

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

CHAPTER 60
Uses and Trusts

8081. Uses and trusts abolished.

Soper's Estate, 196M60, 264NW427; note under §8090(6). Trusts in both real and personal property are abolished except as authorized by statute. 171M237, 213NW893.

Where the trust instrument vests title in the trustee and appropriates the property to the purpose of the trust and nothing remains to be done by the grantor, an "executed trust" is created. 171M237, 213NW893.

An executory trust requires a consideration; an executed trust does not. 171M237, 213NW893.

The beneficiaries of a trust must be certain or capable of being made certain. Where they are limited to those who furnished uncompensated financial aid to the grantor for a specified purpose, they are capable of being made certain. 171M237, 213NW893.

A beneficiary must comply with the conditions precedent prescribed by the trust instrument to acquire any rights under it. 171M237, 213NW893.

Certain persons held not beneficiaries of trust created for persons aiding a corporation. 171M237, 213NW893.

Property held in trust may be attached, and stockholder's liability may be enforced against it. 172M83, 214NW771.

Taxes on unproductive property held in trust for a life beneficiary may be charged to the corpus of the estate where the trustee under discretionary power holds such property for a more advantageous market. Moore's Will, 185M342, 241NW63. See Dun. Dig. 3170(50).

If one person pays money to another, it depends upon manifested intention of parties whether a trust or a debt is created. If intention is that money shall be kept or used as a separate fund for benefit of payer or a third person, a trust is created. City of Canby v. B., 192M571, 257NW520. See Dun. Dig. 9876.

Charitable trusts were not authorized in view of this statute until passage of Mason's Stats. 1927, §§8090-1 to 8090-4. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 9878.

Oral trusts in personality were not abolished. Salschelder v. H., 286NW347. See Dun. Dig. 9878.

Termination and revocation of trusts. 19MinnLawRev 225.

Reservation of control by settlor as rendering trust testamentary. 19MinnLawRev821.

Spendthrift trusts. 21MinnLawRev80.

8083. Who deemed to have legal estate in lands.

The interest of a daughter under a testamentary trust devising real and personal property to a trustee with power to sell or mortgage and to pay the income to the daughter for life, and for a shorter period under certain contingencies, held, not reachable by the daughter's creditors. 181M289, 232NW337. See Dun. Dig. 9928.

Power of grantor to create by a direct conveyance to himself and another a joint tenancy. 23MinnLawRev385.

8084. Trustee takes no interest—Exception.

Where a person, knowing that a testator, in giving him a devise or bequest, intends it to be applied for benefit of another, either expressly promises, or by his action at time implies, that he will carry out testator's intention into effect, and property is left to him in faith on part of testator that such promise will be kept, promisor will be held as a trustee ex maleficio. Ives v. F., 204M142, 283 NW140. See Dun. Dig. 9919.

8085. Limitation of preceding sections.

One may contract with another to give him his property at his death, and if he fails to do so, and the circumstances are such that compensation cannot be made justly in money, an action in the nature of one of specific performance may be maintained and the property vested in the promisee or charged in his favor with a trust. Simonson v. M., 183M525, 237NW413. See Dun. Dig. 8789a(21).

8086. Grant to one for money paid by another.

Even if money used by son to complete purchase of property was a gift from the father, still title vested in the father where property was conveyed to him at the son's request. 175M549, 221NW908.

The evidence compels a finding that a thirty-year lease and a subsequent modification thereof, taken by the promoter of a bank to be organized, was not adopted by the bank occupying the premises leased, improving the same, and paying the rent; for the covenants contained in the lease to be performed by the lessee were such that the bank could not lawfully assume them. Veigel v. O.T., 183M407, 236NW710. See Dun. Dig. 2114, 2114a, 2116.

That a pastor may have paid the consideration for land conveyed to the trustees of a church and their successors in office does not create a trust in his favor. Board of Christian Service v. T., 183M485, 237NW181. See Dun. Dig. 9896.

Statutory provisions affecting purchase money resulting trusts. 18MinnLawRev576.

