

MASON'S MINNESOTA STATUTES

1927

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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THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED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.

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the court, in its discretion, may from time to time require the assignee to render an account, and to file a report of his proceedings and of the condition of the trust estate, and may order distribution thereof. For cause shown, it may, in its discretion, remove the assignee, and appoint another instead, who shall give bond as the court may direct; and the order of removal and appointment shall, in terms, transfer all the trust estate to the new assignee, and may be filed for record with the register of deeds of any county wherein any land affected by the assignment is situated. Upon removal of an assignee, the court may require him to deliver to the new assignee all property, books of account, and vouchers belonging to the trust estate, to execute all necessary transfers, and to render an account and report of all matters connected therewith. When such assignee has complied with all the orders of the court, and whenever any assignee has completed his trust, he may apply to the court for his discharge, first giving three weeks' published notice of such application; the last publication to be not more than three weeks prior to the hearing thereon. If upon the hearing the court is satisfied that the assignee is entitled to such discharge, it shall so order; but if, in its opinion, anything remains to be done by him, it shall re-

quire the performance thereof before making such order. But a discharge shall not be refused because of any failure of the assignee to comply with the forms of law, if no damage has thereby resulted to any person. Such order shall have the effect of discharging the assignee and his sureties from all further responsibilities in respect to the trust. When the trust estate is taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may be discharged upon showing that he has fully accounted with the trustee in bankruptcy, and turned over to him the whole trust estate. And when the trust estate is taken out of the hands of the assignee by legal proceedings in any court, or the assignment is declared void as to creditors, or for any reason the further administration of the trust is rendered impracticable, inadvisable, or nugatory, the assignee shall in like manner be discharged. (4620) [8335]

Supervisory power of court (24-232, 241; 24-295, 297; 26-141, 143, 1+830; 41-304, 306, 43+67, 44-76, 46+204). Removal of assignee (4-13, 1; 6-375, 260; 24-232; 41-304, 306, 43+67; 41-325, 43+385; 55-130, 56+587; 58-205, 212, 59+1003; 58-313, 59+1044; 59-323, 61+330; 68-414, 419, 71+679; 77-59, 79+651; 77-402, 80+300). Court should disallow unauthorized claims without reference to agreement between assignor and assignee (24-232). Court cannot revoke or change assignment (48-396, 51+322). 186+787.

CHAPTER 90

INSOLVENCY

As this chapter is inoperative while the federal bankruptcy act is in force, 76-118, 78+1038; 116-142, 133+561; the same is not printed in this compilation.

CHAPTER 91

CONTEMPTS

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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; 61-120, 63+169; 69-427, 72+451); for disobeying an injunction (27-250, 4+619, 6+776; 52-283, 53+1157; 71-383, 73+1092; 78-464, 81+323); 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). Insulting language and contemptuous behavior of counsel (110-446, 125+1020). As to abusive criticism of court (104-88, 116+212; 113-96, 129+148). See also, 128-153, 150+383.

Contempt defined and powers of courts stated. Remarks of attorney. 165-203, 206+402.

9792. 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. (4638) [8353]

9793. 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, cor-

oner, 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. (4639) [8354]

9794. 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. (4640) [8355]

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, 65-723). Constructive contempt (98-19, 108-513; 113-304, 129-533). Fine and imprisonment constitutional (98-136, 107-963). See also, 125-304, 146-1102; 141-269, 170-198; 151-241, 186-788.

9795. 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. (4641) [8356]

60-478, 62-831.

9796. 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. (4642) [8357]

Procedure for constructive contempt defined (60-478, 62-831; 61-120, 63-169; 65-146, 67-796; 71-383, 73-1092; 113-304, 129-533; 116-228, 133-614). 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). When may be certified to supreme court (116-228, 133-614). See also 154-412, 191-1008.

9797. 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. (4643) [8358]

9798. 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. (4644) [8359]

30-260, 15-117.

