" does not confer on the board the right or power to disregard the qualifications of the applicant. State v Fleischer, 41 M 69, 42 NW 696.

Where the office of president of the common council was abolished, the duty of appointing a county assessor devolved on the other two members of the appointing commission, as did also the duty of making up a jury list. State ex rel v Johnstone, 61 M 56, 63 NW 176; State v Weingarth, 134 M 309, 159 NW 789.

A board of county commissioners consisted of five members, but one failed to qualify. The four may exercise the legislative powers of that board. Swedback v Olson, 107 M 420, 102 NW 753.

Where three referees are appointed by the court to make a partition reported and concurred in by two of them is valid if approved by the court. Robbins v Hobart, 133 M 49, 157 NW 908.

Validity of charter reported by less than all the members of a charter commission. 10 MLR 251.

Clause (5)

This provision is found in the interpretative laws of Arizona and Texas.

(6) Generally

645.09 NUMERALS.

HISTORY. 1941 c. 492 s. 9.

This provision follows the language of statutes in Iowa, Kansas, Missouri and Pennsylvania.

645.10 BONDS.

HISTORY. 1941 c. 492 s. 10.

New York and Pennsylvania alone have this provision. Alabama and Georgia have provisions somewhat similar.

645.11 PUBLISHED NOTICE.

HISTORY. 1921 c. 171; 1921 c. 484 s. 5; G.S. 1923 ss. 10933(14), 10937; M.S. 1927 ss. 10933(14), 1937; 1941 c. 103; 1941 c. 492 s. 11.

This section was rewritten from Mason's Statutes, Section 10937, and Mason's Statutes, Section 10933(14).

Published notices or advertisements falling on a legal holiday are valid, but one falling on Sunday is not valid. 1936 OAG 251, June 8, 1935 (276d); OAG March 4, 1936 (276d).

In case of three weeks' published notice of bids, the time of opening bids should not be less than one week from date of last publication. OAG May 7, 1937 (125a-17).

645.12 POSTED NOTICE.

HISTORY. 1921 c. 171; G.S. 1923 s. 10933(14); M.S. 1927 s. 10933(14); 1941 c. 492 s. 12.

This section is based on Mason's Statutes, Section 10933(14).

Posted in one place instead of three. First Church v White Bear Church, 126 M 285, 148 NW 271.

The last day for posting notices of election in proceedings for the consolidation of school districts was Monday, February 10. The notices were tacked up on Sunday, February 9, but remained up Monday, the 10th. The notices were valid. The court presumes they remained posted on Monday. Thoreson v Susens, 127 M 84, 148 NW 891.

Foreclosure of a chattel mortgage by notice requires strict adherence to statutory requirements. When such notice was made in Minneapolis only, and none in the town of Medina where the mortgaged property had its situs, a sale thereunder was invalid. State Bank v Loose, 198 M 222, 269 NW 399.

645.13 TIME; PUBLICATION FOR SUCCESSIVE WEEKS.

HISTORY. 1941 c. 492 s. 13.

This was taken from Pennsylvania Statutes, and there are similar provisions in Mississippi, and North Dakota.

In registration of title proceedings, Section 508.16 applies and controls. OAG Nov. 8, 1944 (374h).

645.14 TIME; COMPUTATION OF MONTHS.

HISTORY. 1941 c. 492 s. 14.

This was taken from the interpretative statutes of New York.

645.15 COMPUTATION OF TIME.

HISTORY. R.S. 1851 c. 82 s. 42; P.S. 1858 c. 72 s. 42; G.S. 1866 c. 66 s. 68; G.S. 1878 c. 66 s. 82; G.S. 1894 s. 5222; R.L. 1905 s. 5514; G.S. 1913 s. 9412; G.S. 1923 s. 10933(21); M.S. 1927 s. 10933(21); 1941 c. 492 s. 15.

This is based upon Mason's Statutes, Section 10933(21). Similar provisions may be found in the statutes of Arkansas, Alabama and 16 other states.

In computing time for publishing notice of sale under a power in a mortgage, the general rule, prescribed by statute of excluding the first and including the last day, is to apply. Worley v Naylor, 6 M 192 (123).

The right to issue executions on judgments is limited to ten years from the entry of the judgment. In computing such ten years, the day of the entry of judgment should be excluded. Davidson v Gaston, 16 M 230 (202); Mansfield v Fleck, 23 M 61; Spencer v Haug, 45 M 231, 47 NW 794; Johnson v Merritt, 50 M 303, 52 NW 863.

In giving ten days' notice of argument required by rule eight of the supreme court, the day of service and the first day of the term must both be excluded. Greve v St. Paul Co. 25 M 327.

Notices posted on May 13 of a meeting held on May 23 were sufficient notice. Coe v Caledonia Co. 27 M 197, 6 NW 621.

A justice of the peace summons served on the 11th and returnable on the 17th was six days' notice before the time of appearance. Minneapolis Mill v Wheeler, 31 M 119, 16 NW 704.

Rule applied to mechanics' liens. Frankoviz v Smith, 34 M 403, 26 NW 225; Bovey v Tucker, 48 M 223, 50 NW 1038.

Service of notice of trial. State v Weld, 39 M 426, 40 NW 561.

The statutory rule for computing time does not apply to ascertain the day, or the last day, on which a thing may be done where such day is expressed by its date. Northwestern v Channell, 53 M 269, 55 NW 121.

In computation of the required "not less than ten days' notice," the day of publication should be excluded and the day of election included. Brady v Moulton, 61 M 185, 63 NW 489.

Notice is void on its face, notice being premature in point of time. Kipp v Fitch, 73 M 65, 75 NW 752.

In determining whether a cause of action is barred by the statute of limitations, the day on which it accrued is excluded. Nebola v Minnesota Co. 102 M 89, 112 NW 880.

Whether the word "from" shall be construed as inclusive or exclusive of the terminus a quo depends upon the subject matter and context. When it refers to the time within which an act is required or permitted to be done, the statute (Revised Laws 1905, Section 5514(21) (Section 345.15) provides that, with certain exceptions, the first day shall be excluded; but when the words "from the date," or "from" a day named, are used in connection with the creation of an estate or interest, and it is not contrary to the expressed intention of the parties, the date named from which the estate or interest (such as a lease) is to exist is to be included, and the estate or interest vests on that day. Budds v Frey, 104 M 481, 117 NW 158. Following Coe v Caledonia, 27 M 197, 6 NW 621, and State v Weld, 29 M 426, 40 NW 561, and overruling Greve v St. Paul Co. 25 M 327, it is held that, in the computation of the ten days' notice of argument required by rule eight of the supreme court, the day of service should be excluded, and the first day of the term included. Village of Excelsior v Minneapolis Co. 108 M 407, 120 NW 526, 122 NW 486.

Under the terms of a bond given by a dealer in live stock, no recovery can be had on account of a sale made while the dealer is in default more than 48 hours on previous sales. If the 48-hour period ends on Sunday, that day is not to be counted. In the instant case the 48-hour period from the time of the purchases on Friday, January 7, expired at the same hour on Monday, January 10. Hughes v Globe Indemnity, 139 M 417, 166 NW 1075.

See as to time for redemption. Leland v Heiberg, 156 M 32, 194 NW 93.

In computing the three-day period in which a bill is to be returned, Sunday, not holidays, is the only day to be excluded. State ex rel v Holm, 172 M 162, 215 NW 200.

"On the termination of May 20" could not mean any other date than the 21st. "It is proper to notify a tenant to remove on the day his monthly term expires, but a notice is not insufficient or defective which notifies him to vacate the following day." Aitkin Lodge v Trappman, 179 M 349, 229 NW 312.

Where the liability of the transfer or of state bank stock "shall continue for one year after the entry of such transfer," the liability of a stockholder making a transfer on November 23, 1925, continued to and included November 23, 1926. Bank v March, 183 M 127, 235 NW 914.

