

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

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the court, in its discretion, may from time to time require the assignee to render an account, and to file a report of his proceedings and of the condition of the trust estate, and may order distribution thereof. For cause shown, it may, in its discretion, remove the assignee, and appoint another instead, who shall give bond as the court may direct; and the order of removal and appointment shall, in terms, transfer all the trust estate to the new assignee, and may be filed for record with the register of deeds of any county wherein any land affected by the assignment is situated. Upon removal of an assignee, the court may require him to deliver to the new assignee all property, books of account, and vouchers belonging to the trust estate, to execute all necessary transfers, and to render an account and report of all matters connected therewith. When such assignee has complied with all the orders of the court, and whenever any assignee has completed his trust, he may apply to the court for his discharge, first giving three weeks' published notice of such application; the last publication to be not more than three weeks prior to the hearing thereon. If upon the hearing the court is satisfied that the assignee is entitled to such discharge, it shall so order; but if, in its opinion, anything remains to be done by him, it shall re-

quire the performance thereof before making such order. But a discharge shall not be refused because of any failure of the assignee to comply with the forms of law, if no damage has thereby resulted to any person. Such order shall have the effect of discharging the assignee and his sureties from all further responsibilities in respect to the trust. When the trust estate is taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may be discharged upon showing that he has fully accounted with the trustee in bankruptcy, and turned over to him the whole trust estate. And when the trust estate is taken out of the hands of the assignee by legal proceedings in any court, or the assignment is declared void as to creditors, or for any reason the further administration of the trust is rendered impracticable, inadvisable, or nugatory, the assignee shall in like manner be discharged. (4620) [8335]

Supervisory power of court (24-232, 241; 24-295, 297; 26-141, 143, 1+830; 41-304, 306, 43+67, 44-76, 46+204). Removal of assignee (4-13, 1; 6-375, 260; 24-232; 41-304, 306, 43+67; 41-325, 43+385; 55-130, 56+587; 58-205, 212, 59+1003; 58-313, 59+1044; 59-323, 61+330; 68-414, 419, 71+679; 77-59, 79+651; 77-402, 80+300). Court should disallow unauthorized claims without reference to agreement between assignor and assignee (24-232). Court cannot revoke or change assignment (48-396, 51+322). 186+787.

CHAPTER 90

INSOLVENCY

As this chapter is inoperative while the federal bankruptcy act is in force, 76-118, 78+1038; 116-142, 133+561; the same is not printed in this compilation.

CHAPTER 91

CONTEMPTS

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Distinction between direct and indirect contempts (60-478, 62+831). A party may be punished for contempt for refusing to pay alimony (26-9, 46+446; 30-280, 15+117; 39-394, 40+360; 40-4, 41-1076; 42-40, 43+686; 63-443, 65+728; 61-120, 63+169; 69-427, 72+451); for disobeying an injunction (27-250, 4+619, 6+776; 52-283, 53+1157; 71-383, 73+1092; 78-464, 81+323); for persisting in a certain course of examining witnesses contrary to order of court (41-42, 42+598); for refusing to turn over assets in insolvency proceedings (56-397, 57+940); for refusing to obey an order in supplementary proceedings (23-411; 30-487, 16+398); for entering judgment notwithstanding a stay (53-102, 54+940); for refusing to pay over money to a receiver (71-383, 73+1092); for giving information derived by an officer of court as to proceedings pending against parties accused of crime (87-161, 91+297). A party cannot be punished for contempt for failure to perform an act not in his power (8-214, 185; 63-443, 65+728); for failing to plead (1-203, 176); for merely reading an affidavit for change of venue for prejudice of judge (3-274, 188). Insulting language and contemptuous behavior of counsel (110-446, 125+1020). As to abusive criticism of court (104-88, 116+212; 113-96, 129+148). See also, 128-153, 150+383.

Contempt defined and powers of courts stated. Remarks of attorney. 165-203, 206+402.

9792. Direct contempts defined—Contempts of court are of two kinds—direct and constructive. Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings.
2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court. (4638) [8353]

9793. Constructive contempts defined—Constructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from any of the following acts or omissions:

1. Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, clerk, sheriff, cor-

oner, or other person appointed or elected to perform a judicial or ministerial service.

2. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

3. Disobedience of any lawful judgment, order, or process of the court.

4. Assuming to be an attorney or other officer of the court, and acting as such without authority.

5. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

6. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is to be tried.

7. Any other unlawful interference with the process or proceedings of a court.

8. Disobedience of a subpoena duly served, or refusing to be sworn or to answer as a witness.

9. When summoned as a juror in a court, neglecting to attend or serve as such, improperly conversing with a party to an action to be tried at such court or with any person relative to the merits of such action, or receiving a communication from a party or other person in reference thereto, and failing to immediately disclose the same to the court.

10. Disobedience, by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, proceeding in an action or special proceeding in any court contrary to law after the same has been removed from its jurisdiction, or disobedience of any lawful order or process of a judicial officer. (4639) [8354]

9794. Power to punish—Limitation—Every court of justice and every judicial officer may punish a contempt by fine or imprisonment, or both; but, when it is a constructive contempt, it must appear that the right, or remedy of a party to an action or special proceeding was defeated or prejudiced thereby, before the contempt can be punished by imprisonment or by a fine exceeding fifty dollars. (4640) [8355]

A person may be imprisoned for contempt in refusing to pay over money as ordered by the court (23-411; 56-397, 57-940; 63-443, 65-723). Constructive contempt (98-19, 108-513; 113-304, 129-533). Fine and imprisonment constitutional (98-136, 107-963). See also, 125-304, 146-1102; 141-269, 170-198; 151-241, 186-788.

