

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

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.