A cause of action alleging items of deposit received in an insolvent bank, the last one on March 7, 1924, is not barred as to such last item on March 7, 1930. The first day is excluded and the last included in the computation of time. Oleson v Retzlaff, 184 M 624, 238 NW 12, 239 NW 672.

Where a defendant must make his demand for a change of venue within 20 days after the summons is served, and the last day falls on Sunday or a legal holiday, the demand may be made on the following day. State ex rel v District Court, 187 M 287, 245 NW 431.

Where an insurance policy may be canceled on ten days' notice, in computing such time the first day shall be excluded and the last day included. Olson v McGraw, 188 M 307, 247 NW 8.

Where an act is required to be done a specified number of days before an event, the required number of days is to be computed by excluding the day on which the act is to be done and including the day on which the event is to occur. State ex rel v Schimelpfenig, 192 M 55, 255 NW 258.

In computing the time within which an application may be made under section 352.09 holidays are to be counted except when the last day falls on a holiday, in which case the application may be made on the day following. OAG March 3, 1939 (276B).

Performance of contracts; computation of time; doctrine of de minimis. 7 MLR 356.

CONSTRUCTION OF LAWS

645.16 LEGISLATIVE INTENT CONTROLS.

HISTORY. 1941 c. 492 s. 16.

The provisions in the first paragraph are contained in the interpretative statutes of Arkansas, Colorado, Georgia, Illinois, Kentucky, Texas, and Pennsylvania.

The provisions in the second paragraph are found in Louisiana, Oregon, Pennsylvania and New York.

The provisions in the third paragraph are found in Pennsylvania.

In ascertaining the meaning of the language of a statute, resort should be had to statutory rules of construction in aid of the process. Petition of Burnquist, 220 M —, 19 NW(2d) 407.

A statute dealing with a remedy should be liberally construed. Wheeler v Seabord, 218 M 444, 16 NW(2d) 519.

The court in interpreting the legislative intent, and in upholding the constitutionality of a law where possible, may eliminate a part of a statute if necessary to aid in proper construction. State v Minnesota Federal, 218 M 242, 15 NW(2d) 568.

Headlines are not a part of the law. Bond v Pennsylvania Ry. 124 M 195, 144 NW 942; Wangensteen v Northern Pacific, 218 M 322, 16 NW(2d) 50.

The law favors compromise of cases and encourages the ending of litigation. Any law which has for its salutary and beneficent purpose the accomplishment of this end should not be strictly construed. A statute of this kind is to be literally construed so as to enable parties to avoid costs of litigation. Woolsey v O'Brien, 23 M 72; Wangensteen v Northern Pacific, 218 M 322, 16 NW(2d) 50.

Where the language of the statute is clear and unambiguous, the aid of interpretative canons are not required. State ex rel v Oehler, 218 M 290, 16 NW(2d) 765; Travis v Collett, 218 M 595, 17 NW(2d) 68; Kuenzlis Estate, 219 M 176, 17 NW(2d) 309.

Committee reports often persuasively show the intended legislative meaning. Enger v Holm, 213 M 154, 6 NW(2d) 101; Wangensteen v Northern Pacific, 218 M 322, 16 NW(2d) 50.

The legislative history of a statute may be considered in determining its meaning. Barlau v Mpls-Moline, 214 M 575, 9 NW(2d) 6; Wangensteen v Northern Pacific, 218 M 322, 16 NW(2d) 50.

Courts cannot supply that which the legislature purposely omits or inadvertently overlooks. Commissioner v Bennett, 219 M 449, 18 NW(2d) 238.

The supreme court of the United States resorts to the reports of committees of congress for aid in ascertaining congressional intention. Helvering v Griffiths, 318 US 371; Helvering v American Dental Co. 318 US 322; Federal Security v Quaker Oats, 318 US 218; Smith v Shaughnessy, 318 US 176; United States v Wrightwood Dairy, 315 US 110; United States v Dickerson, 310 US 554; N.P. Ry. v Washington, 222 US 370.

State authority must yield to controlling federal authority over interstate and foreign commerce. In the instant case there was no conflict. Union Brokerage v Jensen, 215 M 207, 9 NW(2d) 721, 322 US 203.

To apply the doctrine of contemporaneous or practical construction to a statute, the statute must be doubtful, ambiguous, or uncertain, and the ambiguity must be so great as to compel the court to seize upon extraneous circumstances to aid it in reaching a conclusion. Diedrick v Helm, 217 M 483, 14 NW(2d) 913; Moskovitz v City of St. Paul, 218 M 545, 16 NW(2d) 745.

645.17 PRESUMPTIONS IN ASCERTAINING LEGISLATIVE INTENT.

HISTORY. 1941 c. 492 s. 17.

This follows the interpretative statutes of Pennsylvania.

Action by guest rider in automobile. As the accident occurred in South Dakota a construction of the South Dakota speed law was compelling. Berlin v Koblas, 183 M 278, 236 NW 307.

As between a statutory provision with special and limited application, and another, general in scope, the special controls the general within the former's limited field. Rosenquist v O'Neil, 187 M 375, 245 NW 621.

Strict construction of statutes in derogation of common law must not be used as cover for extra constitutional limitations on legislative power. However radical its change, a statute is not to be so narrowed by construction as to defeat its purpose simply because it is an innovation on common law principles. State ex rel v Minneapolis Ry. 190 M 162, 251 NW 275.

Rules of judicial construction require that so far as possible conflicting provisions of a city charter be harmonized in conformity with the announced legislative policy of the state. State ex rel v Erickson, 190 M 216, 251 NW 519.

The ordinance in question should receive a reasonably strict construction, but, where the facts are undisputed and the language of the ordinance clear, the court cannot, by construction, change its terms or the result of its application to the facts. Zalk v Stuyvesant, 191 M 60, 253 NW 8; Estate of VanSloun, 199 M 434, 272 NW 261.

Ordinances and statutes must be given a reasonable and practical construction in accordance with the intention of the lawmakers. State v Witt's Market House, 191 M 425, 254 NW 596; Knudson v Anderson, 199 M 479, 272 NW 376.

The original act required the appointment of three policemen as court officers. The amendment required the appointment of three court officers with the power of policemen. It will be presumed that the legislature intended, by amendment, to make some change in the law. State ex rel v City of Eveleth, 194 M 46, 260 NW 223.

The law applied to "cattle weight and cattle minimum weight." The 1931 amendment made no change as to this classification. Common usage can be

resorted to in interpreting the meaning of words used in a statute. Bennett v Northern Pacific, 195 M 12, 261 NW 593.

It is a generally accepted rule of statutory construction that a revision of existing statutes is presumed not to have changed their meaning, even if there be phraseological alterations, unless an intention to change clearly appears from the new language or from the legislative history. State ex rel v Montague, 195 M 278, 262 NW 684.

A dominant rule of statutory construction is to discover and give effect to the legislative purpose. To discover that purpose, the object sought to be accomplished by the statute should be given great consideration. North Shore Co. v North Shore Co. 195 M 336, 263 NW 98.

If there is ambiguity, meaning must be given to the whole instrument for such aid as it will afford. State ex rel v Goodrich, 195 M 644, 264 NW 234; Rosenfield v Matthews, 201 M 113, 275 NW 698.

Where a statute has been judicially construed, especially when administrative and executive officers charged with its enforcement have acquiesced therein over a long period of time, such construction becomes a part thereof, and its meaning and import are measured thereby. Bemis v Wallace, 197 M 216, 266 NW 690; Holmes v Borgen, 200 M 97, 273 NW 623; Equitable v Equitable, 202 M 529, 279 NW 736; State ex rel v Crookston, 203 M 512, 282 NW 138.

