

130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

*Minnesota State Law Library
St. Paul, Minnesota*

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1941

deposited with him, and selection of surety should be subject to his approval. Op. Atty. Gen., (454), Jan. 29, 1940.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

9687. State and county officers—Uniform bond.

A state appraiser is a subordinate officer of the state department, which may require fidelity insurance in place of an official bond, but a fidelity policy must be conditioned as is a statutory bond. Op. Atty. Gen., (640), Nov. 1, 1939.

9689-1. Closed banks—Use of funds.—Funds in the possession of the commissioner of banks set aside for the purpose of meeting unforeseen and contingent expenses incident to the liquidation of closed state banks, which funds have been established by withholding a portion of final liquidating dividends in such cases, may be used by the commissioner of banks for any expense incident to the administration of the affairs of the closed bank department of his division. (Act Mar. 28, 1941, c. 92, §1.)

9698. Official bonds, security to whom—Actions.

Bond of judge of municipal court of Ortonville, also acting as clerk of that court, should run to the city and be filed with secretary of state. Op. Atty. Gen., (307a), Nov. 28, 1939.

9700. Contractors' bonds.

1. In general.

One contracting to do certain grading on a large number of highways for a township for certain specified sums per hour for different types of machinery used, and without fixed amount for entire job, must be required to furnish a bond for estimated cost of work. Op. Atty. Gen. (401B-6), July 6, 1940.

Purpose of statute is to protect laborers and material-men who perform labor or furnish material for execution of a public work to which mechanic's lien statute does not apply, and general rules and principles of law of suretyship apply and govern rights of parties. *Ceco Steel Products Corp. v. T.*, 294NW210. See Dun. Dig. 9107c.

Bond cannot be severed from statute and parties deemed to have contracted with reference thereto. Id.

9703. Action on bond.

U. S. v. National Surety Co., 60SCR458, aff'g 103F(2d) 450, which aff'd 23FSupp411.

9705. Limit of time to bring action.

The provision of a bond of a contractor for a public improvement, and of the statute under which it was given, that suit on the bond must be brought within 60 days after accrual of cause of action, gave the surety on the bond a vested right in the limitation provided, and the repeal of the statute could not destroy such right and permit the claimant to bring the action within the time prescribed by the general limitation statute. *Nat'l Sur. Corp. v. W.*, (CCA8), 111F(2d)622, rev'g 24FSupp640.

Beneficiaries of bond must bear burden of showing statutory compliance on their part with respect to filing notice before they can avail themselves of the benefits thereof. *Ceco Steel Products Corp. v. T.*, 294NW210. See Dun. Dig. 9107c.

Evidence held not to sustain finding that surety waived statutory requirement respecting filing of notice with county auditor. Id.

Words "completion" and "acceptance" in this section, are not to be read into §2554 (17) so as to extend time for application for arbitration under that section. *State v. Wm. O'Neil Sons Co.*, 296NW7. See Dun. Dig. 9107c.

9707. Fines, how disposed of.

Monies referred to in §53-47 and §5872, means license and examination fees collected by board, and not fines which are imposed by courts of competent jurisdiction for violations of act, which should be disposed of in accordance with §9707. Op. Atty. Gen., (188), April 9, 1940.

Fines for violation of acts relating to wholesale produce dealers should be paid to county treasurer, while fines collected under Laws 1921, c. 495, §21, should be paid to state treasurer. Op. Atty. Gen. (135a-4), Nov. 26, 1940.

CHAPTER 87

Special Proceedings

MANDAMUS

9722. To whom issued.

1. When will lie.

School board, having refused resident children of proper age admission to its school, is a proper party to mandamus proceedings to enforce rights of children to free education. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 5769.

Where voters of school district voted to exclude children of orphan home from school, and school board acted thereon, board was proper party defendant in action in mandamus to compel admission of children to school. Id.

Mandamus will not control discretion although it will lie to compel its exercise. *Sinell v. T.*, 289NW44. See Dun. Dig. 5752, 5753.

