

REVISED LAWS

MINNESOTA

1905

ENACTED APRIL 18, 1905 TO TAKE EFFECT MARCH 1, 1906

EDITED AND ANNOTATED BY
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PUBLISHED UNDER CHAPTER 185, LAWS 1905

ST. PAUL
PUBLISHED BY THE STATE
1906

4637. Enforcement of liability against stockholders and officers—Whenever any corporation shall have become insolvent and shall have made an assignment of its property under the provisions of this chapter, or for which a receiver shall have been appointed thereunder, whose stockholders or directors, or other managing officers, shall be liable to its creditors by reason of any liability created by law, and no action is commenced by any creditor of such insolvent corporation against such stockholders, directors, or other managing officers under the provisions of §§ 3169-3190, within six months from the date of such assignment or the appointment of such receiver, the assignee or receiver shall forthwith thereafter commence an action against such stockholders, directors, or other officers of such corporation to enforce such liability. The proceedings in such action shall conform, as nearly as may be, to the provisions of §§ 3169-3190, and shall be brought to a termination as soon as possible without awaiting the final disposal of the insolvent estate. The amount collected through such proceeding shall be paid to the creditors of such corporation as soon as possible and if any surplus property or money shall remain after the payment of all duly allowed claims against such estate and the necessary costs and expenses of such assignee or receiver, the same, after due notice given by such assignee or receiver to all interested parties, in the manner prescribed by the court for a final hearing, shall be turned over to such corporation. And upon application of any interested party or upon its own motion, after due notice to all parties interested, the court, in its discretion, may make partition and distribution in such proceeding, of such surplus property and money to the persons who may be entitled thereto and may enter judgment therefor. ('97 c. 341)

CHAPTER 91

CONTEMPTS

4638. Direct contempts defined—Contempts of court are of two kinds—direct and constructive. Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings.

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court. (6155)

Distinction between direct and indirect contempts (60-478, 62+831). A party may be punished for contempt for refusing to pay alimony (26-9, 46+446; 30-260, 15+117; 39-394, 40+360; 40-4, 41+1076; 42-40, 43+686; 63-443, 65+728; 69-427, 72+451; 61-120, 63+169); for disobeying an injunction (27-250, 4+619, 6+776; 52-283, 53+1157; 78-464, 81+323; 71-383, 73+1092); for persisting in a certain course of examining witnesses contrary to order of court (41-42, 42+598); for refusing to turn over assets in insolvency proceedings (56-397, 57+940); for refusing to obey an order in supplementary proceedings (23-411; 30-487, 16+398); for entering judgment notwithstanding a stay (53-102, 54+940); for refusing to pay over money to a receiver (71-383, 73+1092); for giving information derived by an officer of court as to proceedings pending against parties accused of crime (87-161, 91+297). A party cannot be punished for contempt for failure to perform an act not in his power (8-214, 185; 63-443, 65+728); for failing to plead (1-203, 176); for merely reading an affidavit, for change of venue for prejudice of judge (3-274, 188).

4639. Constructive contempts defined—Constructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from any of the following acts or omissions:

1. Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service.

2. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.
3. Disobedience of any lawful judgment, order, or process of the court.
4. Assuming to be an attorney or other officer of the court, and acting as such without authority.
5. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.
6. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is to be tried.
7. Any other unlawful interference with the process or proceedings of a court.
8. Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.
9. When summoned as a juror in a court, neglecting to attend or serve as such, improperly conversing with a party to an action to be tried at such court or with any person relative to the merits of such action, or receiving a communication from a party or other person in reference thereto, and failing to immediately disclose the same to the court.
10. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, proceeding in an action or special proceeding in any court contrary to law after the same has been removed from its jurisdiction, or disobedience of any lawful order or process of a judicial officer. (6155)

See note to § 4638.

4640
98-M - 19
108-NW 513

4640. Power to punish—Limitation—Every court of justice and every judicial officer may punish a contempt by fine or imprisonment, or both; but, when it is a constructive contempt, it must appear that the right or remedy of a party to an action or special proceeding was defeated or prejudiced thereby, before the contempt can be punished by imprisonment or by a fine exceeding fifty dollars. (6156)

A person may be imprisoned for contempt in refusing to pay over money as ordered by the court (23-411; 56-397, 57-940; 63-443, 65+728).

4641. Summarily punished, when—A direct contempt may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a contempt, and that he be punished as therein specified. (6157)

60-478, 62+831.

4642. Arrest—Order to show cause, etc.—In cases of constructive contempt, an affidavit of the facts constituting the contempt shall be presented to the court or officer, who may either issue a warrant of arrest to bring the person charged to answer, or, without a previous arrest, upon notice, or upon an order to show cause, which may be served by a sheriff or other officer in the same manner as a summons in an action, may commit him to jail, impose a fine, or both, and make such order thereupon as the case may require. (6158)

Procedure for constructive contempt defined (60-478, 62+831; 61-120, 63+169; 65-146, 67+796; 71-383, 73+1092.) In cases of strictly criminal contempt the rules of evidence and presumptions of law applicable to criminal cases must be observed (65-146, 67+796). Warrant must specify whether accused shall be let to bail or retained in custody, and if he may be bailed amount in which he may be let to bail (30-260, 15+117). Judgment must be responsive to order to show cause (61-120, 63+169).