9795. Summarily punished, when—A direct contempt may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the court or officer, and adjudging the person proceeded against to be guilty of a contempt, and that he be punished as therein specified. (4641) [8356]

60-478, 62-831.

9796. Arrest—Order to show cause, etc.—In cases of constructive contempt, an affidavit of the facts constituting the contempt shall be presented to the court or officer, who may either issue a warrant of arrest to bring the person charged to answer, or, without a previous arrest, upon notice, or upon an order to show cause, which may be served by a sheriff or other officer in the same manner as a summons in an action, may commit him to jail, impose a fine, or both, and make such order thereupon as the case may require. (4642) [8357]

Procedure for constructive contempt defined (60-478, 62-831; 61-120, 63-169; 65-146, 67-796; 71-383, 73-1092; 113-304, 129-533; 116-228, 133-614). In cases of strictly criminal contempt the rules of evidence and presumptions of law applicable to criminal cases must be observed (65-146, 67-796). Warrant must specify whether accused shall be let to bail or retained in custody, and if he may be bailed amount in which he may be let to bail (30-260, 15-117). Judgment must be responsive to

order to show cause (61-120, 63-169). When may be certified to supreme court (116-228, 133-614). See also 154-412, 191-1008.

9797. Persons in custody—If the party charged is in the custody of an officer by virtue of a legal order or process, civil or criminal, except upon a sentence for felony, an order may be made for his production by the officer having him in custody, that he may answer; and he shall thereupon be produced and held until an order is made for his disposal. (4643) [8358]

9798. Admission to bail—Whenever a warrant of arrest is issued pursuant to this chapter, the court or officer shall direct whether the person charged may be admitted to bail for his appearance, or detained in custody without bail, and, if admitted to bail, the amount thereof. Such direction shall be specified in the warrant. (4644) [8359]

30-260, 15-117.

9799. Warrant, how executed—Upon executing the warrant of arrest, the sheriff shall keep the person in actual custody, bring him before the court or officer, and detain him until an order shall be made in the premises, unless the warrant shall contain a direction to admit him to bail, in which case he shall be discharged from the arrest, upon executing and delivering to the officer at any time before the return day of the warrant a recognizance, with two sufficient sureties, to the effect that he will appear on the return of the warrant and abide the order of the court or officer thereupon, or pay as may be directed the sum therein specified. (4645) [8360]

9800. Return of warrant—Penalty for failure—The officer shall return the warrant and the recognizance, if any, received from the person so arrested, by the return day specified therein. If he fails to make the return, a warrant of arrest, not bailable, may be issued against him, specifying therein the cause of issuing it. The officer to whom the last-mentioned warrant is delivered shall execute it by arresting the person proceeded against, bringing him personally before the court or officer, and detaining him in custody until otherwise ordered. (4646) [8361]

9801. Hearing—When the person arrested has been brought into court, or has appeared, the court or officer shall investigate the charge by examining him and the witnesses for and against him, for which an adjournment may be had from time to time, if necessary. (4647) [8362]

60-478, 62-831; 61-120, 63-169; 65-146, 67-796; 71-383, 73-1092; 87-161, 91-297; 144-326, 175-908.

An order directly committing a person for constructive civil contempt is appealable. 161-122, 200-935.

A person cited in for contempt may submit his excuse upon affidavits. 161-122, 200-936.

9802. Punishment—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 two hundred and fifty dollars, or by imprisonment in the county jail 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. (4648) [8363]

60-478, 62-831; 61-120, 63-169; 98-136, 107-963. 125-304, 146-1102.

9803. Indemnity to injured party—If any actual loss or injury to a party in an action or special proceeding, prejudicial to his right therein, is caused by such contempt, the court or officer, in addition to the fine or imprisonment imposed therefor, may order the

person guilty of the contempt to pay the party aggrieved a sum of money sufficient to indemnify him and satisfy his costs and expenses, which order, and the acceptance of money thereunder, shall be a bar to an action for such loss and injury. (4649) [8364]

May award reasonable attorney's fee (113-304, 129+583).

9804. Imprisonment until performance—Whenever the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it, and in such case the act shall be specified in the warrant of commitment. (4650) [8365].

23-411, 56+397; 57+940; 63-443, 65+728.

Defendant, having admitted default, had the burden of excusing, and it is held, that he made such a showing of present inability to pay the amount of arrears that the court was not warranted in committing him. 161-122, 200+936.

9805. Proceedings by indictment—Persons proceeded against under this chapter are also liable to indictment for the same misconduct, if it is an indictable

offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted. (4651) [8366]

23-411; 52-283, 53+1157.

9806. Second warrant—Action on recognizance—Damages—When a warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or officer may issue another warrant, or may order the recognizance prosecuted, or both. If the recognizance is prosecuted, the measure of damages shall be the amount of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (4652) [8367]

9807. Officer excused from producing party, when—Whenever, under this chapter, an officer is required to keep a person arrested in actual custody and to bring him before a court or officer, the inability, from illness or other cause, of the person to attend, shall be a sufficient excuse for not producing him in court. (4653) [8368]

CHAPTER 92

WITNESSES AND EVIDENCE

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