

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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205] had no claim on railroad property by reason of lease under which property was turned over to railroad with agreement that it would be returned when lease was terminated. *Whitman v. Webster*, (C.C.A.8), 122 F. (2d) 860. See Dun. Dig. 747a.

Evidence held to show that advance of money from one railroad corporation to its affiliates did not constitute a purchase of equipment bought with the money so as to give first corporation a claim in reorganization proceedings of the second, pursuant to the Bankruptcy Act [11 Mason's U. S. C. A. 205]. *Id.* See Dun. Dig. 747a.

Rules governing the question of subordinating claims of officers and directors of bankrupt corporation to those of other creditors stated and held that allowance of claim of an officer and director upon an equitable parity with other creditors being primarily for the bankruptcy court, such allowance would not be set aside where reviewing court was not convinced that it was clearly erroneous. *Barlow v. Budge*, (CCA8), 127F(2d)440, 49AmB(NS)120. *Cert. den.* 317US647, 63SCR42. See Dun. Dig. 743b.

Controlling stockholder's claim based upon a note for money advanced to the corporation in bankruptcy was properly disallowed where the corporate records failed to show the receipt by the corporation of the money for which the note was purportedly given. *Boyum v. Johnson*, (Fergus Falls Woolen Mills Co.), (CCA8), 127F(2d) 491, aff'g (DC-Minn), 41FSupp355. See Dun. Dig. 743b.

Claims of controlling stockholder of corporation in bankruptcy, who virtually ran the affairs of the corporation as his own should be subordinated to claims of general creditors. *Boyum v. Johnson*, (Fergus Falls Woolen Mills Co.), (CCA8), 127F(2d)491, rev'g on other grounds, (DC-Minn), 41FSupp355. See Dun. Dig. 743b.

Where debtor had an interest in real estate because of foreclosure sale never having been confirmed in state court, he was required to list it among his assets, so that he was justified by the change in conditions in filing a second petition for composition, and it was not an abuse of discretion to deny motion to strike such real estate from the schedules and permit creditor to seek confirmation of the foreclosure sale in the state court, though there had been seven years of nonaction by the debtor which ordinarily would have justified dismissal of the proceedings. *Kalb*, (CCA7), 127F(2d)509. See Dun. Dig. 744.

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.*, 207 M537, 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.*, 209M260, 296 NW407. See Dun. Dig. 747.

Mutual covenants not to compete in certain territory in connection with sale of a branch business followed assignment of contract by purchaser of branch to a corporation formed, and involuntary bankruptcy of assignee did not end or affect covenant, insolvency and adjudication was not anticipatory breach, and right to enforce covenant passed by sale of trustee in bankruptcy of assets and good will. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178, construing 204M300, 283NW561. See Dun. Dig. 746.

Right of bankrupt to redeem from tax sale passes to trustee in bankruptcy, but right to purchase land from the state after title has passed does not pass to trustee. *Cobleigh v. State Land Office Board*, 305Mich434, 9NW (2d)665. 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.

Wage earners' plans in the federal courts. 26 Minn. Law Rev. 775.

## 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, notwithstanding intervening discharge, bankrupt making no claim to the fund, on theory of unjust enrichment and trust. *Lucas v. M.*, 207M380, 291NW892. See Dun. Dig. 749.

Discharge of contractor in bankruptcy does not affect lien of materialman. *Willcox-Boiler Co. v. Messier*, 211 M304, 1NW(2d)130. See Dun. Dig. 749, 6067-6076.

A judgment recovered against a bankrupt after commencement of proceedings in bankruptcy and before his discharge is annulled thereby, but a judgment recovered after discharge has been granted is valid and enforceable. *Bearman Fruit Co. v. Parker*, 212M327, 3NW(2d)501. See Dun. Dig. 749.

The right to oppose a discharge in bankruptcy on the ground that bankrupt made a materially false financial statement in writing and thereby obtained money or property on credit is not limited to the creditor defrauded but may be urged by any creditor of the bankrupt. *Sjoberg v. Leach*, 213M360, 6NW(2d)819. See Dun. Dig. 749.

## 3. Liens.

There was no abuse of discretion in bankruptcy court's order directing bankrupt to deliver two auto trucks to chattel mortgagee upon debtor's failure to perform promises of payments made by him. *Kalb*, (CCA7), 127F(2d) 511. See Dun. Dig. 749.

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. *Mulrone v. M.*, 207M234, 290NW584. See Dun. Dig. 749.

Lien of a judgment upon a homestead may be enforced by execution unaffected by debtor's discharge in bankruptcy. *Keys v. Schultz*, 212M109, 2NW(2d)549. See Dun. Dig. 749.

Garnishment and bankruptcy. 27 MinnLawRev 1.

## 4. Preferences.

Intent to prefer is an essential ingredient of an act of bankruptcy. *De Luxe Oil Co.*, (DC-Minn), 36FSupp287. See Dun. Dig. 743, 3857, 3925.

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. *Mulrone v. M.*, 207M 234, 290NW584. 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.

