

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special 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 digest of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

providing for the registration thereof; and providing penalties for violation thereof," may not be sufficient to cover the opening sentence of this section with respect to sanitation.

Department may require registration of dairy containers from other states found in milk plants in this state. Op. Atty. Gen., Oct. 2, 1933.

8335-3. Violations—penalties.—Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases, shall be fined for each and every offense in the sum of not less than fifteen dollars nor more than one hundred dollars. (Act Apr. 25, 1931, c. 366, §3.)

Where inspector of department of agriculture, dairy and food filed complaint under this act, fine imposed was properly remitted to county treasurer. Op. Atty. Gen., July 9, 1932.

Fines collected for violation of this act should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

8335-4. Commissioner of agriculture to enforce act.—The agriculture, dairy and food commissioner of the state is charged with the proper enforcement of all of the provisions of this act. (Act Apr. 25, 1931, c. 366, §4.)

8335-5. Effective June 1, 1931.—This act shall take effect and be in force from and after June 1, 1931. (Act Apr. 25, 1931, c. 366, §5.)

COMMON LAW DECISIONS RELATING TO TRADE-MARKS AND TRADE-NAMES IN GENERAL

1. In general.

Evidence held to sustain holding that name "De Guile" was a trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

A trade-name is not strictly a trade-mark, but is generally governed as to its use and transfer by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

2. Unfair competition.

Evidence held not to show any unfair competition in use of trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

Unfair competition—radio broadcast of dispatches taken from newspapers. 19MinnLawRev322.

Extension of doctrine of unfair competition in broadcasting of sporting events. 23MinnLawRev395.

False and misleading advertising as unfair competition. 22MinnLawRev522.

3. Sale and transfer.

The sale or transfer of the property and good will of an established and going business includes trade-names and trade-marks used in that business, unless the contrary is shown. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

In the absence of restrictive covenants, the vendor of an interest in a partnership business and good will may engage in a rival business and solicit trade by lawful and fair means, but may not privately solicit the customers of the former partnership. Gibbons v. H., 185M290, 240NW901. See Dun. Dig. 4046.

Provision in partnership agreement between medical men not to engage in practice in limited territory for 5 years after withdrawal from partnership is valid. Shaleen v. S., 188M290, 246NW744. See Dun. Dig. 4046, 8436.

On sale of good will of a business establishment limitation as to both time and place is unnecessary, if agreement in other respects is reasonable, and not in conflict with public policy or general welfare. Peterson v. J., 204M300, 283NW561. See Dun. Dig. 4046, 8436.

Covenant not to compete in business entered into for mutual business advantages of parties thereto adds to good will of business and may be transferred with it and as a part thereof. Id. See Dun. Dig. 4046, 8436.

Where an established business has been sold with its good will and there is a valid covenant not to compete in certain territory, breach is regarded as controlling factor and injunctive relief follows almost as a matter of course. Id. See Dun. Dig. 4046, 8436.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

Overvoid v. N., 186M359, 243NW439; notes under §8719.

1. Nature.

Judgment for an amount loaned for the purchase of a homestead upon husband's fraudulent promise to give a mortgage on the homestead after acquired, cannot be declared a lien on the homestead. 171M431, 214NW467.

There was a violation of a promise of future action rather than of an existing duty and so is not one for the imposition of a lien to enforce a trust ex maleficio. 171M431, 214NW467.

Use by brothers, joint tenants, of a farm for partnership farming did not destroy their homestead rights therein. 172M200, 214NW793.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the homestead law. 173M576, 218NW108.

A summer cottage, fully furnished for housekeeping and living and having heating and kitchen coal stoves so that it may be lived in during winter, may be claimed and held as a homestead. Gussman v. R., 190M153, 251NW18. See Dun. Dig. 4207.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. Rusch v. L., 194M469, 261NW186. See Dun. Dig. 4196.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to owners. Smith v. W., 195M589, 263NW903. See Dun. Dig. 4201.