Mandamus is neither law nor source of law, and as a remedy it is granted only on equitable principles. Id. See Dun. Dig. 5752, 5753.

Where a veteran was discharged prior to passage of civil service act, he could not maintain mandamus for reinstatement after passage of that act, mandamus being only available by statutory grant and such statutes being repealed by the civil service act so far as he was concerned. *State v. Stassen*, 294NW647. See Dun. Dig. 5763a.

Mandamus against an officer will not issue unless there is a clear and complete right shown by petitioner to receive that which court is asked to command official to give him. *State v. Hoffman*, 296NW24. See Dun. Dig. 5756.

If deputy oil inspector discharged before Civil Service Act went into effect had a civil service status under existing statute, such status was abolished by going into effect of such act and mandamus would not lie to enforce such right, though petition was filed and alternative writ was issued prior to effective date. *Reed v. T.*, 296NW535. See Dun. Dig. 5752b.

Repeal of veterans' preference act by civil service act took away statutory remedy of mandamus for a wrongfully discharged state employee, including a pending action in mandamus which was not perfected by final judgment, even though trial had been had before repeal, and a cause of action for damages, as long as it remained inchoate and not merged in final judgment, was equally destroyed by repeal of statute which created it. *State*

v. Railroad and Warehouse Com'n, 296NW906. See Dun. Dig. 5763a.

9723. On whose information and when.

2. Other adequate relief.

Where tax commission determined that there was an overpayment of income tax but rejected claim on ground of limitations, taxpayer was not "aggrieved" by the decision, and could proceed in mandamus to compel issuance of certificate for refundment. *State v. Minnesota Tax Commission*, 293NW243. See Dun. Dig. 5754.

9728. Default—New matter—Demurrer.

Right to a writ of mandamus is determined as of time of hearing rather than that of application. *Reed v. T.*, 296NW535. See Dun. Dig. 5752b.

9729. Pleadings—Issues, trial, etc.

Where facts pleaded fail to show any excuse for a delay of more than 62 years in bringing mandamus to open and grade a township road, laches appears as a matter of law, for equity aids the vigilant, and not the negligent. *Sinell v. T.*, 289NW44. See Dun. Dig. 5758a.

In mandamus and certiorari by a discharged war veteran, there being no showing to the contrary, assumption is that relator was honorably discharged from army. *State v. City of Bemidji*, 295NW514. See Dun. Dig. 5777a.

A motion for judgment on pleadings by respondent in mandamus proceeding must rest upon petition and alternative writ, since defensive averment in answer must be considered denied. *State v. Hoffman*, 296NW24. See Dun. Dig. 5776.

9730. Effect of judgment for plaintiff—Appeal.

Board, having acted in behalf of school district in discharge of governmental functions, is not liable for costs or disbursements of mandamus action. *State v. School Board of Consol. School Dist. No. 3*, 287NW625. See Dun. Dig. 2207.

HABEAS CORPUS

9739. Who may prosecute writ.

3b. Custody of children.

Natural parents of a child have first right to its care and custody unless best interests of child require that it

be given to someone else. *State v. Sorenson*, 293NW241. See Dun. Dig. 7297.

Presumption is that parents are fit and suitable persons to be intrusted with care of their child and burden is upon him who asserts contrary to prove it by satisfactory evidence. *Id.*

4. Review of evidence.

Defendant may challenge sufficiency of evidence before committing magistrate in a timely proceeding by a writ of habeas corpus. *State v. Gottwalt*, 295NW67. See Dun. Dig. 4131.

CERTIORARI

9709. Within what time writ issued.

1. In general.

A decision should stand, where it is sustained by the facts well found, even though there was error in other findings, which if changed or set aside would not affect the result. *Cieluch v. E.*, 290NW302. See Dun. Dig. 1402.

Certiorari is a writ of review in nature of a writ of error or an appeal, its office being to review and correct decisions and determinations already made. *Johnson v. C.*, 295NW406. See Dun. Dig. 1391 (60, 61, 64, 66, 67).