Constitutional and statutory declarations are "to be interpreted in the light of the tacit assumptions upon which it is reasonable to suppose the language was used." State v Flores, 197 M 590, 268 NW 194.

Statutory construction lies wholly within the realm of ambiguity. When the language of a statute is plain and unambiguous there is no room for construction. Hall v Gage, 197 M 619, 268 NW 202; Gullings v State Board, 200 M 115, 273 NW 703; Peterson v Halverson, 200 M 253, 273 NW 812; Lowe v Reierson, 201 M 280, 276 NW 224.

Statutes are to be so construed as to suppress the mischief and advance the remedy, to promote rather than defeat the legislative purpose. State v Sobelman, 199 M 233, 271 NW 484.

In civil actions, existing common law remedies are not to be taken away by statute unless by express enactment of necessary implications. State ex rel v St. Cloud Milk Co. 200 M 1, 273 NW 603.

Construction of the statute must be reasonable—such as the language used will reasonably bear. It must be practical. Questions involving government must be determined along technical lines, rather practical considerations should control. Levant v Burns, 200 M 191, 273 NW 691.

A construction of a statute which would result in absurdity, injustice, or inconvenience, is to be avoided if the language used will reasonably bear any other construction. Township of Equality v Township of Star, 200 M 316, 274 NW 219; State v Kenny, 202 M 605, 279 NW 407.

Construction of a statute should be sensible, reasonable, and practical. Broad and practical considerations should control. State ex rel v Schultz, 200 M 365, 274 NW 401; Zochrison v Redemption Corp. 200 M 383, 274 NW 536.

When directory and when mandatory. Wenger v Wenger, 200 M 436, 274 NW 517; Jones v First Minneapolis Trust, 202 M 187, 277 NW 899; Jerome v Burns, 202 M 485, 279 NW 237.

Where the purpose of a statute is remedial the legislative intention will always prevail over the literal sense of its terms; therefore when the expression is special or particular, but the reason is general, the expression should also be deemed general. Minnesota Farmers v Smart, 204 M 101, 282 NW 658.

An ordinance requiring fuel dealers to carry liability insurance is constitutional. Such enactments must be liberally construed to uphold its constitutionality. The fact that a better method to accomplish the same end could be found, is immaterial. Sverkerson v City of Minneapolis, 204 M 388, 283 NW 555.

If on its face or in application to its subject matter the meaning of a statute is plain, it is not permissible to resort to an extraneous aid to construction, such as the rule that a statute is to be so construed, if possible, as to make it constitutional. Trustees v State, 204 M 365, 283 NW 727.

A statute should be construed as it reads and effect given to the clear meaning of its language. State ex rel v Minneapolis Fire Ass'n. 205 M 204, 285 NW 479.

A statute in derogation of the common law should receive "a fair construction, with the purpose of its enactment in view," rather than a "strict construction" which limits or defeats that purpose. Teders v Rothermel, 205 M 470, 286 NW 353.

It is the duty of the courts to construe ordinances as well as statutes to avoid absurd restrictions or results. State v Barge, 82 M 256, 84 NW 911; City of St. Paul v Johnson, 69 M 184, 72 NW 64; Smith v Barry, 219 M 183, 17 NW(2d) 327.

Absent other manifestation of legislative intention, the reenactment of a statute after its construction by the supreme court adopts the prior judicial construction as part of the new statute. Christgau v Woodlawn, 208 M 263, 293 NW 619; Enger v Holm, 213 M 154, 6 NW(2d) 105; Gleason v Geary, 214 M 519, 8 NW(2d) 808; Murray v Floyd, 216 M 73, 11 NW(2d) 780.

Acts of the legislature are presumed to be valid until declared void by the courts. Burt v Winona, 31 M 472, 18 NW 285; Marckel v Zitzow, 218 M 309, 15 NW(2d) 780.

645.18 GRAMMAR AND PUNCTUATION OF LAWS.

HISTORY. 1941 c. 492 s. 18.

This provision may be found in the interpretative statutes of Pennsylvania and Texas.

645.19 CONSTRUCTION OF PROVISOS AND EXCEPTIONS.

HISTORY. 1941 c. 492 s. 19.

This follows the rulings of the supreme court of Minnesota, and may be found in the interpretative statutes of Pennsylvania.

The maxim expressio unius does not apply with the same force that it does to statutes. If a contested enactment is not prohibited either by the letter or the spirit of the constitution it is authorized. Reed v Bjornson, 191 M 254, 253 NW 102.

1. Expressio unius est exclusio alterius

It is a rule of construction that provisos are limitations rather than extensions of legislative provisions, but all rules must yield to obvious legislative purpose. Donaldson v Chase Securities, 216 M 274, 13 NW(2d) 1.

It is a universal principle in the interpretation of statutes that the specific mention of one person or thing implies the exclusion of other persons or things. Wallace v Swinton, 64 NY 188.

Thus, where a statute creates a proviso as to a certain matter, such creation is generally construed as exclusive of others not referred to. In re New York Cable R. Co. 40 Hun 1.

And, unless it indicates a different intent, a statute naming several classes of persons to be benefited thereby, will not be construed to benefit others. Green v Hudson River R. Co. 32 Barb. 25.

So, too, where a statute which grants a certain power expressly states the time when such authority shall begin to be exercised, any other time is excluded. Childs v Smith, 55 Barb. 45.

In the same way, if a saving clause declares that an act shall not affect a proceeding commenced before a certain date, impliedly it affects proceedings commenced after that date. Lennon v New York, 55 NY 361.

Similarly, an express repeal of a particular clause of an act does not repeal the entire act, but in legal construction confirms the remaining clauses. People v Barker, 2 Wheel Crim. 19.

Likewise, when a statute creates a new right and specifies the remedy for the enforcement of such right, the remedy is generally exclusive. People v Barker, 2 Wheel Crim. 19.

The fact that by statutes certain public officers hold their offices until their successors are chosen tends to indicate that other officers do not so hold. People v Tieman, 30 Barb. 193.

2. Distinction between proviso and exception

Doubtless there is a technical distinction between an exception and a proviso, as an exception should comprise that which would otherwise be included in the category from which it is expected, and the office of a proviso is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some ground of misinterpretation of it, as extending to cases not intended to be brought within its operation; but there are a great many examples where the distinction is disregarded and where the words are used as if they were of the same signification. U. S. v Cook, 17 Wall. 168, 21 US (L. ed.) 538.

Technically, an exception exempts something absolutely from the operation of a statute by express words in the enacting clause; a proviso defeats its operation conditionally. An exception takes out of the statute something that otherwise would be part of the subject matter; a proviso avoids them by way of defeasance or excuse. Rowell v Janvrin, 151 NY 60, 45 NE 398.

An exception is generally a part of the enactment itself, absolutely excluding from its operation some subject or thing that otherwise would fall within its scope. But when the enactment is modified by engrafting upon it a new provision, by way of amendment, providing conditionally for a new case, it is in the nature of a proviso. Rowell v Janvrin, 151 NY 60, 45 NE 398.

In stating a cause of action arising upon a statute, it is an ancient rule that where an exception is incorporated in the body of the clause of a statute, he who pleads the clause ought to plead the exception. But where there is a clause for the benefit of the pleader, followed by a proviso which is against him, he may plead the cause and leave it to his adversary to show the proviso. Harris v White, 81 NY 532.

3. Provisos

It is the province of a proviso to restrain the enacting clause, to take something back from the power first declared, to except something which would otherwise have been within it, or in some measure to modify the enacting clause. Mackmull v Brandlein, 152 App. Div. 733, 137 NY Supp. 607.

The enactment and the proviso are to be taken and construed together for the purpose of reaching the true interpretation of the statute, giving to the words of the proviso their natural meaning. LeFevre v LeFevre, 59 NY 434; People v Kelly, 7 Robt. 592.

