

# REVISED LAWS

# MINNESOTA

## 1905

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ministration of the trust is rendered impracticable, inadvisable, or nugatory, the assignee shall in like manner be discharged. (4235)

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 (24-232; 41-304, 306, 43+67; 58-205, 212, 59+1003; 58-313, 59+1044; 59-323, 61+330; 77-402, 80+300; 41-325, 43+385; 55-130, 56+587; 68-414, 419, 71+679; 77-59, 79+651; 4-13, 1; 6-375, 260). 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).

## CHAPTER 90

### INSOLVENCY

[Inoperative while federal bankruptcy act is in force. 76-118, 78+1038]

**4621. Assignment by insolvent**—Whenever any debtor has become insolvent, or his property has been garnished, attached, or levied upon by execution, or other legal process issued against him for the collection of money, he may make an assignment of all his unexempt property for the equal benefit of all his bona fide creditors who shall file releases of their demands as in this chapter provided. Such assignment shall be executed, filed in accordance with, and governed by the laws relating to assignments for the benefit of creditors; and if made within ten days after garnishment, attachment or levy under execution, or other legal process for the collection of money, it shall operate to vacate every pending garnishment, attachment or levy and discharge the property therefrom upon qualification of the assignee, unless within five days thereafter he shall file with the clerk of the court where the assignment was filed, notice of his intention to retain all pending garnishments and levies, in which case it shall inure to the benefit of the creditors under the assignment and be prosecuted by the assignee, but the release of any debtor shall not operate to discharge any other party liable as surety, guarantor or otherwise for the same debt. (4240; '95 c. 66 s. 1)

**4622. Receiver**—Whenever any insolvent debtor shall confess judgment or do anything whereby any of his creditors shall obtain preference over any other such creditor, or shall omit to do any lawful thing to prevent any creditor from obtaining preference over any other, or shall not make an assignment under § 4621, within ten days after garnishment, attachment, or levy upon property under execution, or other legal process for collection of money, or shall conceal, remove, or dispose of any of his unexempt property, with intent thereby to delay or defraud his creditors, then or within sixty days thereafter any one or more of his creditors having claims against him aggregating at least two hundred dollars, may petition the district court, setting forth facts constituting one or more of said cases, and asking that a receiver be appointed of all the debtor's unexempt property, and for such other and further relief as such court shall deem proper. (4241)

**4623. Same—Appointment—Powers—Duties**—Such petition may be heard in any county designated by the court upon such notice to the debtor and any creditor about to be preferred, of the time and place of hearing as it may designate. It shall receive all pertinent evidence and determine the petition summarily. If it shall appear that such debtor has confessed judgment, or done anything whereby any creditor has obtained preference over any other, or has omitted to do any lawful thing to prevent such preference, or that he has not made assignment within ten days after such garnishment, attachment or levy, or that he has concealed, removed or disposed of any of his unexempt property with intent thereby to delay or defraud his creditors, then the court shall appoint a receiver with authority to, and who shall take possession of all the debtor's unexempt property, including that concealed, removed, or disposed of by such debtor in violation of any provision of this

chapter, and all property then under garnishment, attachment or levy, except such as was levied upon under an execution issued upon a judgment against such debtor on a complaint which was on file in court in the county where the debtor resided for at least twenty days next before the entry of judgment. Such receiver shall have authority to, and shall, within four months from his appointment, unless the court shall otherwise direct and allow further time, convert said property into money and distribute the net proceeds thereof ratably and in proportion to their several claims, among the creditors who shall make due proof of their respective claims within such time, and in such manner as the court or judge shall direct and who shall, in consideration of the benefits of the provisions of this chapter execute and file releases of their respective claims against the debtor as herein provided, and such court shall order the debtor to file in the court a verified schedule of all his debts, to whom due, when payable, and the consideration of each, and a schedule of all his property. The court in term or in vacation may also make such further orders as may be necessary or proper to carry into effect the provisions of this chapter, and such orders and applications therefor may be made, served and enforced on Sunday when necessary to protect the rights of creditors and others. (4241)