It is not enough that a creditor has some cause to suspect insolvency of his debtor, but he must have such a knowledge of facts as to induce a reasonable belief of debtor's insolvency. *Arneson v. Scheffer & Rossum Co.*, 210M368, 298NW705. See Dun. Dig. 743.

Evidence to sustain finding that defendant did not have reasonable cause to believe that payments on open account would effect a preference. *Id.*

## 5. Railroad reorganization.

Claims of one who as guarantor made payments of 1st refunding mortgage bonds of a railroad undergoing reorganization were not entitled to participate under the plan where the claims of the refunding bondholder could not be satisfied within the limits of approved capitalization. *Mpls. St. P. & S. S. M. Ry. Co.*, (DC-Minn), 48FSupp 330, 52AmB(NS)150. See Dun. Dig. 736d to 762.

Failure of bondholders desiring to conduct litigation against a railroad in reorganization to deposit their bonds will not prejudice their rights to the dividends and interest or securities allotted to them. *Id.*

Failure of a plan to provide for a sinking fund for new first mortgage bonds would not defeat the plan where a relatively small amount was at issue and to provide such a fund would put an unnecessary burden upon new junior securities. *Id.*

The effective date of a railroad reorganization plan would not be disapproved because of fact that a later date would avoid some taxes, where such postponement would result in greater debt accumulation. *Id.*

In fixing the capitalization of a reorganized railroad the Interstate Commerce Commission exercises its legislative function as a fact finding body in determining the value of the debtor's property. *Id.*

Plan of reorganization of Soo Railway Co. held fair and equitable and therefore approved by the court. *Id.*

## CHAPTER 91

### Contempts

#### 9792. Direct contempts defined.

Liberty of expression and contempt of court. 27Minn LawRev296.

#### 9793. Constructive contempts defined.

Fraudulent conveyances during stay of execution. 24 MinnLawRev572.

(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.*, 207M373, 291NW607. See Dun. Dig. 1703(40).

Violation by defendant in divorce case of order restraining transfer of property to be acquired under a will may be treated as contempt of court and compliance enforced by coercive means of such a proceedings. *Daw v. Daw*, 212M507, 4NW(2d)313. See Dun. Dig. 1703.

**9794. Power to punish—Limitation.**

Where husband's disobedience of an order awarding wife temporary alimony prejudices her remedy, he may, in discretion of court, be punished by imprisonment under this section. *Dahl v. Dahl*, 210M361, 298NW361. See Dun. Dig. 1708.

Sentence of thirty days in county jail was not excessive for willful refusal to pay temporary alimony in suit for separate maintenance. *Id.*

**9796. Arrest—Order to show cause, etc.**

An order adjudging a defendant in contempt and fining him \$50 or, in case he does not pay the fine, imprisoning him for 30 days, is an adjudication of criminal

contempt and is reviewable only on certiorari and not on appeal. *Paulson v. Johnson*, 214M202, 7NW(2d)338. See Dun. Dig. 1703a, 1708a.

If a contempt is a criminal contempt, one simply to impose a punishment, it can be reviewed only by certiorari; but if it is one to aid enforcement of a civil remedy, as by compelling one adjudged in contempt to deliver property in his possession, it is a civil contempt reviewable by appeal. *Id.* See Dun. Dig. 1708a.

An order requiring defendant to do a certain act and if he fail to do it to show cause why he should not be adjudged in contempt is not a final order and is not appealable. *Id.* See Dun. Dig. 1708a.

## CHAPTER 92

## Witnesses and Evidence

## WITNESSES

**9809. Subpoena, by whom issued.**

Statutes authorize issuance of subpoenas by any clerk of court of record or by any justice of the peace of the state for witnesses in proceedings before state board of education to remove the commissioner of education for inefficiency and misconduct. *State v. State Board of Education*, 213M184, 6NW(2d)251, 143ALR503. See Dun. Dig. 10360.

County board has power to subpoena witnesses for hearing of charges against a veteran in removal proceedings, pursuant to this section. *Op. Atty. Gen.* (85E), Mar. 6, 1942.

Hearing before county board of charges against a veteran under the preference act is a "civil case". *Id.*

**9814. Competency of witnesses.****½. In general.**

The competency, as witness, of 14 year old girl with head injuries was for trial court, and rightly defendant's psychiatrist was denied an examination of girl as to competency before being placed on the witness stand, and court accorded defendant all he was entitled to when his expert was permitted to examine girl and, in defense, give an opinion as to her competency to remember what occurred at time of attack on her mother and herself. *State v. Palmer*, 206M185, 288NW160. See Dun. Dig. 10303.

Practice of attorneys of furnishing from their own lips and on their own oaths controlling testimony for their client is one not be condoned by judicial silence, for a lawyer occupying attitude of both witness and attorney for his client subjects his testimony to criticism if not suspicion. *Stephens' Estate*, 207M597, 293NW90. See Dun. Dig. 10306a.