Ordinarily, a proviso makes no affirmative grant of power. But, when a statute is framed in negative terms, a proviso likewise in negative terms may be found to make an affirmative grant. Manning v Keenan, 78 NY 45.

A saving clause or exception which is repugnant to the purview of the act is void, but the rule is to be different in the case of a repugnant proviso. Such a proviso is not void, but, on the contrary, stands as the last expression of the legislature. Farmers' Bank of Fayetteville v Hale, 59 NY 53.

4. Exceptions

In ariving at the intent of the legislature, the courts are not to speculate as to the possible thoughts which might have been in the minds of the legislators when the statute was enacted. Matter of Rochester Water Commissioners, 66 NY 413.

"It is not for the court; acting upon conjecture and surmising what may have been the intent of the legislature, to interpolate exceptions in the statute, thus in effect avoiding and nullifying the express declaration of the legislature." Johnson v Hudson River R. Co. 49 NY 455.

5. Interpretation

It is an important rule in the interpretation of statutes that all parts of an act are to be read and construed together in order to determine the legislative intent. People v Draper, 15 NY 532.

A statute is construed as a whole. People v McClave, 99 NY 83, 1 NE 235.

645.20 CONSTRUCTION OF SEVERABLE PROVISIONS.

HISTORY. 1941 c. 492 s. 20.

This accords with the decisions of the supreme court of Minnesota.

When a statute contains a separability clause declaring that the act would have been passed irrespective of the unconstitutionality or invalidity thereof, unconstitutionality of an exclusion does not affect other parts of the act, at least where the remaining portions constitute an operative statute. Mesaba Loan v Sher, 203 M 589, 282 NW 823.

There is no reason why the objectionable feature cannot be eliminated and the statute upheld. The legislative intent sustains a statute in a limited application rather than eliminate entirely a tax otherwise valid. State v Fed. Savings, 218 M 245, 15 NW(2d) 568.

645.21 PRESUMPTION AGAINST RETROACTIVE EFFECT.

HISTORY. 1941 c. 492 s. 21.

Possibly the word "stated" should be used instead of "intended." It depends upon how broad the legislature desires the statute to be. This was taken from the interpretative statutes of Arizona, Georgia, North Dakota, South Dakota, Idaho, Kentucky, and Pennsylvania.

The presumption created by the 1941 act disappeared with the repeal by the 1943 act, notwithstanding the saving provision of the 1943 act. A presumption created by statute may be repealed. There is no vested right in a rule of evidence. Ogren v City of Duluth, 220 M —, 18 NW(2d) 535.

Rule against retroactive legislation. 20 MLR 775.

645.22 UNIFORM LAWS.

HISTORY. 1941 c. 492 s. 22.

Arizona, the state that has adopted the greatest number of uniform laws, is the only state that has this interpretative statute. This provision would permit the deletion of this particular provision from all uniform laws adopted by the state.

Uniformity of interpretation among the several states is desirable. Matson v Flynn, 216 M 354, 13 NW(2d) 11; Commissioner v Bennett, 220 M —, 18 NW(2d) 242.

645.23 PENALTIES NO BAR TO CIVIL REMEDIES.

HISTORY. 1941 c. 492 s. 23.

This appears in the interpretative statutes of California, Kentucky, North Dakota, and Oregon.

645.24 PENALTIES FOR EACH OFFENSE.

HISTORY. 1941 c. 492 s. 24.

This is the law in Minnesota, and the interpretative statute was taken from Massachusetts.

645.25 INTENT TO DEFRAUD.

HISTORY. 1941 c. 492 s. 25.

This is the law in Minnesota, and is included in the interpretative statutes of Arizona, Montana and North Dakota.

645.26 IRRECONCILABLE PROVISIONS.

HISTORY. 1941 c. 492 s. 26.

These provisions are found in the interpretative statutes of Rhode Island, Texas and Pennsylvania.

Where two inconsistent statutes are enacted at the same session of the legislature, the first must give way to the last as the latest expression of the law-making power. State ex rel v Schimelpfenig, 192 M 55, 255 NW 258.

Before it can be said that a later act is intended as a substitute for the earlier, there must be unmistakable intent manifested on the part of the legislature to make a new act a substitute for the old and to contain all the law on the subject. State v Sobelman, 199 M 232, 271 NW 484.

The rule of construction provides that where there is apparent conflict between a general provision of law and a special provision in the same or another law, the two shall be construed together and, if possible, harmonized and reconciled and effect given to both. Ausman v Hoffman, 208 M 13, 292 NW 421; Halverson v Elsberg, 202 M 232, 277 NW 535; Aslakson v State Dept, 217 M 527, 15 NW(2d) 22.

Sections 268.10 and 268.12 conflict. The special provision, as far as it conflicts with the general provision, controls. 1942 OAG 89, May 26, 1941 (885).

So far as there is a conflict between the repurchase act, Laws 1941, Chapter 43, and the pertinent provisions of Laws 1941, Chapter 511, the latter must control. Chapter 43 deals with tax-forfeited land generally, whereas the latter deals with a special class of such land, that is, land which has been released to the state. 1942 OAG 322, Oct. 27, 1941 (425-C-13).

From the construction of Laws 1941, Chapters 436, 437, 438, it follows that all agricultural products in the hands of the producer, shall be valued and assessed at ten per cent of the true value thereof. The complement of the proposition is that all agricultural products held by one not a producer, falls in Class 3 and should be assessed at thirty-three and one-third per cent. 1942 OAG 339, July 24, 1941 (421-C).

645.27 STATE BOUND BY STATUTE, WHEN.

HISTORY. 1941 c. 492 s. 27.

Literal meaning of a statute is not always conclusive. In construing the Spanish war veterans relief act, Laws 1931, Chapter 405, ambiguity in a government grant will be resolved in favor of the government. State ex rel v Walsh, 188 M 412, 247 NW 523.

Rules of statutory construction should not be enforced inflexibly. Such rules are not masters but rather servants of the courts as aids in determining legislative intent. Board v Borgen, 192 M 367, 256 NW 894.

645.28 LOCAL LAWS, REPEAL.

HISTORY. 1941 c. 492 s. 28.

645.29 MANNER OF AMENDMENT.

HISTORY. 1915 c. 59 s. 1; G.S. 1923 s. 10931; M.S. 1927 s. 10931; 1941 c. 492 s. 29.

This is taken from Mason's Statutes, Section 10931. In order to make references to a prior statute for the purpose of amendment or repeal, there must be some means to identify that statute. The purpose of this section is to resolve disputes as to the wording of a statute enacted before 1905 in accordance with Revised Laws 1905, which constitutes the last official revision of the Minnesota Statutes.

The rule of construction that an amendatory act providing that the amended act shall read as follows, and then setting forth the amendment, repeals all the amended act not reenacted, is no obstacle to the application of the rule that erroneous reference in the amendatory act identifying the amended statute may be corrected or eliminated by construction to conform to the legislative intent. Bull v King, 205 M 427, 286 NW 311.

645.30 EFFECT OF SEPARATE AMENDMENTS ON CODE PROVISIONS ENACTED AT SAME SESSION.

HISTORY. 1941 c. 492 s. 30.

Effect of separate amendments on code provisions enacted at the same session.

This is in accordance with the opinion of the attorney general and expresses the real intention of the legislature, and has been approved by Minnesota supreme court. Brown v Pinkerton, 95 M 153, 103 NW 897, 900; 6 Dunnell, Minnesota Digest, (2d Ed. 1927) s. 8924.

It adopts the canon of statutory construction providing that where there is an express repeal of an existing statute, and a reenactment of it at the same time, the reenactment neutralizes the repeal, and the old law continues in force. 1 Lewis' Sutherland Statutory Construction (2d Ed. 1904) s. 238 p. 445; Fullerton v Spring, 3 Wis. 667; Baines v Janesville, 100 Wis. 369, 75 NW 404; Prines' Estate, 136 NY 347, 32 NE 1091; State Trust Co. v Kansas City, 115 F 363.