9799. 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. (4645) [8360]

9800. 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. (4646) [8361]

9801. 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. (4647) [8362]

60-478, 62-831; 61-120, 63-169; 65-146, 67-796; 71-383, 73-1092; 87-161, 91-297; 144-326, 175-908.

An order directly committing a person for constructive civil contempt is appealable. 161-122, 200-935.

A person cited in for contempt may submit his excuse upon affidavits. 161-122, 200-936.

9802. 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. (4648) [8363]

60-478, 62-831; 61-120, 63-169; 98-136, 107-963. 125-304, 146-1102.

9803. 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. (4649) [8364]

May award reasonable attorney's fee (113-304, 129+583).

9804. 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. (4650) [8365].

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

Defendant, having admitted default, had the burden of excusing, and it is held, that he made such a showing of present inability to pay the amount of arrears that the court was not warranted in committing him. 161-122, 200+936.

9805. Proceedings by indictment—Persons proceeded against under this chapter are also liable to indictment for the same misconduct, if it is an indictable

offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted. (4651) [8366]

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

9806. 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. (4652) [8367]

9807. 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. (4653) [8368]

CHAPTER 92

WITNESSES AND EVIDENCE

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1940 Supplement
To
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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
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schedule is immaterial because title of the bankrupt as to all of his property, not exempt, passed to his trustee upon latter's qualification. *Id.* See Dun. Dig. 746.

Insolvency of a promisor is not always an anticipatory breach, and his bankruptcy does not necessarily have all the effects of such breach. *Id.* See Dun. Dig. 747b.

Recovery where creditor given preference has been deprived of property and received no benefit. 23MinnLaw Rev214.

2. Discharge.

Failure of postmaster to pay over to the government funds creates a debt which is not discharged in bankruptcy. *National Surety Co. v. W.*, 185M321, 240NW883. See Dun. Dig. 750.

Discharge in bankruptcy discharges personal liability of debtor on note secured by real estate mortgage, duly scheduled by him as liability. *Fiman v. H.*, 185M582, 242NW232. See Dun. Dig. 749.

Bankrupt did not lose or waive his right to have deficiency judgment vacated, and foreclosure judgment set aside so far as it imposed personal liability upon him, by failing to apply to court to have foreclosure judgment reopened so as to set up his discharge as bar. *Fiman v. H.*, 185M582, 242NW232. See Dun. Dig. 5121.

Judgment in foreclosure of mortgage is discharged as to any personal liability of mortgagor by his subsequent discharge in bankruptcy. *Fiman v. H.*, 185M582, 242NW 292.

Where, without fraud, a bankrupt failed to schedule as an asset an interest in real estate and he is discharged without property being disposed of by trustee, title which latter took by operation of law under bankruptcy act

reverts to owner subject to a reopening of bankruptcy proceeding. *Stipe v. J.*, 192M504, 257NW99. See Dun. Dig. 751.

A discharge in bankruptcy does not discharge an assigned claim for alimony. *Cederberg v. G.*, 193M252, 258 NW574. See Dun. Dig. 749.

Lien of judgment upon real estate is not affected by discharge in bankruptcy, although judgment debtor is relieved of personal liability. *Rusch v. L.*, 194M469, 261 NW186. See Dun. Dig. 749(17).

Confirmation of a composition in bankruptcy discharges the bankrupt from his debts by operation of law by preventing a remedy against him and leaving the debt as an unenforceable legal obligation, and it does not affect the liability of the bankrupt's endorsers on notes, but renunciation by the holder of a negotiable instrument of his rights under the instrument by giving referee a receipt in full discharges endorsers. *Northern Drug Co. v. A.*, 234NW881. See Dun. Dig. 941, 1765, 1768.

3. Liens.

Claim of county for taxes against mortgaged property of debtor petitioning for reorganization under Bankruptcy Act, which had been in prior equity receivership, held allowable as to taxes accruing during equity receivership, and allowable as to those accruing during trusteeship under Bankruptcy Act in so far as they were valid liens upon the real estate. *Hennepin County v. M.*, (USCCA8), 83F(2d)453, 31AmB(NS)89. Cert. den., 299US555, 57SCR16.