Privilege is personal to those to whom it belongs and is waived unless asserted by them, and a party may not invoke privilege of his witness, much less that of his adversary. *Esser v. Brophay*, 212M194, 3NW(2d)3. See Dun. Dig. 10316.

**1. All persons not excepted competent.**

Where no objection was made to testimony of plaintiff's attorney at trial, error on its reception cannot be assigned or urged on appeal. *Holmes v. Conter*, 212M394, 4NW(2d)106. See Dun. Dig. 10313.

**3. Subdivision 1.**

Admissibility of testimony of one spouse against the other in cases of a crime committed by one against the other. 27MinnLawRev205.

**4. Subdivision 2.**

Communications between testator and attorney who drew will are not privileged in probate proceedings involving question whether omission of a child from will was intentional. *Dorey's Estate*, 210M136, 297NW561. See Dun. Dig. 10206e, 10313, 10316.

There is a distinction between documents prepared as records by an employee pursuant to employer's direction in regular course of business and those prepared under direction and advice of attorney as a communication for use in connection with his rendition of professional service, one being a business record without privilege of any sort, and other a communication between attorney and client. *Schmitt v. Emery*, 211M547, 2NW(2d)413, 139ALR1242. See Dun. Dig. 10313.

Where a document is prepared by an agent or employee by direction of employer for purpose of obtaining advice of attorney or for use in prospective or pending litigation, agent or employee as well as attorney is prohibited from testifying with respect thereto without client's consent. *Id.*

Where an employer delivers to an attorney a document prepared by an agent or employee, for purpose of obtaining professional advice or for use in prospective or pending litigation, document is privileged as a communication between attorney and client. *Id.*

Where parties are engaged in maintaining a common cause, furnishing copy of a document privileged as a communication between attorney and client by attorney for one party to attorney for another does not affect

privilege, and recipient of copy stands under same restraints arising from privileged character of document as giver. *Id.*

Where a party refuses to produce a document which is privileged as a communication between attorney and client, opposing party, if he has given due notice to produce, may show the contents thereof by parol testimony, but such testimony must itself not be privileged. *Id.*

In action to quiet title where issue was whether defendants were served with personal notice of expiration of period of redemption on lands sold for taxes, and attorney for defendants was called by plaintiff and asked whether he had in his possession a sales slip from a local store to one of defendants, court properly overruled objection to question on ground that it was incompetent, immaterial, irrelevant, and privileged, defendants' attorney answering that he did not have the slip in his possession. *Holmes v. Conter*, 212M394, 4NW(2d)106. See Dun. Dig. 10313(89).

Where an attorney is requested by his client to attest a deed or will prepared for client by attorney, the attorney may disclose, after death of client, statements made by latter at time of transaction relative thereto, since client in requesting attorney to witness document, by implication, waives privilege which would otherwise bar the disclosure of his statements. *Larson v. Dahlstrom*, 214M304, 8NW(2d)48, 146ALR245. See Dun. Dig. 10313, 10316(f).

Extent of privilege between attorney and client's agent. 26 Minn. Law Rev. 744.

**5. Subdivision 4.**

In motor vehicle collision case, history given by decedent several months prior to collision, when at clinic for examination, and records there made were rightly ruled inadmissible as privileged. *Ost v. U.*, 207M500, 292NW207. See Dun. Dig. 10314.

Plaintiff as administratrix did not waive statute by a personal letter authorizing clinic to exhibit its records to insurance company which had issued policies on life of her husband wherein she as his widow was sole beneficiary. *Id.* See Dun. Dig. 10314.

Statement by person injured in automobile accident to doctor at hospital that he was driving the car was not "necessary to enable the doctor to act in that capacity", communication relating wholly to a non-professional matter. *Leifson v. Henning*, 210M311, 298NW41. See Dun. Dig. 10314.

Where two doctors were attending defendant at a hospital, defendant by calling one of the doctors to testify that he was in a mental fog waived a right to insist that other doctor withhold his opinion. *Id.*

Doctor could testify that defendant appeared to be clear mentally when he was asked by defendant to serve as his doctor following an automobile accident, his observations having been made before he undertook professional services for defendant. *Id.*

In prosecution for murder of wife statement by prosecuting attorney in argument that deceased's physician was called as a witness by the state but that the defence would not permit the physician to speak on ground that information was confidential was not so prejudicial as to require a new trial. *State v. Rediker*, 214M470, 8NW(2d)527. See Dun. Dig. 10314.

Court on granting a new trial for inadequacy of damages need not consider an assignment of error as to examination of a physician concerning privileged matter. *Krueger v. Henschke*, 210M307, 298NW44. See Dun. Dig. 10314.

Testimony as to examination not made for purpose of treatment. *Id.*

**6. Subdivision 5.**

Reports of brewer filed with liquor control commissioner under regulation may be inspected by tax payers under reasonable rules and regulations. *Op. Atty. Gen.* (851r), July 25, 1941.

**9815. Accused.****1. In general.**

Statement of prosecuting attorney in argument to the jury, that nobody had denied portions of an extra-judicial confession of defendant, held not to transgress statutory