**4624. Real property and assets conveyed to creditors**—Whenever it shall be made to appear to any district court before whom the administration of an insolvent estate is pending, that any real property or other assets belonging to such estate cannot be converted into cash at a reasonable price, but can be turned over and conveyed to certain creditors in full or partial satisfaction of their claims and that this will be for the best interest of all concerned therein, such court may make an order directing the assignee or receiver to advertise for bids on such assets by three weeks' published notice, therein describing the assets to be conveyed. Each bid shall specify the amount at which the bidder will take such assets toward the satisfaction of his claim. Every bid shall be submitted to the court at a time and place specified in the notice, and if approved by it, the assignee or receiver may convey the property to such bidder and his claim against the estate shall thereby be satisfied to the amount of his bid. ('97 c. 82)

**4625. Preferences—Penalty—Injunction, etc.**—No assignment for the benefit of creditors shall give to any one creditor any preference over another, except when expressly provided by law. If any insolvent debtor shall confess or suffer judgment to be procured in any court with intent that any one of his creditors should obtain a preference over any other, he shall be guilty of a gross misdemeanor and punished by a fine not exceeding five hundred dollars and in default of payment shall be imprisoned in the county jail for not more than six months. The court may, at any time, upon the filing of affidavits or other satisfactory evidence, grant an order restraining such debtor from collecting any bills, notes, accounts, or other property, or from disposing of, or in any manner interfering with the property of said estate, or may, by writ of ne exeat, or by order restrain him from leaving the state until further order of court, or may, at any time, require him to appear and make full disclosure as to any disposition of property, or as to any other matter pertaining to such estate. It may require him to deliver to the assignee or receiver any property which it appears he should have, but has not so delivered, and on his failure to obey any order of court it may punish him therefor as for contempt. (4242; '95 c. 66 s. 3)

**4626. Conveyances, etc., in anticipation of insolvency**—Conveyances and payments made, and securities given by an insolvent debtor or one in contemplation of insolvency, within ninety days before an assignment, with a view of giving preference to any creditor upon a pre-existing debt or to any person under liability for such debtor, over another, shall be void as to all creditors or persons receiving the same who shall have reasonable cause to believe that such debtor was insolvent; and all such conveyances made and securities given at any time unaccompanied by a delivery or change of posses-

sion of the property to the grantee, unless the instrument containing the grant or conveyance shall have been duly filed or docketed ninety days before the assignment, shall be void as a preference as to any creditor; and the assignee may, by action or other proceeding, have all such conveyances, payments and preferences annulled and adjudged void, and recover the property so conveyed, or the value thereof, and the payments, and convert all proceeds into money, but this shall not apply to any payment or satisfaction, in whole or in part, of a past due debt made in the usual course of business without intent on the part of the creditor to evade the provisions of this chapter. (4243)

**4627. Attachment, etc.—Costs—**Costs in cases in which attachments or levies have been made, which are dissolved under the provisions of this chapter, and a reasonable fee not exceeding twenty-five dollars, in the discretion of the court, and disbursements to an attorney for petitioning creditors shall be preferred and paid first by the receiver, and on removal of an assignee or receiver, reasonable attorneys' fees and costs shall be allowed as preferred claims against the insolvent estate. (4245; '95 c. 66 s. 2)

**4628. Actions—Parties—Application of laws—**All actions and proceedings under this chapter may be commenced and prosecuted in the name of the assignee or receiver, and all laws of the state of a general nature applicable to receivers and assignees and not in conflict with the provisions of this chapter shall apply to assignees and receivers appointed under these provisions as the case may require. (4246)

**4629. Allowances to assignee, receiver and attorney—**In all assignments and receivership proceedings under this chapter, the court or a referee appointed by it for that purpose, shall determine specifically, and allow the reasonable value of the services performed by the assignee or receiver and of his attorney. The assignee or receiver shall, in all cases be entitled to the services of an attorney who may, in addition to the services usually performed by such attorney, prepare the deed of assignment and aid in preparing the schedules of debts and assets. ('95 c. 66 s. 6)

**4630. Vacancy—Removal—**The court may, for cause, remove an assignee or receiver, and may fill any vacancy. Upon petition of a majority in number and amount of the creditors, the court shall remove an assignee or receiver, and if shown to be a proper person, shall appoint the party specified in the petition; otherwise, some other suitable person. (4248)

