

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 52 (G. S. ch. 43).

USES AND TRUSTS.

Prior to Richard II., A. D. 1377, uses were unknown. In middle of this reign uses were devised by the monks from civil law to separate the benefit from the possession for the purpose of avoiding the feudal law and statute of mortmain, and lasted until 1535. This was effected by conveyance to A. for the use of B., enforceable in chancery as a conscientious duty on B., but not annexed to the land and not enforceable at law. Bac. Uses, 153; 1 Steph. Com. 364. In 1535-36 the statute of uses (27 Hen. VIII. ch. 10) was enacted to transfer the possession to the person entitled to the use, which provided that "when any person seized of lands to the use, confidence or trust of any other person or body politic, the person or corporation entitled to the use in fee-simple, fee-tail, for life or years or otherwise, shall from thenceforth stand and be seized or possessed of the land, etc., of and in the like estate as they have in the use, trust or confidence, and that the estate of the persons so seized to the uses shall be deemed to be in him or them that have the use, in such quality, manner, form and condition as they had before in the use." To prevent equitable interests from being abolished by the statute two uses were created, *i. e.*, a feoffment to A. to the use of B., to the use of C., and the common-law judges decided that the statute executed the first use but not the second. Dyer, 155. This opened the door for chancery to administer the second use as a trust. 1 Madd. 448. Under the 27 Hen. VIII. ch. 10, grants, feoffments and releases transmitted the possession. Appointment to uses, bargain and sale and covenants to stand seized did not transmit the possession. Dyer, 155. By the first form a conveyance to A. to the use of B. in trust for C., B. took the legal and C. the equitable estate. By the latter mode A. took the legal, B. nothing, and C. the equitable estate. This produced active uses, shifting or secondary uses (the groundwork of modern settlements), springing uses (tantamount to executory devises), future or contingent uses (which take effect as remainders), resulting uses (similar to a reversion). The statute did not apply to leaseholds, contingent uses during the period of the contingency, and a use upon a use, the second use being a trust (Tyrell's Case, Tudor's L. C. Conv. 274), the latter being the restored duality by equity which produced express or direct trusts (perfect and imperfect) and trusts arising by operation of equity (constructive, resulting, implied).

<i>Sections.</i>	
4003-4012.	Uses and trusts.
4013-4022.	Express trusts.
4023-4029.	Trustees.

USES AND TRUSTS.

SEC. 4003. **Abolished except as here provided.**—Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute.

G. S. ch. 43, § 1. 37 M. 452.

SEC. 4004. **Converted into legal estate.**—Every estate which is now held as a use executed under laws as they formerly existed, is confirmed as a legal estate.

G. S. ch. 43, § 2.

SEC. 4005. **Same.**—Every person who, by virtue of any grant, assignment or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

G. S. ch. 43, § 3.

SEC. 4006. **Same — Exception — Trust with power.**—The preceding section shall not divest the estate of any trustees in any existing trust, where the

title of such trustees is not merely nominal, but is connected with some power of actual disposition, or management, in relation to the lands which are the subject of the trust.

G. S. ch. 43, § 4.

SEC. 4007. Uses prohibited.—Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other to the use of or in trust for such person; and if made to one or more persons in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

G. S. ch. 43, § 5. 6 M. 358; 8 M. 309; 30 M. 167.

SEC. 4008. Same — Exception.—The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law; nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

G. S. ch. 43, § 6. 37 M. 471.

SEC. 4009. Resulting trusts prohibited.—When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

G. S. ch. 43, § 7. 2 M. 422; 5 M. 422; 7 M. 286; 8 M. 309; 8 M. 351; 10 M. 320, 401; 13 M. 463; 14 M. 424; 16 M. 512; 22 M. 132, 384; 26 M. 98; 28 M. 87; 35 M. 302; 36 M. 35, 279.

SEC. 4010. Same — Fraudulent.—Every such conveyance shall be presumed fraudulent as against the creditors, at that time, of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

G. S. ch. 43, § 8. 2 M. 277; 8 M. 195; 9 M. 133; 9 M. 303; 12 M. 145; 14 M. 424; 22 M. 132, 384; 24 M. 244; 34 M. 139; 36 M. 35.

