

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 Suppl82. 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, 9070.

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. *Haimila 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. *Haimila 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.*, (372B-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.

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, 49AmE(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. 746, 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. *Mulroney 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. *Mulroney 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. 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.