Creditor's rights in securities held by surety. 22Minn LawRev316.

CHAPTER 91

Contempts

9792. Direct contempts defined.

Power of court to purge of contempt. 172M102, 214 NW776.

A judgment debtor is not guilty of contempt for failing to convey to receiver pending appeal from order appointing him, but he is guilty for failing to convey after affirmance. 172M102, 214NW776.

In prosecution of agent of owner of building for concealing plumbing installed before proper inspection by city officers, court did not abuse its discretion in requiring defendant to answer question, "Who was the plumber?", and in adjudging him guilty of contempt in refusing to answer on ground that it might intend to incriminate him. *State v. Beery*, 198M550, 270NW600. See Dun. Dig. 1703.

Trial judge is permitted a wide discretion in determining whether witness may in a particular case exercise privilege of silence on ground of self-incrimination. *Id.*

9793. Constructive contempts defined.

Act of juror in willfully concealing her interest in a prosecution for which she was called as a juror, even if not constituting perjury, was a contempt of court. *U. S. v. Clark* (DC-Minn), 1FSupp747. Aff'd 61F(2d)695, 289 US1, 53SCR465.

A witness before a grand jury may not refuse to answer questions because they have not been ruled upon by the court or because they seem to relate only to an offense, the prosecution of which is barred by a statute of limitation. 177M200, 224NW838.

The doctrine of double jeopardy has no application in proceedings to punish for contempt, and each succeeding refusal to answer the same questions will ordinarily be a new offense. 177M200, 224NW838.

A defendant who refuses to testify or answer proper questions in a hearing before a referee in proceedings supplementary to execution, is guilty of constructive contempt, and repeated evasions and untrue answers amount to a refusal to answer. 178M158, 226NW183.

A judgment directed a corporation to file dismissals of cross-actions in a foreign state. It did not authorize a requirement that they be dismissed with prejudice. 181M559, 233NW586. See Dun. Dig. 1705.

Order in contempt against one who had obtained property in proceeding supplementary to execution and had failed to return property as required by order of court after reversal on appeal, held improvidently made. *Proper v. P.*, 188M15, 246NW481. See Dun. Dig. 1702, 3548.

Where debtor's automobile was seized and taken to creditor's garage, and garage company assigned its claim to its president, who commenced action, making garage garnishee, there was an abuse of process requiring dismissal of garnishment. *Wood v. B.*, 199M208, 271NW447. See Dun. Dig. 7837.

In certiorari to review conviction for contempt in violating a temporary injunction, latter is under collateral attack which must fail unless injunction is shown to be a nullity. *Reid v. L.*, 200M599, 275NW300. See Dun. Dig. 1702.

If junction suit be erroneously decided and, without findings of fact, an injunction issues upon ground that

no labor dispute is presented, decision, even though erroneous, is not subject to collateral attack in proceedings to punish a violator for contempt. *Id.* See Dun. Dig. 1706.

Publications tending to interfere with the administration of justice. 15MinnLawRev442.

(3.)

One failing to replace lateral support as required by judgment held guilty of constructive contempt. *Johnson v. F.*, 196M81, 264NW232. See Dun. Dig. 1702.

Violation of an injunction is punishable as a contempt of court. *Id.* See Dun. Dig. 4504.

Disobedience of any lawful judgment, order, or process of the court is a contempt. *Wenger v. W.*, 200M515, 274 NW517. See Dun. Dig. 1703.

(7.)

Evidence held not to warrant finding that defendant was guilty of constructive contempt in attempting to procure witnesses to testify falsely. *State v. Binder*, 190 M305, 251NW665. See Dun. Dig. 1705.

9794. Power to punish—Limitation.

Writ issued to lower court only when that court is exceeding its jurisdiction. 173M623, 217NW494.

Defendant in divorce in contempt of court in failing to obey order for payment of temporary alimony, is not for that reason deprived of the right of defense. 173M 165, 216NW940.

