

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CHAPTER 88

Actions against Boats and Vessels

9774. For what liable.

Defendant having executed a charter party in which it purported to contract as principal, is liable for breach of the contract, whether in fact contracting as principal or as agent for an undisclosed principal. 171M507, 214NW510.

Evidence held to sustain finding that contract was breached by the failure of the vessel to report for loading within the time required by the contract; also that the delay was caused by the voluntary act of the owner; also that plaintiff had not waived its claim for damages. 171M507, 214NW510.

CHAPTER 89

Assignments for Benefit of Creditors

9782. Requisites.**1. Nature of proceeding.**

Transfer of property by managing officer or bank to certain directors to secure payment of his debts to the bank, held a mortgage and not an assignment for benefit of creditors, though it rendered him insolvent. 172M149, 214NW787.

3. To what applicable.

Not applicable to state banks in liquidation. 181M1, 231NW407.

11. Releases.

An assignment in favor of only those creditors who

will file releases is void. *Kobler v. H.*, 248NW698. See Dun. Dig. 614.

9789. Proof of claims—Order of payment.

Money received by bankrupt representing proceeds of hunting and fishing license fees, held preferred claim in favor of the state in bankruptcy proceeding. 47F(2d) 1073. See Dun. Dig. 612(93).

Subd. 1.

State is a preferred creditor entitled to all assets if not sufficient to pay claim in full. Op. Atty. Gen., Aug. 1, 1933.

CHAPTER 90

Insolvency

The persons and property of farmers are excluded from the operation of the state insolvency law so long as the national act is in force. *Adrian State Bk. of Adrian v. K.*, 182M57, 233NW588. See Dun. Dig. 4542(96).

DECISIONS RELATING TO BANKRUPTCY**1. 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, 240NW888. 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, 242NW292. 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, 242NW292. See Dun. Dig. 5131.

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.

CHAPTER 91

Contempts

9792. Direct contempts defined.

Power of court to purge of contempt. 172M102, 214NW776.

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.

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. *Certiorari* granted.

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, 226NW188.

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.*, 246NW481. See Dun. Dig. 1702, 3548.

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. 173M165, 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, 226NW188.

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.*, 246NW 481. 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. *Certiorari* granted.

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.

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 alimony or to punish for contempt a failure to comply with the judgment, though it followed the agreement. 178M75, 226NW211.

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, 233NW586. 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. Certiorari granted.

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. Dumbek 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, 233NW309. 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. Drabeck v. W., 182M217, 234NW6. 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. Drabeck v. W., 182M217, 234NW6. See Dun. Dig. 3393.

Letter written by expert witness contrary to his testimony, held admissible. Jensen v. M., 185M284, 240NW656. See Dun. Dig. 3343.

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. Examination of clergyman restricted in certain cases.—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).

There was no error in permitting the mother of the three-year-old child who was injured to testify as to the indications the child gave of injury at the time of the accident, nor as to the duration of its disability. Ball v. G., 185M105, 240NW100. See Dun. Dig. 3232.

3. Subdivision 1.

Not applicable in action by wife to set aside conveyance obtained by fraud of husband. 173M61, 216NW311.

Prohibition of this subdivision applies in actions for alienation of affections. 175M414, 221NW639.

Plaintiff in action for alienation or criminal conversation could not testify to admissions made to him by his deceased wife concerning meretricious relations with defendant, though defendant requested him to ask his wife about the matter. 177M577, 226NW195.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. State v. Soyka, 181M502, 233NW300. See Dun. Dig. 10312.

Defendant by calling his wife as a witness waived his privilege. State v. Stearns, 184M452, 238NW895. See Dun. Dig. 10312(59).

4. Subdivision 2.

Volunteering information on the witness stand. 171M492, 214NW666.

On application to share in grandfather's estate on ground of unintentional omission from will, communications between testator and attorney who drew will were not privileged. 177M169, 225NW109.

4½. Subdivision 3.

For a confession to a clergyman to be privileged it must be penitential in character and made to him in his professional character as such clergyman in confidence while seeking religious or spiritual advice, aid, or comfort, but the court cannot require the disclosure of the confession to determine if it is privileged. In re Swenson, 183M602, 237NW589. See Dun. Dig. 10314.

5. Subdivision 4.

180M205, 230NW648.

Information acquired by a physician in attempting to revive a patient, and opinions based thereon, are within protection of section, although patient may have been dead when such attempts were made. Palmer v. O., 187M272, 245NW146. See Dun. Dig. 10314.

A doctor may testify that he has been consulted but he may not against objection disclose any information which he obtained at such consultation. Stone v. S., 248NW285. See Dun. Dig. 10314.

Communications between superintendent of state hospital and patient are privileged. Op. Atty. Gen., May 9, 1933.

6. Subdivision 5.

Commercial Union Ins. Co. v. C., 183M1, 235NW634. See Dun. Dig. 10315(20).

Court properly sustained objection to question asked prosecuting attorney with respect to a disclosure made to him by an accomplice of accused who testified against defendant, though proper foundation was laid for impeachment. 172M106, 214NW782.

9815. Accused.

2. Cross-examination of accused.

Statement of defendant in cross-examination that he never robbed anybody does not put his general character in issue. 181M566, 233NW307. See Dun. Dig. 2453.

There was no error in cross-examination of defendant because it tended to subject him to prejudice on account of his associations and earlier career. State v. Quinn, 186M242, 243NW70.