645.31 CONSTRUCTION OF AMENDATORY LAWS.

HISTORY. 1941 c. 492 s. 31.

This is found in Montana, North Carolina, and Pennsylvania. It is merely declaratory of the common law. That law provides that where a section of a statute is amended, the original ceases to exist, and the section as amended supersedes it and becomes a part of the statute for all intents and purposes as if the amendments had always been there. Walsh v State, 142 Ind. 347, 41 NE 65; Blair v Chicago, 201 US 400; Stonega v Southern Steel, 123 Tenn. 428, 131 SW 988.

Furthermore, provisions of an old law, by being embodied in a new one, are not deemed repealed and reenacted, but to have been law all the time, the new portion of course, operating only prospectively. Burwell v Tullis, 12 M 572 (486); Kerlinger v Barnes, 14 M 526 (398); Gaston v Merriam, 33 M 271 (283), 22 NW 614; Nelson v Itasca Co. 131 M 478, 155 NW 752; In re Davis, 168 NY 89, 1 NE 118; Hall v Dunn, 52 Ore. 475, 97 Pac. 811.

Where two laws passed are not inconsistent, the earlier one is not necessarily repealed by the later. Licha v Northern Pacific, 201 M 427, 276 NW 813.

645.32 MERGER OF SUBSEQUENT AMENDMENTS.

HISTORY. 1941 c. 492 s. 32.

In accord with this section, the common law provides that a subsequent statute making a second amendment of the original act need not make special reference to the first amending act, which will be deemed to remain in force, and to qualify or modify the new act in the same manner as it did the first. Powell v King, 78 M 83, 80 NW 850; State v Klasen, 123 M 382, 143 NW 984; Nelson v Itasca Co. 131 M 478, 155 NW 752; State Bank v Memphis, 116 M 641, 94 NW 606.

With regard to the effect of an attempt to repeal a repealing statute, the common law rule apparently would revive the original statute without formal words for that purpose, in the absence of any contrary intent expressly declared to be necessarily implied. United States v Philbrick, 120 US 52; Baun v Thomas, 150 Ind. 378, 50 NE 357; People v Montgomery Co. 67 NY 109.

But by statute in the great majority of jurisdictions it is now provided that the repeal of a repealing statute shall not operate to revive the original statute. Yolo County v Colgan, 132 Cal. 265, 64 Pac. 403; People v Sweitzer, 266 Ill. 459, 107 NE 902.

645.33 TWO OR MORE AMENDMENTS TO SAME SECTION, ONE OVERLOOKING THE OTHER.

HISTORY. 1941 c. 492 s. 33.

This accords with the rules of construction of statutes in pari materia. It is merely declarative of the common law. In applying the common law, the courts have held that a later law, which is merely a reenactment of a former, does not repeal an intermediate act which has qualified or limited the first one, but that such intermediate act, not being inconsistent with the later law, will remain in force and be construed with it. Powell v King, 78 M 83, 80 NW 850; Nelson v Itasca County, 131 M 478, 155 NW 752; State v Klasen, 123 M 382, 143 NW 984; See Am. St. Rep. 282, cases in other states.

The fact that two statutes were passed at the same session of the legislature and took effect on the same day is strong evidence that they were intended to stand together. Commissioner v Huntley, 156 Mass. 236, 30 NE 1127.

It is elementary that where two irreconcilably inconsistent statutes are enacted, the first must give way to the last as to the latest expression of the law-making power. State ex rel v Schimelpfenig, 192 M 55, 255 NW 258; 24 MLR 260 (65).

Laws 1939, Chapter 101 and 248, relating to the penalty for selling liquor to a minor, are irreconcilable, and consequently the later in date of enactment controls. 1942 OAG 171, Feb. 6, 1942 (218-J-12).

645.34 REPEAL OF AMENDATORY AND ORIGINAL LAWS SUBSEQUENTLY AMENDED.

HISTORY. 1941 c. 492 s. 34.

This is in accordance with the common law and is in the interpretative statutes of several states. Some states, notably New York, have the reverse of this rule, possibly because controlled by special provisions of their state constitutions.

At common law, repeal of an amendatory act would be a repeal of the provisions therein contained in force from the original act.

Moody v Seaman, 46 Mich. 74, 8 NW 711, but does not revive the provisions originally enacted. 1 Lewis' Sutherland Statutory Construction (2d Ed 1904) s. 237, p. 443; State v Burh, 88 Iowa 661, 56 NW 180; Goodno v Oshkosh, 31 Wis. 127; People v Wilmerding, 136 NY 363, 32 NE 1099.

Thus this section is in accord with the common law and is consistent with section 645.36, which provides that the repeal of a repealing law does not revive the provisions of the original law.

In the absence of a declaration of other legislative intent, where a statute amends a former statute by reenacting its terms with supplementary provisions, such an act is not a repeal of the previous act, but as to all future matters the amended statute is merged in the amending statute and the repeal of the latter does not revive the first statute. State ex rel v Elmquist, 201 M 403, 276 NW 735.

645.35 EFFECT OF REPEAL.

HISTORY. G.S. 1866 c. 4 s. 3; G.S. 1878 c. 4 s. 3; G.S. 1894 s. 258; R.L. 1905 s. 5512; G.S. 1913 s. 9410; G.S. 1923 s. 10930; M.S. 1927 s. 10930; 1941 c. 492 s. 35.

Mason's Statutes, Section 10930, is rewritten and placed in two sections, 345.35 and 345.36.

The last paragraph of section 345.35 is probably in accordance with our present law, but it differs materially and is much broader in its implications than laws generally throughout the nation. For instance, some state preserve only "rights vested or transactions past and closed." Others preserve only "those already ripened into judgment." The courts hold that when there is a mere change of the form of the remedy, proceedings continue under the repealing act. Some states apply this rule to criminal actions, but that practice is extremely controversial.

This provision has been adopted by: Arizona, Arkansas, Colorado, Illinois, Indiana, Kentucky, Missouri, Montana, New Hampshire, New Jersey, New York, Pennsylvania, Virginia and West Virginia. With variations, it has also been adopted in Georgia, Iowa, Maine, Massachusetts, North Carolina, Ohio, and South Dakota. This is the present law in Minnesota.

Where employee's death from an occupational disease, contraction by him of the disease, and the notice to employer thereof, and death occurred while the 1941 occupational diseases act was in effect, and there was nothing in the 1943 act showing that it should not operate prospectively as to matters of procedure and evidence, substantive rights of the parties were controlled by the 1941 act, while as to matters of procedure and evidence, the rights of the parties were governed by the 1943 act. Ogren v City of Duluth, 219 M 555, 18 NW(2d) 535.

645.36 EFFECT OF REPEAL OF A REPEALER.

HISTORY. G.S. 1866 c. 4 s. 3; G.S. 1878 c. 4 s. 3; G.S. 1894 s. 258; R.L. 1905 s. 5512; G.S. 1913 s. 9410; G.S. 1923 s. 10930; M.S. 1927 s. 10930; 1941 c. 492 s. 36.

This was taken from Mason's Statutes, Section 10930.

The common law rule provides that when a repealing statute is itself repealed, the first statute is revived without formal words for that purpose, in the absence of any contrary intent expressly declared or to be implied necessarily from the enactment or some general statute. United States v Philbrick, 120 US 52; Baun v Thomas, 150 Ind. 378, 50 NE 357.

But by statute in the great majority of jurisdictions it is now provided in effect that the repeal of a repealing statute shall not operate to revive the original statute. Yolo County v Colgan, 132 Cal. 265, 64 Pac. 403; People v Sweitzer, 266 Ill. 459, 107 NE 902.