**4631. Release—When not required—**No creditor of any insolvent debtor shall receive any benefit from, or any share in such debtor's estate under the provisions of this chapter, unless, in consideration of such benefits he shall have first filed with the clerk of the district court a release to the debtor of all claims other than such as may be paid under the provisions of this chapter, and the court may direct judgment to be entered discharging the debtor from all claims of creditors who have filed such release: Provided, that when any creditor of such debtor who has made an assignment or of whose property a receiver has been appointed under the provisions of this chapter shall petition to the court, before entry of the final order of distribution, stating that such debtor has wilfully sworn falsely in relation to any specified material fact in any affidavit or upon any examination relating to his insolvency, has concealed from his assignee or receiver any of his property or evidence thereof, has destroyed or falsified any of his account books or other evidence of his property, or has been privy to any such doings with intent to delay or defraud his creditors, or has removed or connived at the removal of any of his property or evidences thereof from the state with intent to defeat or delay the operation of this chapter, or has given or permitted any preference contrary to its provisions, or that having knowledge that any person has presented a false or fictitious demand against his estate he has not disclosed the same to the assignee or receiver within thirty days thereafter, or that he has not kept books of account or records from which his true condition can be ascertained, or that he has within six months prior to his assignment or the appointment of a receiver, concealed, removed, or disposed of all or some part of his property

with intent thereby to delay or defraud his creditors, or if, within six months prior to the making of the assignment or the appointment of a receiver the insolvent shall have induced the giving of credit by intentionally misrepresenting the actual value of his assets or the amount of his liabilities, or by misrepresenting the condition of his business, then the court shall require such debtor to appear before him at a time and place designated and after such notice thereof to the complaining creditor as the court shall direct, it shall proceed summarily, and if the allegations of the petition are denied it shall hear pertinent evidence, and after hearing may order and direct that all the debtor's unexempt property be distributed among his creditors as provided in this chapter without the filing of releases, and creditors may likewise be examined as to the validity of their demands. The release required may be executed by the original holder of the demand or any subsequent owner thereof. (4249; '95 c. 66 s. 4)

**4632. Notice of appointment of assignee or receiver**—Every assignee or receiver within twenty days after his appointment, shall give published notice thereof, and mailed notice to each creditor whose residence is known to him, and all creditors claiming the benefits of this chapter shall file with such assignee or receiver their claims within such time as the court shall by order provide, which time may, for cause, be extended. (4250; '97 c. 188)

**4633. Preferred debts**—After payment of costs, disbursements and expenses as provided in this chapter, debts due the United States, this state, all taxes or assessments levied and unpaid, and the expenses of the assignment, the assignee shall pay in full, if sufficient then remains, the claims duly proven of all servants, clerks or laborers, for personal services performed within three months preceding said assignment not exceeding fifty dollars in each case. The balance of the estate shall then be equally distributed among the general creditors, under the direction of the court. (4251)

**4634. Attachment, etc., from justice courts**—Whenever at the time of the appointment of a receiver under this chapter the property of the insolvent or any part thereof is under garnishment, attachment, or levy, by virtue of any writ or process issued by a justice of the peace, such garnishment, attachment or levy shall be dissolved in the same manner as when the process is issued by a court of record, and the plaintiff and the officer shall thereafter have the same and no greater rights than where the process issued out of a court of record and the garnishment, attachment, or levy shall be proceeded with in the same manner as in process issued out of a court of record, but § 4621 shall not apply to any case where an execution has been issued upon a judgment in an action wherein the complaint has been filed with the justice twenty days prior to the date of the levy upon said execution. (4252)

**4635. Fees of assignees, receivers, and attorneys**—The fees allowed assignees and receivers, in ordinary cases, shall not exceed ten per cent. upon the amount received by them up to one thousand dollars, five per cent. on the excess up to five thousand dollars, and two per cent. upon the excess above that; and the attorney fees allowed shall not exceed one hundred and fifty dollars where the gross proceeds are not more than three thousand dollars. Where they do exceed that and in extraordinary cases involving unusual litigation, the fees of assignees, receivers and attorneys shall be fixed by the court at the reasonable value of their services. (4253)

**4636. Partnership—Minor—Special partner**—Every assignment under the provisions of this chapter made by a copartnership of which a minor is a member or of which there are special partners, shall be valid if executed by the adult or general partner and shall pass to the assignee all the unexempt individual property of the adult or general partner, and all of the copartnership property of the firm and the court may appoint receivers of such copartnership in the manner in this chapter provided, and all the property of such copartnership and the individual property of the adult or general partners shall pass to such receiver in like manner as to an assignee. (4254)

**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)

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## 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.