

CHAPTER 360—S. F. No. 768.

An Act entitled: An act to authorize the District Courts of the State, under certain conditions, to order sale or other disposition, or mortgage, pledge or lease of property, real or personal, held in trust created by written instrument, upon application to the Court by the Trustee, or any beneficiary, and providing procedure therefor, and for the repeal of all laws inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota :

Section 1. Distribution of trust estates.—When any trust is expressed in the instrument creating the trust estate, every sale, conveyance or other act of the trustee in contravention of the trust shall be absolutely void, except as in this act provided. The district court of the county wherein the property, whether real or personal, or any part thereof, held in trust is situate may, by order, on such terms and conditions as seem just and proper, authorize any such trustee, whether he be beneficially interested in such trust property or not, to sell or otherwise dispose of, mortgage or pledge all or any part of such trust property, whether real or personal, whenever it appears to the satisfaction of the court that it is necessary, or for the best interest, or for the benefit of the trust estate, or of the person or persons beneficially interested therein holding the first and present estate, interest or use, and that it will do no substantial injury to the heirs or next of kin, or others in succession, expectancy, reversion or remainder, in respect of such property.

Sec. 2. Trustee to sell or lease property.—The trustee appointed to hold real property in trust during the life of a beneficiary, and to pay or apply the rents, income and profits thereof to or for the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five (5) years, without application to the court. The district court may, by order, on such terms and conditions as seem to it just and proper, authorize such trustee to lease such property for a term exceeding five (5) years, if it appears to the satisfaction of the court that it is for the best interest of the trust estate, and may authorize such trustee to covenant in the lease to pay, at the end of the term or any renewal term, to the lessee, the then fair and reasonable value of any buildings and improvements which may have been erected or placed on the leased premises during such term or renewal term.

Sec. 3. Application for order must be made.—Application to the court for such order to sell or otherwise dispose of, mortgage or pledge such trust property, real or personal, or any part thereof, or to lease such trust property, real, or any part thereof, shall be by petition, duly verified, made by such trustee, or any person beneficially interested in such property. Such petition shall set forth the nature of the trust estate, the particular facts making it necessary or

proper for the application to be granted, a description of the trust property to be sold or otherwise disposed of, mortgaged, pledged or leased, and the interest of the petitioner therein. Such petition and the notice of hearing thereof shall set out, so far as appears of record or as known to the petitioner, the names, and in addition such petition shall set out the places of residence, of all persons, who have any right, title, interest, estate or lien, and the nature thereof, in or upon the trust property, or who, by the terms of the instrument creating the trust, may, at any time thereafter, have any such right, title, interest, estate or lien, and the nature thereof. If there be persons having, or claiming to have, or who, at any time thereafter, may have any interest in the trust property, whose names are unknown, it shall be lawful to include such persons in such petition and the notice of hearing thereof, by the name and description of unknown persons interested in the trust property, and, to that end, such petition and notice, in addition to setting out the names of the persons aforesaid, may contain the following: "Also all other persons unknown, having, or claiming to have, or who at any time may have any right, title, or interest, estate or lien in or upon the trust property." Such petition, together with a copy, annexed thereto, of the deed, will or other written instrument creating the trust estate, shall be filed in the office of the clerk of the district court of the county wherein such property, or some part thereof, is situate. Upon the filing of any such petition, the district court shall, by order, fix a time and place of hearing the same. Such hearing may be at chambers, or at a general or special term of the court wherein the proceedings are pending.

Sec. 4. Notice of hearing—Service.—Notice of such hearing stating the time and place thereof and the objects of the petition shall be served upon all persons named in the petition as having any right, title, interest, estate or lien in or upon the trust property, or who, by the terms of the instrument creating such trust, may, at any time thereafter, have any such right, title, interest, estate or lien. Such notice shall be served, except as provided in Section Five (5) of this act, in the same manner as a summons in a civil action, at least ten (10) days before such time of hearing. If any such person, whose name is set out in the petition, be not a resident of the state, or if his place of residence be unknown to the petitioner, then, upon the filing in said court of an affidavit of the petitioner, his agent or attorney, alleging that he believes that such person is not a resident of the state, and that he has mailed a copy of such notice to him at his last-known place of residence, or that his place of residence is not known and cannot be ascertained by the affiant, the service of such notice upon such person may be made by publication thereof for two (2) successive weeks in a qualified newspaper, as defined in the statutes of the State of Minnesota. Service of such notice may be had upon all persons named and described in such petition and

notice, as unknown persons interested in the trust property, by publication of such notice in the same manner and for the same time, as in the case of non-residents whose names are set out in the petition upon the filing in said court of an affidavit by the petitioner, his agent or attorney, stating that there are, or that affiant is informed or believes there are, certain persons, in addition to those whose names are set out in such petition, who have, or claim to have, or may have some right, title, interest, estate or lien in or upon the trust property, the nature of which is, as well as the names and places of residence of whom are, to affiant unknown.

Sec. 5. Service on incompetent persons.—In case any person, whose name is set out in such petition, is a minor, lunatic, idiot, or person of unsound mind, or an habitual drunkard or spendthrift, such notice of hearing shall be served upon the duly appointed guardian, conservator, committee or other legal representative, of such person, if any. If there be none, then the district court in which such proceedings are pending shall appoint a guardian, *ad litem*, to such person and may compel the person so appointed to act. In such case, service of such notice of hearing shall be had by service on such guardian, *ad litem*.

