

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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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.)

* * * * *

½. 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).