4643. Persons in custody—If the party charged is in the custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for felony, an order may be made for his production by the officer having him in custody, that he may answer; and he shall thereupon be produced and held until an order is made for his disposal. (6159)

4644. Admission to bail—Whenever a warrant of arrest is issued pursuant to this chapter, the court or officer shall direct whether the person charged

may be admitted to bail for his appearance, or detained in custody without bail, and, if admitted to bail, the amount thereof. Such direction shall be specified in the warrant. (6160)

30-260, 15+117.

4645. Warrant, how executed—Upon executing the warrant of arrest, the sheriff shall keep the person in actual custody, bring him before the court or officer, and detain him until an order shall be made in the premises, unless the warrant shall contain a direction to admit him to bail, in which case he shall be discharged from the arrest, upon executing and delivering to the officer at any time before the return day of the warrant a recognizance, with two sufficient sureties, to the effect that he will appear on the return of the warrant and abide the order of the court or officer thereupon, or pay as may be directed the sum therein specified. (6161, 6162)

4646. Return of warrant—Penalty for failure—The officer shall return the warrant and the recognizance, if any, received from the person so arrested, by the return day specified therein. If he fails to make the return, a warrant of arrest, not bailable, may be issued against him, specifying therein the cause of issuing it. The officer to whom the last-mentioned warrant is delivered shall execute it by arresting the person proceeded against, bringing him personally before the court or officer, and detaining him in custody until otherwise ordered. (6163, 6164)

4647. Hearing—When the person arrested has been brought into court, or has appeared, the court or officer shall investigate the charge by examining him and the witnesses for and against him, for which an adjournment may be had from time to time, if necessary. (6165)

60-478, 62+831; 61-120, 63+169; 65-146, 67+796; 71-383, 73+1092; 87-161, 91+297.

4648. Punishment—Upon the evidence so taken, the court or officer shall determine the guilt or innocence of the person proceeded against, and, if he is adjudged guilty of the contempt charged, he shall be punished by a fine of not more than two hundred and fifty dollars, or by imprisonment in the county jail for not more than six months, or by both. But in case of his inability to pay the fine or endure the imprisonment, he may be relieved by the court or officer in such manner and upon such terms as may be just. (6166)

60-478, 62+831; 61-120, 63+169.

4649. Indemnity to injured party—If any actual loss or injury to a party in an action or special proceeding, prejudicial to his right therein, is caused by such contempt, the court or officer, in addition to the fine or imprisonment imposed therefor, may order the person guilty of the contempt to pay the party aggrieved a sum of money sufficient to indemnify him and satisfy his costs and expenses, which order, and the acceptance of money thereunder, shall be a bar to an action for such loss and injury. (6167)

4650. Imprisonment until performance—Whenever the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it, and in such case the act shall be specified in the warrant of commitment. (6168)

23-411; 56-397, 57+940; 63-443, 65+728.

4651. Proceedings by indictment—Persons proceeded against under this chapter are also liable to indictment for the same misconduct, if it is an indictable offence; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted. (6169)

23-411; 52-283, 53+1157.

4652. Second warrant—Action on recognizance—Damages—When a warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or officer may issue another warrant, or may order the recognizance prosecuted, or both. If the recognizance is prosecuted, the measure of damages shall be the amount of the loss or injury sustained by

the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (6170)

4653. Officer excused from producing party, when—Whenever, under this chapter, an officer is required to keep a person arrested in actual custody and to bring him before a court or officer, the inability, from illness or other cause, of the person to attend, shall be a sufficient excuse for not producing him in court. (6171)

CHAPTER 92

WITNESSES AND EVIDENCE

WITNESSES

4654. Definition—A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration is made on oral examination, or by deposition or affidavit. (5657)

56-33, 57+219.

4655. Subpoena, by whom issued—Every clerk of a court of record, and every justice of the peace, may issue subpoenas for witnesses in all civil cases pending before the court or justice, or before any magistrate, arbitrator, board, committee, or other person authorized to examine witnesses, and in all contests concerning lands before the register and receiver of any land office in this state. (5652)

30-140, 14+531; 50-239, 52+655.

4656. How served—Such subpoena may be served by any person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy with a person of suitable age and discretion at the place of his abode. (5653)

4657. Failure to attend—Damages—If any person duly subpoenaed to attend as a witness fails to do so, without reasonable excuse, he shall be liable to the aggrieved party, in a civil action, for all damages occasioned by such failure. (5002, 5654)

4658. Contempt—Such failure to attend as a witness is a contempt of court, and, if the subpoena issues out of a court of record, may be punished by a fine not exceeding two hundred and fifty dollars, or by imprisonment in jail not exceeding six months, or both. (5091, 5655; 299 c. 207)

4659. Attachment—The court in such case may issue an attachment to bring such witness before it to answer for the contempt, and also to testify as a witness in the action or proceeding in which he was subpoenaed. (5656)

2-37, 26; 62+318, 64+821.

4660. Competency of witnesses—Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as follows:

1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. But this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to an action or proceeding for abandonment and neglect of the wife or children by the husband.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in

4660
101-M - 452
103-M - 295
112-NW 628

4660 (2)
104-M - 432
116-NW 933