In mandamus and certiorari by a discharged war veteran, there being no showing to the contrary, assumption

is that relator was honorably discharged from army. *State v. City of Bemidji*, 295NW514. See Dun. Dig. 1397.

6. Compensation proceedings.

Where claim is made that industrial commission did not consider certain evidence, which was part of transcript in case, and decision of commission recites that it considered transcript, all files, records and proceedings, recitals will be taken as affirmatively showing that evidence was considered. *Cieluch v. E.*, 290NW302. See Dun. Dig. 1402.

Where a party to a workmen's compensation proceeding obtains additional time in which to apply for certiorari, writ must be obtained and be served upon both industrial commission and employer and insurance carrier within time so limited, and actual notice does not take place of written notice. *Haimila v. O.*, 293NW599. See Dun. Dig. 1408, 10426.

9770. When served.

Where a party to a workmen's compensation proceeding obtains additional time in which to apply for certiorari, writ must be obtained and be served upon both industrial commission and employer and insurance carrier within time so limited, and actual notice does not take place of written notice. *Haimila v. O.*, 293NW599. See Dun. Dig. 1408, 10426.

CHAPTER 89

Assignments for Benefit of Creditors

9788. Fraudulent conveyances.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 MinnLawRev 832.

9789. Proof of claims—Order of payment.

Claim of state against a bankrupt's assets is not a preferred one unless it is for taxes. *Op. Atty. Gen.*, (372B-5), Feb. 2, 1940.

CHAPTER 90

Insolvency

COMMON LAW DECISIONS RELATING TO BANKRUPTCY IN GENERAL

1. In general.

Decree of a federal court in a reorganization proceeding is not *res judicata* of certain issues expressly stated to be without prejudice to decision of such issues in state courts. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 749.

By accepting a regular operator's contract and acquiescing in suspension of rental provisions in order to regain possession of oil station in possession of bankrupt, under agreement with trustee, lessor waived any standing in state court in an action for an accounting to challenge validity of new arrangement because not approved by federal court. *Range Ice & Fuel Co. v. E.*, 296NW407. See Dun. Dig. 747.

Claim of state against a bankrupt's assets is not a preferred one unless it is for taxes. *Op. Atty. Gen.*, (372B-5), Feb. 2, 1940.

2. Discharge.

Assignment of portion of salary for benefit of specified creditors as a part of a contract of employment entitled creditors to pursue fund accumulated at time of adjudication in bankruptcy of the employee, notwith-

standing intervening discharge, bankrupt making no claim to the fund, on theory of unjust enrichment and trust. *Lucas v. M.*, 291NW892. See Dun. Dig. 749.

3. Liens.

Judgment was not a lien upon personal property of judgment debtor until levy, and if levy was within four months of filing petition in bankruptcy it was voidable in a plenary action, even though there had been a lawful sale prior to bankruptcy, if it operated as a preference. *Mulroney v. M.*, 290NW584. See Dun. Dig. 749.

4. Preferences.

A sheriff, who has levied upon and sold personal property of a judgment debtor and paid amount realized to judgment creditor before judgment debtor has filed his petition in voluntary bankruptcy, cannot be held liable in a suit to recover a preference. *Mulroney v. M.*, 290NW585. See Dun. Dig. 743.

Practice established in state courts governs cases brought therein by a trustee in bankruptcy to recover preferential payments as to pleading, proof and findings. *Id.* See Dun. Dig. 748.

Trustee in bankruptcy suing to recover a preference must both plead and prove that effect of transfer was to enable defendant to obtain a greater percentage of its debts than any other creditor of same class. *Id.* See Dun. Dig. 747.

CHAPTER 91

Contempts

9793. Constructive contempts defined.

Fraudulent conveyances during stay of execution. 24 MinnLawRev672.

(3).

District court has power to punish as for contempt

wrongful refusal of a husband to pay an allowance ordered for benefit of his wife in an action for separate maintenance. *Sybilrud v. S.*, 291NW607. See Dun. Dig. 1703(40).