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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.

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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

9769. 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. B.*, 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).