Sec. 6. Hearing in District Court.—Upon proof being filed of the service of such notice, the court, at the time and place therein fixed or to which the hearing may be adjourned, shall hear all competent evidence offered for and against the granting of such petition, regulating the order of proof as it may deem best, and shall make and enter a final order upon the application. If the application is granted, the final order shall authorize the sale or other disposition, or the mortgaging, pledging or leasing, as the case may be, of such trust property, or any part thereof, in manner and upon such terms as the court may prescribe. Any such sale or other disposition, mortgaging, pledging or leasing of such trust property, by such trustee, shall be reported to the court for confirmation and confirmed by the court, before the same shall become effective and valid. Upon such confirmation, such trustee shall make, execute and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, good and sufficient instruments of conveyance, assignment and transfer, or mortgage, pledge or lease, as the case may be. On receipt by such trustee of the money, or other proceeds derived from any such sale or other disposition, or mortgaging, pledging or leasing of such trust property, such money or other proceeds shall be held, administered, distributed or otherwise dealt with by such trustee under and pursuant to the terms of the deed, will or other written instrument creating the trust estate, but subject, at all times, to the direction and order of the court. The court, in its discretion, may require such trustee to give bond in such amount and with such sureties as the court shall direct, condi-

tioned for accounting for all such money, or other proceeds, so received by such trustee, and for the faithful discharge of his trust.

Sec. 7. Final order.—The final order of the court in such proceedings, made or had with respect to such unknown persons, shall have the same effect and be as binding and conclusive upon them, as though they had been named and described in such petition and notice by their proper names; *provided, that, if any such unknown persons be minors without guardian, ad litem, or other guardian, or legal representative duly appointed when such order is made, they may be allowed to appear and object to such order and the granting thereof, at any time within one (1) year after becoming of age.*

Sec. 8. Who may answer.—In very case where service of such notice is made and had by publication, as in this act provided, any person, so served, shall have the right to appear and oppose the granting of such petition before the making of such final order, and the right to appear and object to such order and the granting thereof, on such terms as may be just, at any time within one (1) year after such order has been made and entered. If the objection be sustained in such case or in the case of a minor without a guardian, as provided in Section Seven (7) of this act, the direction of the court shall be such as seems to it just and equitable, in the circumstances.

Sec. 9. Order to be valid against persons served.—The final order of the court in such proceedings, and every deed or other instrument of conveyance, assignment, transfer, mortgage, pledge or lease made, executed and delivered by such trustee, pursuant to any such final order, shall be valid and effectual against all persons whose names are set out in such petition, and all persons therein named and described as unknown persons interested in the trust property, served with notice of hearing as in this act provided, or appearing voluntarily in the proceedings and consenting to the granting of such order, whether such persons, or any of them, are in being or not in being, and whatever the nature of their interest and estate in the trust property, whether vested or contingent, in expectancy, in reversion or in remainder, or otherwise, at the time of the granting of such order.

Sec. 10. Liability of persons to others than trustee.—Any person who shall actually and in good faith pay to any such trustee any money or other proceeds derived from the sale or other disposition, or from the mortgaging, pledging, or leasing of such trust property, or any part thereof, shall not be responsible for the proper application of such money, or other proceeds, in accordance with the terms of the trust; and any right, title, interest or estate derived from such trustee by such person, in consideration of such payment, shall not be impeached or called in question in consequence of any misapplication by such trustee of such money or proceeds so paid.

Sec. 11. **Inconsistent acts repealed.**—All laws, acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its passage.

Approved April 24, 1925.

CHAPTER 361—S. F. No. 773.

(Not in G. S. 1923.)

An act to amend Sections 7, 9 and 10, Chapter 226, General Laws 1923, providing for the levy and collection of a tax on royalty received by the owner of any right, title or interest in land situate in this state for permission to explore, mine, take out and remove ore from the same.

Be it enacted by the Legislature of the State of Minnesota :

Section 1. **Date of payment of royalty tax.**—That Section 7, Chapter 226, General Laws 1923, be amended to read as follows :

Section 7. Such tax shall be due and payable *or before May 31st of each year.*

Sec. 2. **Auditor to make draft.**—That Section 9, Chapter 226, General Laws 1923 be amended to read as follows :

Section 9. On or before the tenth day of *May* in each year the state auditor shall make his draft upon *the person, against whom a tax has been certified* for the amount of tax and penalty, *if any*, due and place the same in the hands of the state treasurer for collection. The draft of the state auditor for the tax and penalties imposed by the foregoing provisions of this act shall be prima facie evidence in any court where proceedings may be brought for its enforcement that the amount therein stated is due the state from the person against whom the same is drawn.

Sec. 3. **Treasurer to deliver unpaid drafts to Attorney General.**—That Section 10, Chapter 226, General Laws 1923, be amended to read as follows :

Section 10. *If the tax herein provided for is not paid before June first of the year when due and payable a penalty of ten per cent thereof shall immediately accrue and thereafter one per cent per month shall be added to such tax while such tax remains unpaid. On July first of each year the state treasurer shall deliver all unpaid drafts to the attorney general whose duty it shall be to bring an action thereon in the district court of Ramsey County for the amount of such draft, together with penalties, interest and costs of the proceedings; and the judgment of the court when so obtained and properly docketed shall be a lien upon all right, title and interest of the taxpayer to the land upon which such tax is a lien from the time the same is docketed; and said lien shall continue without limi-*