"Homestead" in tax classification statute means abode of owner without limit as to acreage or lots. Op. Atty. Gen., Nov. 7, 1933. Opinion of Oct. 18, 1933, is withdrawn.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. Op. Atty. Gen. (421a-9), Sept. 14, 1934.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. Op. Atty. Gen. (521-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. Op. Atty. Gen. (521g), Apr. 16, 1936.

Homestead of old age assistance recipient is exempt after his death, though he leaves only adult children. Op. Atty. Gen. (521p-3), July 28, 1938.

3. Actual occupancy as home essential.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

5. No limitation on use.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, 241NW388. See Dun. Dig. 4207.

8. Debts due laborers or servants.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221NW534.

"Any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commissions earned while an employee of the homestead owner. Fletcher v. S., 201M609, 277NW270. See Dun. Dig. 4209.

12. Mortgage foreclosures.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v. A., 204M432, 283NW753. See Dun. Dig. 4205.

13. Selection by bankruptcy court.

Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. Landy v. M., 193M252, 258NW573. See Dun. Dig. 741.

14. Alienation.

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our

homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

15. Estoppel to claim.

That plaintiff's husband, a year before judgment was obtained against plaintiff, went through bankruptcy in another state and in his petition stated his residence to be in that state, was not conclusive against plaintiff claiming homestead in state. *Gussman v. R.*, 190M153, 251NW18. See Dun. Dig. 2817.

Rule that husband has right to fix domicile of family has no special application where it is shown that husband has not determined or fixed any domicile either for himself or for his family. *Id.* See Dun. Dig. 2817.

8337. Area, how limited.

The words "within the laid-out or platted portion" mean that the land in question, though surrounded by platted land, must itself be laid out or platted actually or by some act equivalent to a laying out or platting. *Mintzer v. S.*, 45M323, 47NW973. See Dun. Dig. 4218.

The word "lot" in the former statute meant a city lot according to a survey and plat, and is not synonymous with "tract" or "parcel." *Wilson v. P.*, 28M13, 8NW830. See Dun. Dig. 4204.

8338. Existing exemption not affected by changes.

Unplatted homestead cannot be reduced in area by extension of city limits to include it and by the laying out or platting of contiguous and surrounding lands owned by others. *Baldwin v. R.*, 39M244, 39NW321. See Dun. Dig. 4218. See, also, 51M316, 53NW711; 61M170, 63NW490; 68M484, 71NW672; 69M24, 71NW919.

8339. Title may be in husband or wife—Equitable title exempt.

Kingery v. K., 185M467, 241NW583; note under §8340.

8340. No alienation without consent of spouse—Exceptions.

Surviving wife is entitled to proceeds of sale of homestead where same was sold in fraud of her marital rights, and where such proceeds were used to purchase an annuity for husband to defeat wife's marital rights in such proceeds, in which plan insurer participated, wife is entitled to follow proceeds so used. *Maruska v. E.*, (USDC-Minn.), 21FSupp841.

Use by joint tenants of a farm for partnership farming did not destroy homestead rights therein, where the wife of one of them refused to join in a conveyance of the farm to the partnership. 172M200, 214NW793.

On foreclosure mortgage covering a homestead, and land conveyed to a purchaser by the mortgagor's trustee in bankruptcy subject to existing liens, the judgment correctly directed the land sold by the trustee to be first subjected, and the homestead last. 172M529, 215NW850.

Where the wife does not sign a contract to convey the homestead the contract is a nullity, but a broker may recover a commission from the husband, there being a presumption that he can perform his contracts. 179M42, 228NW339.

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 9037(12).

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. *Kingery v. K.*, 185M467, 241NW583. See Dun. Dig. 4211(7).

Husband's signature as witness on new contract for deed to wife did not constitute estoppel to claim that surrender back of former contract was invalid without husband's signature. *Craig v. B.*, 191M42, 254NW440. See Dun. Dig. 3179(83), 4211.

