

MASON'S MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
CITER-DIGEST COMPANY

WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

Citer-Digest Company
St. Paul
1927

CHAPTER 88

ACTIONS AGAINST BOATS AND VESSELS

For what liable	9774
Action—Warrant — Procedure	9775
Discharge of boat—Bond	9776
Sale—Execution	9777
Owner, etc., summoned to show cause.....	9778
Pleadings—Trial — Judgment	9779
Appeals	9780
Limitation of action	9781

9774. For what liable—Every boat or vessel used in navigating the waters of this state shall be liable for the claims or demands hereinafter mentioned, and which shall constitute liens thereon:

1. For all debts contracted by the master, owner, agent, or consignee thereof on account of supplies furnished for its use, or on account of work done or services rendered on board for its benefit, or on account of labor done or materials furnished by mechanics, tradesmen, or others in and for building, repairing, fitting out, furnishing, or equipping the same;

2. For all sums due for wharfage or anchorage of such boat or vessel within the state;

3. For all demands or damages accruing from the non-performance or malperformance of any contract of affreightment, or any contract touching the transportation of persons or property entered into by the master, owner, agent, or consignee of the boat or vessel on which such contract is to be performed; and

4. For all injuries done to persons or property by such boat or vessel.

Provided, that no boat or vessel shall be so liable for any debt contracted on account of work done or services rendered on board of or for the benefit of such boat or vessel until such contract is fully performed. (4603) [8318]

Constitutional (43-192, 45-430; 44-510, 47-160). Liability of boat for death by wrongful act (8-97, 72). A common law remedy. Assignee of claim may sue (10-242, 190; 10-250, 195). Jurisdiction when cause arises out of state (2-178, 146; 3-192, 124). Jurisdiction of state court of cause of action for breach of contract of affreightment (12-465). Extent of lien for supplies and service (69-537, 72-809). Jurisdiction of federal court (36 Fed. 197).

9775. Action — Warrant — Procedure — An action against a boat or vessel may be instituted by the filing in the district court of the county where it may be of a complaint against it by name, or if it have no name by description, verified by the plaintiff or some person having knowledge of the facts, and setting forth the demand, and on whose account it accrued. Thereupon the clerk shall issue a warrant, returnable in twenty days, directing the sheriff to seize such boat or vessel and detain it in custody, with its tackle, apparel, and furniture, until discharged by due course of law. Such warrant shall be served and returned as in the case of a writ of attachment. Upon the return of the warrant, proceedings shall be had against the boat or vessel seized in the same manner as if the action had been instituted against the person on whose account the demand accrued. The master, owner, agent, or consignee of the boat or vessel may appear on its behalf and answer the complaint. For sufficient cause shown, he shall be entitled to a continuance, but such continuance shall not operate as a discharge of the boat or vessel from custody, and no continuance shall be granted to the plaintiff. (4604) [8319]

9776. Discharge of boat—Bond—If before judgment, the master, owner, agent, or consignee give bond to the plaintiff, to be approved by the court, or by a judge or the clerk thereof in vacation, conditioned to satisfy the amount which shall be adjudged to be due to the plaintiff, with costs, the boat or vessel, with its tackle, apparel, and furniture, shall be discharged from custody. (4605) [8320]

44-510, 47-160.

9777. Sale—Execution—If judgment be rendered in favor of the plaintiff against the boat or vessel, the court shall make an order, directing the sheriff to sell it, with its tackle, apparel, and furniture, or such part thereof or interest therein as shall be necessary, to satisfy the judgment and costs, and the order shall be executed and returned in the same manner as an execution. If a bond has been given, as provided in § 9776 and judgment rendered in favor of the plaintiff, execution shall issue for the amount thereof and costs against the principal and sureties on the bond. (4606) [8321]

44-510, 47-160.

9778. Owner, etc., summoned to show cause—When judgment is rendered in favor of the plaintiff against a boat or vessel, and prior thereto it has been discharged from custody by the giving of bond or otherwise, or when for any reason such judgment or any part thereof remains unpaid for sixty days, the master and owner, or either, may be summoned to show cause why they should not be personally bound by the judgment. Such summons shall be subscribed by the judgment creditor, his agent or attorney, and shall describe the judgment, specify the amount due thereon, and require the party summoned to show cause within twenty days after the service thereof, and may be served in the same manner as a summons in a civil action. It shall be accompanied by an affidavit of the person subscribing it, to the effect that the judgment has not been paid or satisfied, except as specified in the summons, to his knowledge, information, or belief. (4607) [8322]

9779. Pleadings—Trial—Judgment—The party summoned may by answer deny that the judgment was duly rendered, or that he was master, owner, or part owner of the boat or vessel when the cause of action against it arose, and he may set up any defense which has arisen since the rendition of judgment, but no other defense. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply. The issues shall be tried, and judgment, with costs, shall be rendered and enforced in the same manner as in a civil action. (4608) [8323]

9780. Appeals—In all cases under this chapter, if judgment be rendered in favor of the plaintiff, the master, owner, agent, or consignee of the boat or vessel, and any other person interested, may appeal from the orders or judgment of the court as in other cases. (4609) [8324]

12-388, 269.

9781. Limitation of action—All actions under this chapter shall be commenced within one year after the cause of action accrues. (4610) [8325]

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

8. Supersedeas.

Certiorari operates as a supersedeas. *Aylmer v. N.*, 195M661, 262NW257. See Dun. Dig. 1414.

During pendency of certiorari proceedings to review proceedings to extend time for redemption under mortgage foreclosure, plaintiff was required to either file a supersedeas bond or pay to clerk of district court monthly sums required by order as condition for extension. *Id.*

Certiorari stops further proceedings in municipal court, but does not preclude judge of that court from making return to show what actually occurred in his court, prior to time writ issued. *State v. Municipal Court*, 197M141, 266NW433. See Dun. Dig. 1414.