Punishment for constructive contempt is limited to a fine of \$50.00, unless a right or remedy of a party was defeated or prejudiced, but this does not prevent the court from enforcing payment of the fine by imprisonment. 178M158, 226NW183.

Section authorizes a punishment for a constructive contempt whereby right or remedy of a party to an action or special proceeding is defeated or prejudiced, a fine exceeding \$50 or imprisonment, or both, subject to limitations of §9802. *Wenger v. W.*, 200M515, 274NW517. See Dun. Dig. 1703.

A sentence permitting defendant to purge himself of contempt does not change it from one for punishment to one for enforcement of plaintiff's judgment. *Id.*

Imposition of maximum sentence authorized as punishment for contempt is in sound discretion of court. *Id.*

9795. Summarily punished, when.

When object of a proceeding in contempt is to impose punishment merely, order adjudging contempt is reviewable on certiorari, but when object is to enforce doing of something in aid of a civil proceeding, order of contempt is reviewable on appeal. *Proper v. P.*, 188M15, 246NW481. See Dun. Dig. 1395, 1702 to 1708a.

9796. Arrest—Order to show cause, etc.

Information for contempt by a juror in willfully concealing her interest in a criminal prosecution, as a result of which she was accepted as a juror, held sufficient. *U. S. v. Clark*, (DC-Minn), 1FSupp747. Aff'd 61F(2d)695, 289US1, 53SCR465.

9798. Admission to bail.

Where warrant does not state whether or not person shall be admitted to bail and defendant is before court, court has jurisdiction. *State v. Binder*, 190M305, 251NW 665, overruling *Papke v. Papke*, 30 Minn. 260, 282, 15NW 117. See Dun. Dig. 1706.

9801. Hearing.

In cases of strictly criminal contempt, rules of law and evidence applied in criminal cases must be observed, and defendant's guilt must be established beyond a reasonable doubt. *State v. Binder*, 190M305, 251NW665. See Dun. Dig. 1705.

9802. Penalties for contempt of court.—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 \$250.00, or by imprisonment in the county jail, workhouse or work farm 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. (R. L. '05, §4648; G. S. '13, §8363; Apr. 15, 1933, c. 267.)

Contempt is not a "crime" within §9934, and, in view of §9802, punishment can only be by imprisonment in county jail and not in a workhouse. 175M57, 220NW414.

Section 9794 authorizes a punishment for a constructive contempt whereby right or remedy of a party to an action or special proceeding is defeated or prejudiced, a fine exceeding \$50 or imprisonment, or both, subject to limitations of this section. *Wenger v. W.*, 200M515, 274NW517. See Dun. Dig. 1708.

An order discharging an order to show cause and dismissing a criminal contempt proceeding can only be reviewed by certiorari, and fact that trial court may have based its order on mistaken belief that it lacked jurisdiction does not affect mode of review. *Spannaus v. L.*, 202M497, 279NW216. See Dun. Dig. 1391.

9803. Indemnity to injured party.

Postnuptial agreements properly made between husband and wife after a separation, are not contrary to public policy, but the parties cannot, by a postnuptial agreement, oust the court of jurisdiction to award al-

mony or to punish for contempt a failure to comply with the judgment, though it followed the agreement. 178M 75, 226NW211.

Fines for contempt as indemnity to a party in an action. 16MinnLawRev791.

9804. Imprisonment until performance.

A proceeding to coerce payment of money is for a civil contempt. Imprisonment cannot be imposed on one who is unable to pay. 173M100, 216NW606.

Payment of alimony and attorney's fees. 178M75, 226NW701.

A lawful judicial command to a corporation is in effect a command to its officers, who may be punished for contempt for disobedience to its terms. 181M559, 233NW 586. See Dun. Dig. 1708.

Father of a bastard cannot be punished for contempt in not obeying an order to save money which it is not in his power to obey. *State v. Strong*, 192M420, 256NW 900. See Dun. Dig. 850, 1703.

One failing to replace lateral support as required by judgment held guilty of constructive contempt. *Johnson v. F.*, 196M81, 264NW232. See Dun. Dig. 1702.