SEC. 4011. Same — When valid.—The preceding seventh¹ section shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance, in his own name, without the knowledge, or consent, of the person paying the consideration; or when such alienee, in violation of some trust, has purchased the lands so conveyed, with moneys belonging to another person.

G. S. ch. 43, § 9. 33 M. 336; 37 M. 471. ¹Sec. 4009, *ante*.

SEC. 4012. Same — Purchasers protected.—No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

G. S. ch. 43, § 10. 30 M. 540.

EXPRESS TRUSTS.

SEC. 4013. Authorized — Purposes.—Express trusts may be created for any, or either, of the following purposes:

First. To sell lands for the benefit of creditors.

Second. To sell, mortgage or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.

Third. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in chapter forty-five.¹

Fourth. To receive the rents and profits of lands, and to accumulate the same, for either of the purposes, and within the limits, prescribed in chapter forty-five.¹

* Fifth. To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind, and to invest and loan the same for the benefit of

MINNESOTA STATUTES 1891

SECS. 4014-4020.]

USES AND TRUSTS.

the beneficiaries of such express trust; and the district courts of the state shall, on petition and hearing, have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts, created under the provisions of this clause, shall be administered under the direction of the court.

G. S. ch. 43, § 11, as amended 1875, ch. 53. Approved March 4th. Amendment below *.
2 M. 238, 264, 277; 25 M. 511; 30 M. 167. ¹ Ch. 50, *ante*.

SEC. 4014. Whole estate vests in trustee.—Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

G. S. ch. 43, § 16. 25 M. 511.

SEC. 4015. Same — Exception.—The preceding section shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons, except the trustees and those lawfully claiming under them.

G. S. ch. 43, § 17.

SEC. 4016. Interest not embraced in trust.—When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, as a legal estate.

G. S. ch. 43, § 18.

SEC. 4017. Declared in conveyance.—When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust; and as against purchasers from such trustees, without notice, and for a valuable consideration.

G. S. ch. 43, § 20.

SEC. 4018. Trust to sell or mortgage.—A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

G. S. ch. 43, § 12.

SEC. 4019. Trust to receive rents and profits.—When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that is necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

G. S. ch. 43, § 13.

SEC. 4020. Same — Assignable, when.—No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

G. S. ch. 43, § 19.

SEC. 4021. Construed as a power, when.— When an express trust is created for any purpose not enumerated in the preceding sections of this chapter, no estate shall vest in the trustee; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

G. S. ch. 43, § 14. 33 M. 333.

SEC. 4022. Same.— In every case where the trust is valid as a power, the land to which the trust relates shall remain in, or descend to, the persons otherwise entitled, subject to the execution of the trust as a power.

G. S. ch. 43, § 15.

TRUSTEES.

SEC. 4023. When trust ceases.— When the purposes for which an express trust is created cease, the estate of the trustee shall also cease.

G. S. ch. 43, § 23.

SEC. 4024. Acts void.— When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void.

G. S. ch. 43, § 21.

SEC. 4025. Death of trustee.— Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the district court, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

G. S. ch. 43, § 24.

SEC. 4026. Resignation of trustee.— Upon the petition of any trustee of an express trust, the district court may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the person interested in the execution of the trust require.

G. S. ch. 43, § 25.

SEC. 4027. Misconduct of trustees.— No person who actually and in good faith makes any payment to a trustee, which the trustee as such is authorized to receive, shall be responsible for the proper application thereof, according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

G. S. ch. 43, § 22.

SEC. 4028. Removal of trustee.— Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the district court may remove any trustee who has violated or threatened to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who, for any other cause, is deemed an unsuitable person to execute the trust.

G. S. ch. 43, § 26. 4 M. 13; 24 M. 244.

SEC. 4029. New trustee.— The district court has full powers to appoint a new trustee in the place of a trustee deceased, released or removed; and when, in consequence of death, resignation or removal, there is no acting trustee, the court in its discretion may appoint new trustees or cause the trust to be executed by one of its officers under its direction,* and it may also, where a trust has in good faith been assumed to be executed by a person other than the trustee originally named, or appointed by a court of this state, ratify, adopt and confirm any or all the acts of such person so acting as trustee in the execution of such trust.

G. S. ch. 43, § 27, as amended 1889, ch. 82. Amendment below *.