

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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ST. PAUL
WEST PUBLISHING CO.

1910

PART II
 PROPERTY RIGHTS AND DOMESTIC
 RELATIONS.

CHAPTER 59.

ESTATES IN REAL PROPERTY.

3238. Exceptions.—The prohibitions of sections 3235–3237 shall not apply to lands acquired by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; nor to any person or corporation engaged in the business of selling lands to actual settlers; provided, that all lands hereafter acquired by such person or corporation be disposed of within ten years after acquiring title thereto, and that all lands now owned by such persons or corporations be disposed of within ten years after the approval of this act. (R. L. § 3238, as amended by Laws 1907, c. 439.)

CHAPTER 60.

USES AND TRUSTS.

3245. Grant to one for money paid by another.

See note under section 3487, as to *Henderson v. Murray*, 121 N. W. 214.

Grant to member of firm.—When real estate is acquired in a partnership business by a partnership formed by parol to deal in real estate, notwithstanding the statute of uses, it is partnership assets, although the legal title be taken in the name of one of the partners. *Stitt v. Rat Portage Lumber Co.*, 98 Minn. 52, 107 N. W. 824.

Cited in *Irish v. Daniels*, 100 Minn. 189, 110 N. W. 968.

G. S. 1894, § 4280, cited in *Laythe v. Minnesota Loan & Investment Co.*, 101 Minn. 152, 112 N. W. 65.

3246. Such conveyance fraudulent—Trust for creditors.

Cited in *Irish v. Daniels*, 100 Minn. 189, 110 N. W. 968.

3259. Sales by trustees, when void.

See section [3259—] 1, and note thereunder.

[3259—]1. **Same—Powers of district court—Sale, mortgage and lease—Payment to trustee.**—When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustee, in contravention of the trust, shall be absolutely void. But the district court of the district wherein such property 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 mortgage or sell such real property or any part thereof whenever it appears to the satisfaction of the court that it is for the best interest of such estate, or that it is necessary or for the benefit of the said 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 in tail, or others in expectancy, succession, reversion or remainder. A trustee appointed to hold real property 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 years, without application to the court. The district court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five 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 renewal term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. The district court shall not grant an order to mortgage or sell such real property or lease the same for a term exceeding five years, unless it appears to the satisfaction of such court that a written notice, stating the time and place of the application therefor, and the object thereof, has been served upon the beneficiary of such trust, and every other person in being having an estate vested or contingent in reversion or remainder in said real property at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard, or absentee, until proof of the service, on such beneficiary or other person, of such notice as the court or a judge thereof prescribes. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind, or habitual drunkard who shall not be represented by a committee or guardian duly appointed. The application must be by petition duly verified, which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application be granted. Such petition shall contain a description of the estate to be sold, mortgaged, or leased, a clear statement of the interest of the petitioner therein, and a copy of the will, deed, or other instrument in writing by which the estate is created; all persons in being who are interested in the estate, or who may, by the terms of the will, deed or other instrument creating the estate, thereafter become interested therein as heir, reversioner or otherwise shall be made parties to the petition; and if the names of any persons who ought to be made parties are unknown to the petitioner, or if the residence of any such person is unknown to the petitioner, the facts shall be verified by the affidavit of the petitioner, then such notice shall be served upon such unknown person or persons whose residence is unknown, by publication for six successive weeks, once in each week in some newspaper published in the county in which said property is held in trust. After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold or leased, upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to said order. If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be dis-

posed of or invested as the court shall specially direct. Before a mortgage sale, or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and must report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute as directed by the court a mortgage, deed or lease. A mortgage, deed or lease made pursuant to a final order granted as provided in this and the last two preceding sections shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being interested in the trust or having estates vested or contingent in reversion or remainder in said real property and against all other persons so interested or having such estates who shall consent to such order, or who having been made parties to such proceeding as herein provided, shall not appear therein and object to the granting of such order. All parties in interest may appear voluntarily and consent in writing to such sale, mortgaging or leasing of such real property; and testamentary guardians and guardians appointed by the probate court, may assent thereto in the place of their wards. A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid. (G. S. 1878, c. 43, § 21, as amended by Laws 1905, c. 339, § 1.)

Historical.—"An act to amend section twenty-one of chapter forty-three of the General Statutes of one thousand eight hundred and seventy-eight, being section four thousand two hundred and ninety-four of the General Statutes of 1894, relating to uses and trusts." Approved April 19, 1905.

Said section 21 was section 21 of G. S. 1866, c. 43, which was repealed by R. L. § 5518; its provisions being incorporated in section 3259. So far as the amended section above set forth differs from said section 3259, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

CHAPTER 61.

POWERS.

3267. Power defined.

Cited in *Rogers v. Clark Iron Co.*, 104 Minn. 198, 116 N. W. 739.

3272. Power is beneficial, when.

Cited in *Rogers v. Clark Iron Co.*, 104 Minn. 198, 116 N. W. 739.

3281. Power of tenant for life to make leases.

Cited in *Rogers v. Clark Iron Co.*, 104 Minn. 198, 116 N. W. 739.

[CHAPTER 61A.]

[OFFICIAL TRUSTS.]

[3326—]1. **Corporate authorities or judge to convey lands.**—That when the corporate authorities of any town or the judge of the district court for any county wherein such town is situated enter, at the proper land office, the land or any part thereof, settled and occupied as the site of such town, pursuant to an act of congress, entitled, "An act for the relief of the citizens of towns upon lands of the United States under certain circumstances," passed May 23,