Equitable interest of a vendee under a contract for deed cannot be alienated without signature of other spouse where land covered by contract is occupied by vendee as a homestead. *Id.*

So strong is the public policy behind homestead statute that, where it appears that one spouse has attempted to alienate an interest in homestead without other's consent, supreme court can, on its own motion, assert this defense even though not properly pleaded or even though raised for first time on appeal. *Id.*

Conveyance by one spouse to other spouse through medium of a third party is valid, but an executory agreement between spouses to make such a conveyance would be invalid. *Simmer v. S.*, 195M1, 261NW481. See Dun. Dig. 4282.

8341. Exemption not lost by death or desertion.

Upon death of spouse holding fee title to homestead surviving spouse takes homestead right not by right of survivorship, but as property set apart by law for benefit of surviving spouse or children. *Maruska v. E.*, (US DC-Minn.), 21FSupp841.

8342. Sale or removal permitted.

1. Sale and removal.

Finding against abandonment of homestead held sustained by the evidence. 172M200, 214NW793.

2. Notice of claim—Abandonment.

No "abandonment" of wife's homestead results from fact that husband makes a lease thereof to third party, not joined in or authorized by wife. 173M576, 218NW108.

There is no "abandonment" of a homestead until the owner removes therefrom and ceases to occupy the same as his home, intention to remove therefrom at some future time not being sufficient. 173M576, 218NW108.

The homestead tax reduction law does not follow the same rules as the homestead exemption law, that the six months' absence period of the homestead exemption law does not apply to the tax law, and that the filing of a notice claiming property under the homestead exemption law will not extend the period of permissible absence to five years. *Op. Atty. Gen.* (414a-9), Aug. 7, 1934.

For purposes of taxation, a person is not entitled to homestead classification of a place in which he does not reside, even though he files a notice of homestead, and maintains furniture in one room. *Op. Atty. Gen.* (408d), June 2, 1936.

CHAPTER 67

Chattel Mortgages and Conditional Sales

CHATTEL MORTGAGES

8345. Mortgages, when void.

½. In general.

A conditional sale of stock of merchandise under which buyer is permitted to retain possession and to sell from and replenish the stock is valid. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

A chattel mortgage covering a stock of merchandise under which mortgagor is permitted to retain possession and to sell from and replenish the stock is fraudulent as a matter of law and void as to creditors. In re *Horwitz*, (USDC-Minn.), 32F(2d)285.

Judgment of state court as to validity of transfer, held conclusive in bankruptcy court. In re *Ruthkowski*, (USDC-Minn.), 39F(2d)969.

Where a tenant in possession installed a hot air furnace in the basement of a dwelling house, under a conditional sales contract, and the owner of the realty knew of and consented to such installation, although he did not know that there was a conditional sales contract, and such furnace and attachments can be removed without material injury to the building, the furnace and attachments did not become a part of the realty as between the seller and the owner, and may

be removed by the seller on default in payments. 173M121, 216NW795.

Evidence held not to require finding that plaintiff authorized or acquiesced or ratified giving of mortgage. 173M166, 216NW801.

In replevin for lunch counter outfit under chattel mortgage given for balance of purchase price, defense of fraudulent misrepresentation held sustained by evidence. 173M443, 217NW505.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process or to a receiver representing creditor and vested with the right to attack. 175M47, 220NW400.

Findings in civil suit, held inadmissible in criminal prosecution. 180M378, 230NW818.

Tenant permitting third party under authority from landlord to cut wood and pile it on railroad right of way had no title which he could mortgage. *Morrow v. P.*, 186M516, 243NW785. See Dun. Dig. 1427(85).

Transaction evidenced by a trust receipt, and acceptance of a time draft held a chattel mortgage upon automobiles named in trust receipt. *McLeod Nash Motors v. C.*, 187M452, 246NW17. See Dun. Dig. 1425.

Junior chattel mortgagee held not entitled to recover in conversion by reason of private sale of chattels for purpose of paying debts. *Carity Motors v. E.*, 189M310, 249NW190.