

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.



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**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