645.37 REPEAL AND REENACTMENT.

HISTORY. 1941 c. 492 s. 37.

This follows the interpretative statutes of California, Illinois, Kansas, Montana, New York, North Dakota, Pennsylvania and Washington. It follows the rule that provisions of any statute, so far as they are substantially the same as existing statutes or common law, must be construed as continuations thereof, and not as new enactments. The New York law provides, "The provisions of a law repealing a prior law, which are substantial reenactments of provisions of the prior law, shall be construed as a continuation of such prior law, modified or amended according to the language employed, and not as new enactments."

This section embodies a rule laid down by a group of Minnesota cases. Powell v King, 78 M 83, 80 NW 850; State v Klasen, 123 M 382; 143 NW 984; Nelson v Itasca County, 131 M 478, 155 NW 752.

The above cases are in accord with the rule generally accepted at common law. Hall v Dunn, 52 Ore. 475, 97 Pac. 811; See 88 A.S.R. 276, 5 Am. Cases 203.

645.38 EFFECT OF REENACTMENT ON INTERVENING LAW.

HISTORY. 1941 c. 492 s. 38.

The courts have held: "A later law which is merely a reenactment of a former, does not repeal an intermediate act which qualifies and limits the first one, but such intermediate act shall be deemed to remain in force, and to modify the new act in the same manner as it did the first." Again, the court has held: "The amending act has no effect on a prior act extending the provisions of the original act, nor as to repeal of the amending act."

This section embodies the common law. The enactment of revisions and of statutes manifestly designed to embrace an entire subject of legislation operates to repeal former acts dealing with the same subject. Kohlsaat v Murphy, 96 US 153, 24 L.Ed. 844; United States v Ranlett, 172 US 133, 43 L.Ed. 393; Bartlett v King, 12 Mass. 537, 7 Am. Dec. 99; State v Milwaukee Ry. 144 Wis. 386, 129 NW 623.

Application of the rule does not depend on inconsistency or repugnancy of the new legislation and the old for the old legislation will be impliedly repealed by the new, even though there is no repugnancy between them. Morris v Indianapolis, 177 Ind. 369, 94 NE 705; Pratt Inst. v New York, 183 N.Y. 151, 75 NE 1119; State v Wilson, 43 NH 415, 82 Am. Dec. 163.

The general rule is that a general statute does not repeal a special statute unless the purpose to do so is clearly manifested. United States v Gear, 3 How. (U.S.) 120, 11 L.Ed. 523; Norwich v Johnson, 86 Conn. 151, 84 Atl. 727; Howard v Hulbert, 63 Kan. 793, 55 Pac. 1041.

This is not a rule of positive law but a canon of construction, and it must yield where there is a manifest legislative intention that the act shall be of universal application. For Minnesota cases applying these propositions see: State v Luther, 56 M 156, 57 NW 464; Rundlett v St. Paul, 64 M 223, 66 NW 967; Lien v Norman Co. 80 M 58, 82 NW 1094; Enlargement of School District, 155 M 41, 192 NW 345; Borgerding v Freeport, 166 M 202, 207 NW 309; Abramowitz v Continental Ins. Co. 170 M 215, 212 NW 449.

Under the rule laid down in Section 645.38, the time of filing certified copies of certificate of nomination as required by Section 202.25 is governed by Section 202.27, and not by Section 202.26. State ex rel v Erickson, 213 M 151, 6 NW(2d) 43.

645.39 IMPLIED REPEAL BY LATER LAW.

HISTORY. 1941 c. 492 s. 39.

The courts have held: "Where a new statute continues all but one of the provisions of an earlier act dealing with the same subject, the presumption is that this one provision is not intended to be continued." Again, "The subsequent statute provides a comprehensive method of doing what was provided for in an earlier statute, and the two methods are exclusive and cannot be harmonized." Again, "In determining whether or not an act is repealed, the courts will consider long practice under it and the fact that it has been upheld by a number of suits in local courts." This elaborates and extends, the present method of law.

This section embodies a proposition so obvious that authority for it at common law is scarce. Mayor v Dearmon, 2 Sneed (Tenn.) 104.

Where two acts are not in express terms repugnant, but the later act covers the whole subject-matter of the earlier, not purporting to amend it, and plainly shows that it was intended as a substitute for the earlier, it will not operate as a repeal thereof, though all the provisions of the two may not be repugnant. There must be an unmistakable intent manifested on the part of the legislature to make the new act a substitute for the old and to contain all the law on the subject. Lind v Johnson, 204 M 41, 282 NW 661.

Implied repeals are not favored. Tamte v Eddy, 205 M 303, 285 NW 720.

The rule of construction that an amendatory act providing that the amended act shall read as follows, and then setting forth the amendment repeals all of the amended act not reenacted is no obstacle to the application of the rule that erroneous references in the amendatory act identifying the amended statute may be corrected or eliminated by construction to conform to legislative intent. Bull v King, 205 M 427, 286 NW 311.

Any statute having for its purpose the avoidance of the costs of litigation should be liberally construed. In construing revised laws, reference may be had to the report of the commission which drafted them. Wangensteen v Northern Pacific, 218 M 318, 16 NW(2d) 50.

Where a special law temporarily supersedes the operation of a general law, upon repeal of the special law, the previous general law at once operates. OAG Aug. 24, 1937 (339o-5).

645.40 NON-EXISTENCE OF REASON FOR LAW DOES NOT REPEAL IT.

HISTORY. 1941 c. 492 s. 40.

The common law is in accord. Pearson v International, 72 Iowa 348, 34 NW 1; State v Nease, 46 Ore. 433, 80 Pac. 897; Homer v Com. 106 Pa. 221, 51 Am. Rep. 521; Hebbert v Purchas, L.R. 3 P.C. 605, 17 Eng. Rep. 468.

645.41 NO IMPLIED REPEAL BY NON-USER.

HISTORY. 1941 c. 492 s. 41.

645.42 EFFECT OF SEPARATE REPEALS ON CODE PROVISIONS ENACTED AT THE SAME SESSION.

HISTORY. 1941 c. 492 s. 42.

It is well settled that a special or local law (when constitutional) repeals an earlier general law with which it is inconsistent. Walla Walla v Walla Walla Water Co. 172 US 1, 43 L.Ed. 341; Western Ry. v Atlanta, 113 Ga. 537, 38 SE 996; State v Gosgrave, 85 Neb. 187, 122 NW 885; 24 MLR 260 (65).

This section theoretically expresses the real intention of the legislature as does section 645.30. It is probably in accord with the existing policy concerning

statutes of limitations as the general rule now is that the legislature may change an existing statute, Terry v Anderson, 95 US 628, 24 L.Ed. 365; Lawton v Waite, 103 Wis. 244, 79 NW 321; Hathaway v Merchant's Loan Co. 218 Ill. 580, 75 NE 1060, or even shorten the period of limitation, provided a reasonable time is allowed for actions to be instituted. Mitchell v Clark, 110 US 633, 28 L.Ed. 279; Tipton v Smythe, 78 Ark. 292, 94 SW 678, Richardson v Cook, 37 NH 599, 88 Am. Dec. 622.

645.43 EFFECT OF REPEAL ON LIMITATIONS.

HISTORY. 1941 c. 492 s. 43.

This section will be found in the interpretative statutes of Arizona, California, Kansas, Montana and Pennsylvania.

At common law the repeal of a statute did not affect rights vested under it. 2 Lewis' Sutherland and Statutory Construction, (2d ed. 1904) sec. 672, p. 1221; Commonwealth v Newcomb, 109 Ky. 18, 58 SW 445; Hanscom v Meyer, 61 Neb. 798, 86 NW 381.