Habeas corpus is not to be used as substitute for an appeal or writ of error, and therefore cannot be used to determine whether or not there was an erroneous decision of issue whether relator was or was not able to pay alimony supporting order of imprisonment for contempt. *State v. Gibbons*, 199M445, 271NW873. See Dun. Dig. 4129.

Section relates simply to present coercing of compliance by imprisonment, which is not authorized unless it be shown that party complained of has present ability to comply. *Wenger v. W.*, 200M436, 274NW517. See Dun. Dig. 1708.

Provisions authorizing one guilty of contempt to purge himself are proper and are within the sound discretion of the court. *Id.*

A commitment which embodies judgment of conviction of criminal contempt, which is unmistakably charged in commitment, is adequate to entitle sheriff to custody of defendant until sentence imposed has been served. *State v. Syck*, 202M252, 277NW926. Cert. den., 59SCR64. See Dun. Dig. 1708.

9807. Hearing.

It is not against public policy to receive testimony of jurors in a proceeding for contempt of one of the jurors in obtaining her acceptance on the jury by willful concealment of her interest in the case. *U. S. v. Clark*, (DC-Minn), 1FSupp747. Aff'd 61F(2d)695, aff'd 289US1, 53SCR465.

CHAPTER 92

Witnesses and Evidence

WITNESSES

9808. Definition.

Testimony on former trial admissible where witness absent from state. 171M216, 213NW902.

Whether collateral matters may be proved to discredit a witness is within the discretion of the trial court. 171M515, 213NW923.

The foundation for expert testimony is largely a matter within the discretion of the trial court. *Dumbeck v. C.*, 177M261, 225NW111.

Where a witness is able to testify to the material facts from his own recollection, it is not prejudicial error to refuse to permit him to refer to a memorandum in order to refresh his memory. *Bullock v. N.*, 182M192, 233NW858. See Dun. *State v. Novak*, 181M504, 233NW 309. See Dun. Dig. 10344a.

There was no violation of the parol evidence rule in admitting testimony to identify the party with whom defendant contracted, the written contract being ambiguous and uncertain. *Drabek v. W.*, 182M217, 234NW 6. See Dun. Dig. 3368.

After prima-facie proof that the person who negotiated the contract the defendant signed was the agent of plaintiff, evidence of such person's declarations or statements during the negotiation was admissible. *Drabek v. W.*, 182M217, 234NW6. See Dun. Dig. 3393.

Letter written by expert witness contrary to his testimony, held admissible. *Jensen v. M.*, 185M284, 240NW 656. See Dun. Dig. 3343.

9809. Subpoena, by whom issued.

Power of trial judge to summon witnesses. 15Minn LawRev350.

9810. How served.

A subpoena issued by Senate investigation committee sent to person for whom it is intended by registered mail is of no effect. *Op. Atty. Gen.*, Apr. 12, 1933.

Subpoena to appear before senate committee must be served by an individual and one sent by registered mail is without effect. *Op. Atty. Gen.*, Apr. 12, 1933.

Secretary of conservation commission could not be required by subpoena to produce all of his correspondence with certain official before committee of senate making investigation. *Id.*

9814. 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:
* * * * *

3. A clergyman or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs. Nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid or comfort or his advice given thereon in the course of his professional character, without the consent of such person. (Act Apr. 18, 1931, c. 206, §1.)
* * * * *

1/2. In general.

A justified disbelief in the testimony of a witness does not justify a finding of a fact to the contrary without evidence in its support. *State v. Novak*, 181M504, 233NW309. See Dun. Dig. 10344a.

The court did not err in excluding the opinion of plaintiff's expert as to values. *Carl Lindquist & Carlson, Inc., v. J.*, 182M529, 235NW267. See Dun. Dig. 3322.

Owner's opinion of the value of his house as it would have been if plaintiff's work had been properly done, was admissible. *Carl Lindquist & Carlson, Inc., v. J.*, 182M529, 235NW267. See Dun. Dig. 3322(4).