

REVISED LAWS OF MINNESOTA *94*

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

ST. PAUL
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CHAPTER 90.

INSOLVENCY.

4628. Actions—Parties—Application of laws.

See note under section 4612.

4633. Preferred debts.

See *In re Western Implement Co.* (D. C.) 166 Fed. 576, cited in note under section 4618.

CHAPTER 91.

CONTEMPTS.

4640. Power to punish—Limitation.

Constructive contempt.—Under this section the power to punish for a constructive contempt is limited to a fine not exceeding \$50 unless it expressly appears that the right of a party to an action or special proceeding was defeated or prejudiced thereby. *State ex rel. Holland v. Miesen*, 98 Minn. 19, 108 N. W. 513.

The court having found that the violation of a writ of injunction resulted in extra loss and injury to plaintiff, and was prejudicial to his rights, a fine of \$250 and conditional imprisonment were not in excess of the authority conferred. Such fine and imprisonment in cases of contempt is not in contravention of the constitutional provision which prohibits excessive fines, and cruel and unusual punishment. *State ex rel. Phillips v. District Court of Redwood County*, 98 Minn. 136, 107 N. W. 963.

4648. Punishment.

Cited in *State ex rel. Phillips v. District Court of Redwood County*, 98 Minn. 136, 107 N. W. 963.

See note under section 4640.

CHAPTER 92.

WITNESSES AND EVIDENCE.

WITNESSES.

4660. Competency of witnesses.

Subd. 1.—The reception of evidence of communications between husband and wife, in apparent violation of this section, was without prejudice. *White v. White*, 101 Minn. 451, 112 N. W. 627.

Subd. 2.—Communications made to a clerk of an attorney at law are privileged, if made in the course of professional duties. *Hilary v. Minneapolis St. R. Co.*, 104 Minn. 432, 116 N. W. 933.

Subd. 4.—G. S. 1894, § 5662, subd. 4, is for the protection of the patient, and he may waive it, and as a rule those who represent him after his death may also waive the privilege. *Olson v. Court of Honor*, 100 Minn. 117, 110 N. W. 374, 8 L. R. A. (N. S.) 521, 117 Am. St. Rep. 676. Cf. *Mageau v. Great Northern R. Co.*, 103 Minn. 290, 115 N. W. 651, 946, 15 L. R. A. (N. S.) 511.

A party may consent that his attending physician may testify against him, but a statement made during cross-examination, without opportunity to advise with counsel and a full understanding of his legal rights, that he has no objection to the physician testifying, should not be treated as waiver which cannot be thereafter withdrawn. *Ross v. Great Northern R. Co.*, 101 Minn. 122, 111 N. W. 951.

A physician cannot testify as to information acquired by him in attending his patient, and such privilege was not waived because plaintiff testified concerning