Inchoate rights, however, are lost by repeal. Bailey v Mason, 4 M 546; Turnipseed v Jones, 101 Ala. 593, 14 SE 377; Miller v Hageman, 114 Iowa 195, 86 NW 281.

If a proceeding is in progress when the statute is repealed, and the power to confer it ceases, it fails, for it cannot be pursued. 1 Lewis' Sutherland Statutory Construction (2d ed. 1904) sec. 285, p. 551; Gilleland v Schuyler, 9 Kan. 569; South Carolina v Gaillard, 101 US 433, 25 L.Ed. 937; Warne v Bureford, 2 M & W 848.

DEFINITION OF WORDS AND PHRASES

645.44 PARTICULAR WORDS AND PHRASES.

HISTORY. R.S. 1851 c. 2 s. 1; 1852 Amend. p. 5; P.S. 1858 c. 3 s. 2; G.S. 1866 c. 4 s. 1; G.S. 1878 c. 4 s. 1; G.S. 1894 ss. 258, 7987; 1895 c. 352; 1899 cc. 86, 165; R.L. 1905 s. 5514; 1907 c. 254; G.S. 1913 s. 9412; 1917 c. 233; 1921 c. 15; 1921 c. 171; G.S. 1923 s. 10933; M.S. 1927 s. 10933; 1941 c. 492 s. 44; 1945 c. 337 s. 1.

Subdivison 1. Clerk

The privilegium clericale had its origin in the pious regard paid to the church and the ill use ecclesiastics in early days made of that regard. At first it was confined to persons who had taken orders, but gradually was extended to any so-called clericus, that is, any person who could read. There are many early English statutes on the subject, all bad; the statute of 5 Anne, Chapter 6 "granted it to all those who were entitled to ask it (noblemen, clergy, and the like) without requiring the applicant to read, by way of conditional merit." In the reign of George IV, it was abolished, George IV, Chapter 28, Sections 7, 8. It was never in effect in Minnesota. State v Bilansky, 3 M 246 (173).

Subdivision 2. County, town, city, borough, or village

If one of our citizens was the plaintiff in a Nebraska cause of action, transitory in nature and properly brought here, it does not seem that the Minnesota courts ought to refuse his case, though he was restrained by a Nebraska court; and the privileges and immunities clause in the constitutions does not permit of any different rule applied to a citizen of another state when plantiff. State ex rel v District Court, 140 M 494, 168 NW 589.

County

The new counties to be created out of territory to be detached from a county already organized must be composed of contiguous territory, and leave the remaining part of the original county one contiguous territory. Duckstad v Board, 69 M 202, 71 NW 933.

"An act to authorize county commissioners to issue certificates of indebtedness in certain cases," and purporting to legalize certain county orders issued under authority of a law declared unconstitutional, is held a legal curative act. State ex rel v Gunn, 92 M 436, 100 NW 97.

Town

The fact that the word "village" was inadvertently used both in the title and in the body of the act when the word "town" was intended, does not render the act inoperative and void. State ex rel v Town of Lake City, 25 M 404, 413.

The word "town" used in Special Laws 1875, Chapter 74, includes incorporated cities such as Albert Lea, and Albert Lea must support its own poor. Odegaard v City of Albert Lea, 33 M 351, 23 NW 526.

Notices to be published "in a public place in each organized town in said county" applies to incorporated villages within the county. Tucker v Board, 90 M 406, 97 NW 103.

Revised Laws 1905, Section 1528, granting the right of local option to towns and incorporated villages, does not apply to cities. Kleppe v Gard, 109 M 251, 125 NW 665.

In the soldiers' preference act, the word "towns" is construed to include villages. State ex rel v Village of Chisholm, 173 M 485, 217 NW 681.

Borough

Belle Plaine was created a borough by Special Laws 1868, Chapter 36, and so remained, except for certain granted powers a part of the town of Belle Plaine. The chattel mortgage was properly filed with the clerk of the town of Belle Plaine. Bannon v Bowler, 34 M 416, 26 NW 237.

Laws 1897, Chapter 94, refers to "all villages and boroughs." The facts do not justify an order of the railroad commissioners requiring the building of a passenger station at an unincorporated village of less than 100 inhabitants. State ex rel v Minneapolis Ry. 76 M 469, 79 NW 510.

Villages

See: State ex rel v Town of Lake, 25 M 404, 413; Bannon v Bowler, 34 M 416, 26 NW 237; State ex rel v Minneapolis Ry. 76 M 469, 79 NW 510.

In the incorporation of a village "lands adjacent thereto" include only those which lie near the center or nucleus of population on the platted lands, as to be suburban in character. State ex rel v Minnetonka Village, 57 M 526, 59 NW 972; State ex rel v Village of Gilbert, 107 M 364, 120 NW 528.

The effect of the amendment Laws 1883, Chapter 38, is to overrule Moriarity v Gullickson, 22 M 39, so that a village is no part of the township in which it is situated for the purpose of filing seed grain loans. Minnesota Agricultural v Northwestern Elevator, 58 M 536, 60 NW 671.

The statute authorizes the incorporation only of territory urban in character. State ex rel v City of Nashwauk, 151 M 534, 186 NW 694, 189 NW 592.

Subdivision 3. Folio

General Statutes 1878, Chapter 70, Section 31, construed, and the meaning of "folio," "ems," and "solid matter," as therein used, construed. Hobe v Swift, 58 M 84, 59 NW 831.

Each letter or combination of letters representing an abbreviation should be counted as one word in determining what makes up a folio. OAG Jan. 4, 1937 (373b-10).

Subdivision 4. Holidays

The trial was commenced before, and proceeded with and closed on, Washington's birthday. It was for the trial court to determine at the time upon the necessity of continuing the trial on that day, and its action is final. State v Sorenson, 32 M 118, 19 NW 738.

In taking an acknowledgment of a deed, a notary is engaged in private business only. Such acknowledgment may be taken on the 22nd of February. Slater v Schack, 41 M 269, 43 NW 7.

The service of a summons by publication is valid, although one of the publications is made on May 30, (Memorial Day). Malmgren v Phinney, 50 M 457, 52 NW 915.

On first appearance before the justice of the peace by stipulation the case was continued until May 30. As the plaintiff lives 90 miles from the office of the justice, the court properly required the defendant to go to trial on the holiday. Fureseth v Great Northern, 94 M 500, 103 NW 499.

Publication of an ordinance under St. Paul 1900 home rule charter might lawfully be made on Memorial day. City of St. Paul v Robinson, 129 M 383, 152 NW 777.

The service of a summons on Lincoln's birthday, when the statute forbids, does not confer jurisdiction. Farmers v Sandberg, 132 M 389, 157 NW 642; Chapman v Foshay, 184 M 318, 238 NW 637.

Public business transacted on a legal holiday is legal in case of necessity, the existence of which will be presumed in the absence of a showing to the contrary. Ingelson v Olson, 199 M 422, 272 NW 270.

A notice of appeal from the probate to the district court is not "process," and the service of such notice on election day is not prohibited by this section. Dahmen v Simmons, 200 M 55, 273 NW 364.

Board of basic science may conduct examination on New Year's day. OAG Oct. 5, 1934 (303b).

Where Memorial day falls on Sunday, the treasurer is not warranted in accepting tax payment on Monday, June 1, without penalty. OAG May 26, 1937 (276f).

An assessor should not work on Sundays or holidays, and cannot be compensated for doing so. 1942 OAG 185, Feb. 13, 1942 (12-B-1); 1942 OAG 186, July 16, 1941 (12-B-1).

Subdivision 5. Oath; Sworn

The requirement that an oath must be administered to an illiterate or physically disabled elector before he can have the aid of another person in the marking of his ballot is mandatory. State ex rel v Gay, 59 M 6, 60 NW 676.

One who executes a false affidavit in his application for a liquor license is guilty of perjury. State v Scatena, 84 M 281, 87 NW 764.

