

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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In determining custody of a child court should not award custody to parents if serious emotional and psychological maladjustment would result, unless overpowering reasons require it. *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, 209M4, 295NW67. See Dun. Dig. 4131.*

**9752. Prisoner remanded, when.**

Judgment of conviction was not void because of denial of constitutional right to be represented by counsel where defendant was in fact represented by counsel of his own selection, and if counsel was drunk during the trial such condition was not apparent to the trial court nor court's attention called to such condition or request made for appointment of other counsel. *Hudspeth v. McDonald, (CCA10), 120F(2d)962, rev'g (DC-Kan), 41F Supp182. Cert. den. 62SCR110. See Dun. Dig. 2419e, 4132.*

**9768. Hearing on appeal.**

Constitutionality as to custody of child questioned in dissenting opinion. *State v. Jensen, 214M193, 7NW(2d) 393. See Dun. Dig. 4142, 9770.*

**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., 207M1, 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., 209M67, 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, 209M91, 295NW514. See Dun. Dig. 1397.*

Where nonintoxicating liquor licensee appeared pursuant to notice before city council without objection and contested proceeding for revocation of license on its merits, he could not question sufficiency of notice or form of charges made against him. *State v. City of Alexandria, 210M260, 297NW723. See Dun. Dig. 1402.*

Since proceeding in certiorari is in nature an appeal, record to be considered is that made and certified by tribunal whose proceedings are under review, and that return in so far as it is responsive to the writ, is conclusive upon the court. *Id.*

At common law the proper form of judgment in certiorari proceedings was either that the proceedings below be quashed or that they be affirmed, but under our practice, certiorari is not the common-law writ, but rather a writ in the nature of certiorari. *State v. Board of Education of Duluth, 213M550, 7NW(2d)544. See Dun. Dig. 1391.*

In reviewing determination of a school board that a statutory ground for discharging a tenure teacher exists, jurisdiction of courts is limited to questions affecting jurisdiction of school board, regularity of its proceedings, and, as to the merits, whether the determination was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it. *Id. See Dun. Dig. 1402.*

Discontinuance of position or lack of pupils having been judicially determined to exist as a ground for dis-

charge of one or more tenure teachers, policy or rules to be followed by board in determining which teacher or teachers are to be discharged is an administrative question, upon which the decision of board is final, absent arbitrariness or capriciousness. *Id. See Dun. Dig. 1402.*

Where war veteran claiming to have been wrongfully discharged before effective date of civil service act applied to civil service board for determination as to his status, refusal of board to hear his claim, especially its failure to give him an opportunity to present his proof on the vital subject of his claimed wrongful discharge, amounted to a complete failure by the board to act upon the application, requiring reversal in certiorari proceedings, though board consulted printed record of a court case involving the applicant. *State v. Elston, 214M205, 7NW(2d)750. See Dun. Dig. 1397.*

Scope of review in certiorari proceedings is limited to and determined by record made by officers whose action is sought to be reviewed, and on appeal to supreme court from an order discharging the writ and affirming order below, supreme court cannot make findings of fact or determine questions of fact, but appealing relator has a right to have considered and determined all questions properly presented by the record. *Id. See Dun. Dig. 1402.*

**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., 207M1, 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. *Haimilia v. O., 208M605, 293NW599. See Dun. Dig. 1408, 10426.*

**7. Drainage proceedings.**

A landowner is not entitled to certiorari where he assails on the merits the validity of an assessment for repairs to a drainage ditch, because statutes afford him an adequate remedy, either by answer or petition. *Saxhaug v. County of Jackson, 215M490, 10NW(2d)722. See Dun. Dig. 1397.*

**8. Remand of case.**

Court on certiorari cannot modify or remand matter for rehearing where it cannot be said that board proceeded on other than a correct theory or that its action was arbitrary, fraudulent, oppressive or unreasonable. *Walker v. Corwin, 210M337, 300NW800. See Dun. Dig. 1397.*

If a district court, in reviewing administrative proceedings on certiorari, determines that administrative board has acted upon an erroneous theory of law, court should remand proceedings with directions to proceed under a correct theory, and should not itself attempt to decide the case on the merits. *State v. Board of Education of Duluth, 213M550, 7NW(2d)544. See Dun. Dig. 1402.*

Entry of a formal judgment of affirmance or reversal in certiorari proceedings is neither contemplated nor authorized under our statutes. *Id. See Dun. Dig. 1405.*

**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. *Haimilia v. O., 208M605, 293NW 599. 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., (372E-5), Feb. 2, 1940.*

**CHAPTER 90**

**Insolvency**

**COMMON LAW  
DECISIONS RELATING TO BANKRUPTCY  
IN GENERAL**

**1. In general.**

*Peterson v. Johnson Nut Co., 204M300, 283NW561; 209M 470, 297NW178.*

Creditors' attorneys were not entitled to fees out of bankrupt's estate for their services which benefited estate by reducing amount allowed to trustees' attorneys. *Cox v. Elliott, (CCA8), 122F(2d)851.*

Evidence held to show that receiver of corporation affiliated with railroads which participated in reorganization pursuant to Bankruptcy Act [11 Mason's U. S. C. A.