9. Remand of case.

Pending certiorari by mortgagors from order denying second extension of time to redeem from mortgage fore-

closure, supreme court remanded case on motion by mortgagee on showing that condition had changed since hearing in district court and that mortgagors were in position to take care of the mortgage and redemption. *Sjodin v. O.*, 195M507, 263NW543. See Dun. Dig. 1404.

In habeas corpus proceedings judgment of conviction for criminal contempt must be taken as a finality as to all questions presented and decided by supreme court on certiorari. *State v. Syck*, 202M252, 277NW926. Cert. den., 59SCR64. See Dun. Dig. 4132.

9770. When served.

Certiorari to review decision of Industrial Commission was quashed because not served upon the adverse party or his attorney within 60 days. 171M519, 214NW795.

CHAPTER 88

Actions against Boats and Vessels

9774. For what liable.

Defendant having executed a charter party in which it purported to contract as principal, is liable for breach of the contract, whether in fact contracting as principal or as agent for an undisclosed principal. 171M507, 214NW510.

Evidence held to sustain finding that contract was breached by the failure of the vessel to report for loading within the time required by the contract; also that the delay was caused by the voluntary act of the owner; also that plaintiff had not waived its claim for damages. 171M507, 214NW510.

CHAPTER 89

Assignments for Benefit of Creditors

9782. Requisites.**1. Nature of proceeding.**

Transfer of property by managing officer or bank to certain directors to secure payment of his debts to the bank, held a mortgage and not an assignment for benefit of creditors, though it rendered him insolvent. 172M148, 214NW787.

3. To what applicable.

Not applicable to state banks in liquidation. 181M1, 231NW407.

11. Releases.

An assignment in favor of only those creditors who will file releases is void. *Kobler v. H.*, 189M213, 248NW698. See Dun. Dig. 614.

9783. Assignment of real estate—Record.

Certified copy of assignment for benefit of creditors does not require certificate of auditor that taxes have been paid. Op. Atty. Gen. (363B-7), Sept. 15, 1939.

9789. Proof of claims—Order of payment.

Money received by bankrupt representing proceeds of hunting and fishing license fees, held preferred claim in favor of the state in bankruptcy proceeding. 47F(2d) 1073. See Dun. Dig. 612(93).

Subd. 1.

State is a preferred creditor entitled to all assets if not sufficient to pay claim in full. Op. Atty. Gen., Aug. 1, 1933.

CHAPTER 90

Insolvency

Certified copies of petitions, decrees and orders in bankruptcy under §21g, may be recorded in register of deeds office. Laws 1939, c. 117.

The persons and property of farmers are excluded from the operation of the state insolvency law so long as the national act is in force. *Adrian State Bk. of Adrian v. K.*, 182M57, 233NW588. See Dun. Dig. 4542(96).

COMMON LAW

DECISIONS RELATING TO BANKRUPTCY
IN GENERAL**1. In general.**

An insane person may not file petition in bankruptcy but may become involuntary bankrupt. *Tobin*, (DC-Minn), 24FSupp325.

Construction of bankruptcy act by United States Supreme Court prevails over any contrary interpretation by state courts. *Landy v. M.*, 193M252, 258NW573. See Dun. Dig. 738.

Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. *Id.* See Dun. Dig. 741.

Mortgagors' bankruptcy did not suspend court's order extending time for redemption from mortgage sale, order having fixed terms and conditions, compliance with which was wholly lacking. *Butts v. T.*, 194M243, 260NW308. See Dun. Dig. 740.

A trustee in bankruptcy, who brings suit in state court alleging conversion of property of bankrupt estate by reason of an invalid foreclosure of chattel mortgage, is bound by measure of damages in state jurisdiction and is entitled to recover only difference between value of property and amount of lien, and where property converted was worth less than amounts of chattel mort-

gage liens, judgments were rightly entered for defendants. *Ingalls v. E.*, 194M332, 260NW302. See Dun. Dig. 746.

Reason why interest is generally disallowed in bankruptcy and other similar proceedings is that equality among general creditors as of date of insolvency is thereby attained, but where ideal of equality is served, interest is properly allowed. *Equitable Holding Co. v. E.*, 202M529, 279NW736. See Dun. Dig. 4883a.

A claim for damages for pure tort arising out of negligence of debtor, not reduced to judgment at time of adjudication in 1936, was not provable as a debt under §63(a) (6½) of the 1898 Act, and could not be liquidated and allowed under §63(b) of such act, and amendment of the act of 1938 permitting proof of claim in pending negligence case did not render such a claim provable in proceeding wherein there was a previous adjudication. *Jones v. F.*, 204M333, 283NW535. See Dun. Dig. 743a.

Contracts from which provable debts may arise are express contracts or contracts implied in fact or in law. They do not include obligations imposed by law where the remedy is other than by action on contract, express or implied. Wholly contingent claims are not provable as debts in bankruptcy. So long as a claim remains uncertain as to whether a contract or liability will ever give rise to an actual duty or liability, and there is no means of removing the uncertainty by calculation, it is too contingent to be a provable debt. *Peterson v. J.*, 204M300, 283NW561. See Dun. Dig. 743a.

Primary purpose of bankruptcy legislation is to effect an equitable distribution of bankrupt's property among his creditors, and so far as may be, to preserve existing business relations and not to upset them or interfere with fundamental incidents thereof. *Id.* See Dun. Dig. 745.

Fact that contract containing mutual covenant not to compete in business was not entered in bankrupt's