Subdivision 6. Person

Our statutes expressly provide that the word "person" may extend and be applied to bodies politic and corporate. First Nat'l v Loyhead, 28 M 396, 10 NW 421.

Word "person" in the laws relating to embalming does not include corporation. OAG Feb. 23, 1937 (950).

Subdivision 7. Population

It is within the constitutional power of the legislature to provide that, for the purpose of classification of cities, population shall be determined according to the state census alone. State ex rel v County Board, 124 M 126, 144 NW 756.

The court will take judicial notice of the results of a census taken under federal or state authority. State ex rel v Erickson, 160 M 513, 200 NW 813.

For the purpose of issuing licenses in villages the population used is that of the last census, state or federal. OAG June 7, 1937 (218g-11).

In section 275.12, the word "population" means the entire population of the school district, and is not limited by an enumeration. OAG Nov. 20, 1944 (519m).

Subdivision 8. Recorded; filed for record

The resolution was attended by the county auditor as of Feb. 1, but marked as filed Feb. 25. The supreme court held the evidence was insufficient to warrant

the trial court in ordering the date of filing changed to Feb. 3. Foster v Brick, 121 M 173, 141 NW 101.

Subdivision 9. Seal

Laws 1899, Chapter 86, abolished the use of private seals; and all the distinctions which had theretofore existed between unsealed or simple contracts under seal (specialities), between private parties were abrogated. Streeter v Janu, 90 M 393, 96 NW 1128.

An instrument in the form of a negotiable promissory note, but with the device "(SEAL)" after and opposite the signature of the maker, is, though there be no reference to a seal in the body of the instrument, a sealed instrument, and not a negotiable promissory note. Brown v Jordhal, 32 M 135, 19 NW 650.

Subdivision 10. State; United States

A member of the military forces, serving at Fort Snelling must pay a state license on his motor car which he uses for his own private purpose. State v Storaasli, 180 M 241, 230 NW 572.

Subdivision 11. Sheriff

For the purpose of a redemption, a payment or tender of the money to the deputy sheriff in charge of the office at the time, is equivalent to payment or tender to the sheriff himself. Williams v Lash, 8 M 496 (441).

Subdivision 12. Time; month; year

In computing time for publishing notice of sale under a power in a mortgage, the general rule prescribed by the statute of excluding the first and including the last day is to apply. Worley v Naylor, 6 M 192 (123); Brady v Moulton, 61 M 185, 63 NW 489.

In computing the ten-year limitation period, the day of the entry of judgment should be excluded. Davidson v Gaston, 16 M 230 (202).

When an offer of judgment is made, and served, the plaintiff has ten full days thereafter, excluding the day of service. Mansfield v Fleck, 23 M 61.

In giving ten days' notice of argument required by supreme court rule 8, the day of service and the first day of the term must both be excluded. Greve v St. Paul Ry. 25 M 327; Village of Excelsior v Minneapolis Ry. Co. 108 M 407, 120 NW 526, 122 NW 486.

Where ten days' notice of a special election must be given, notices posted on the 13th of May of a meeting to be held on the 23rd of May were sufficient. Coe v Caledonia Co. 27 M 197, 6 NW 621.

When the last day of the year from the confirmation of the mechanic's lien sale falls on Sunday, redemption may be made the following Monday. Bovey v Tucker, 48 M 223, 50 NW 1038.

In the instant arbitration case, the rule does not apply. Northwestern v Channell, 53 M 269, 55 NW 121.

In determining whether a cause of action is barred by the statute of limitations, the day on which it accrued is excluded. Nebola v Minnesota Iron Co. 102 M 89, 112 NW 880.

Whether the word "from" shall be construed as inclusive or exclusive of the terminus a quo depends upon the subject matter and context, when it refers to the time within which an act is required or permitted to be done, the first day shall be excluded. Budds v Frey, 104 M 481, 117 NW 158.

In computing the three-day period in which a bill is to be returned, Sunday, not holidays is the only day to be excluded. State ex rel v Holm, 172 M 162, 215 NW 200.

"On termination of May 20" could have no other meaning than May 21. Aitkin v Trappman, 179 M 349, 229 NW 312.

Where the bank stockholder transferred his stock on Nov. 23, 1925, his liability as a stockholder continued to and included Nov. 23, 1926. Bank of Dassel v March, 182 M 127, 235 NW 914.

As to bank deposits and liability thereon, the limitation excludes the first day and includes the last day of the period. Olesen v Retzlaff, 184 M 624, 238 NW 12, 239 NW 672.

Where the last day in which to ask for a change of venue falls on Sunday, an application may be made Monday. State ex rel v District Court, 187 M 287, 245 NW 431.

In determining rights under a canceled workmen's compensation policy, the first day of the notice is excluded and the last day included. Olson v McGraw, 188 M 307, 247 NW 8.

Where an act is required to be done a specified number of days before an event, the required number of days is to be computed by excluding the day on which the act is done and including the day on which the event is to occur. State ex rel v Schimelpfenig, 192 M 55, 255 NW 258.

A summons in an action before a justice of the peace, served on the 11th, returnable on the 17th, is served in time. Smith v Force, 31 M 119, 16 NW 704.

Deliveries to a building project, as relates to mechanic's lien, must be considered as a unit, and time begins to run from the date of the last delivery of supplies used in the building unit. Frankoviz v Smith, 34 M 403, 26 NW 225.

In the computation of time upon service of notice of trial in the district court, the day of service is excluded, and the first day of the term included. State v Currie, 39 M 426, 40 NW 561.

General Statutes 1878, Chapter 66, Section 82, relating to computation of time, was intended to establish a uniform rule, applicable to the construction of statutes as well as to matters of practice. Spencer v Haug, 45 M 231, 47 NW 794; Johnson v Merritt, 50 M 303, 52 NW 863; Kipp v Fitch, 73 M 65, 75 NW 752.

The 48-hour period from the time of the purchases on Friday, Jan. 7, expired at the same hour on Monday, Jan. 10. Hughes v Globe, 139 M 420, 166 NW 1075.

The court rightly determined that the city council in reducing "time" with reference to compensation used that word as the equivalent of "pay." Levant v Burns, 200 M 192, 273 NW 691.

"Time" for redemption by second redemptioner. Leland v Heiberg, 150 M 30, 194 NW 93.

In determining the consequences of a disregard of a statutory provision as to time, a court must seek to ascertain the legislative intention. Rambeck v La-Bree, 156 M 310, 194 NW 643.

"My legal heirs according as the law provides," there being nothing in the context or in the circumstances of the case indicating a contrary intention, construed to mean the heirs at the death of the testator, distinguishing Swenson's Estate, 55 M 300, 56 NW 1115. In re Fretheim, 156 M 366, 194 NW 766.

Subdivision 13. Writing

The making of his mark to his proposed will by a testator, who is unable to write, is a signing thereof within the meaning of the statute, although his name, leaving space for his mark, is written at the end of the will by another, without his express direction. Geraghty v Kilroy, 103 M 286, 114 NW 838.

Blank space on the ballot so voter "can write in his vote" is satisfied by pasting printed stickers on the ballot and marking an X thereafter. Snortum v Homme, 106 M 464, 119 NW 59.

To sign an instrument indicates signing by one's own hand. Where a signature is required by law it must be in the handwriting of a person or if he is unable to write, written by some person at his request or in his presence. Notice of strike or lockout must be signed in the writing of the person giving or authorizing it. 1942 OAG 88, May 26, 1941 (270-d-9).

645.45 DEFINITIONS, CONTINUED.

HISTORY. 1941 c. 492 s. 45.

(8). The word "orphans," as used in the rules of the association, was intended in the sense of "children," and not in the strict legal sense of orphans. Fischer v Malchow, 93 M 396, 101 NW 602.