8090. Purposes of express trust.—* * * * *

6. For the beneficial interests of any person or persons, whether such trust embraces real or personal property or both, when the trust is fully expressed and clearly defined on the face of the instrument creating it, provided that the trust shall not continue for a period longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of them, and that the free alienation of the legal estate by the trustee is not suspended for a period exceeding the limit prescribed in chapter 59. (As amended Mar. 28, 1929, c. 110; Mar. 18, 1931, c. 65, §1.)

* * * * *

Sec. 2 of Laws 1931, c. 65, provides that act shall be effective from its passage.

1. In general.

An irrevocable trust creating a fund with which to pay premiums on policies on life of creator, with provision that proceeds of policies should be distributed to children of creator after his death, held not invalid as creating a perpetuity. Wells v. C., (CCA8), 63F(2d) 425, reviewing 19BTA1213. Certiorari granted 53SCR528. Rev'd 239US670, 53SCR761.

The words "trust" or "trustee" are not required to be used in a declaration of trust, nor is it necessary that the language be technical, but it may be that of a layman if it sufficiently sets out the intention of the settlor. Bingen v. P., (DC-Minn), 23FSupp958. Aff'd on this point but rev'd on other grounds, (CCA8), 103F(2d)260.

In determining power of trustee, not only language but purpose of trust and situation of parties in interest, are to be considered. Warner Hardware Co. v. S., 186M 229, 242NW718. See Dun. Dig. 9888a.

A trustee is forbidden to purchase trust property for himself or to sell his own to the trust, but, if he does so, transaction is not void, but voidable at option of beneficiaries. Smith v. T., 190M410, 252NW423. See Dun. Dig. 9934.

It is duty of a trustee to keep clear, distinct, and accurate accounts of his transactions as trustee. Id. See Dun. Dig. 9931.

In action against him for accounting, burden of proof is upon trustee, and if records are absent or ambiguous, resulting obscurity or doubt will be resolved against trustee. Id. See Dun. Dig. 9945.

There was no prejudice in erroneously charging a trustee with income on an item of real estate, when proper interest charge, which might have been, but was not made, is not shown to be less than income charge. Id. See Dun. Dig. 9941.

A trustee, having purchased corporate stock belonging to trust, is properly charged with resulting profit, including dividends, and without interest credit on money he paid for stock. Id. See Dun. Dig. 9934.

Trustee transferring his own corporate stock to the trust is properly charged with the resulting loss. Id. See Dun. Dig. 9937.

Where trustee sold land, and in his deed therefor recited receipt of a stated money consideration, in absence of other records, that recital is sufficient, prima facie, to sustain a finding charging him with sum stated in deed. Id. See Dun. Dig. 9939.

It is essential to a trust that there be separation of the legal from the equitable estate. Julian v. N., 192M 136, 255NW622. See Dun. Dig. 9875.

The sole beneficiary of a trust cannot be its sole trustee, but one of several trustees can be the sole beneficiary or one of several beneficiaries may be the sole trustee. Id. See Dun. Dig. 9925.

Trust company acting as agent in handling funds has a right to sell the principal its own property if it does so openly. Id. See Dun. Dig. 200.

Trustee in trust deed after bidding in the property at foreclosure and holding it after expiration of period of redemption was, in duty bound to take possession and manage property for bondholders and was liable for negligence in permitting persons to remain in possession without payment of rent. Sneve v. F., 192M355, 256NW 730. See Dun. Dig. 9931.

No damages were recoverable from trustee in trust deed for neglect to sue on guaranty or for acts which prevented bondholders enforcing guaranty where guarantors paid interest up to date they became insolvent. Id. See Dun. Dig. 9931.

A testamentary trustee is in duty bound to employ such diligence and prudence in care and management of trust estate as in general prudent men of discretion and intelligence in such matters employ in their own like

affairs. *Bowden v. C.*, 194M113, 259NW815. See Dun. Dig. 9931.

Supreme court having arrived at same construction of trust agreement as court below from consideration of instrument alone, it is immaterial that incompetent evidence was introduced. *Towle v. F.*, 194M520, 261NW5. See Dun. Dig. 424.

Trust instrument construed as intending that there be no division or distribution of any part of corpus until all income beneficiaries were dead. *Id.* See Dun. Dig. 9889.

Whenever possible a trust should be sustained when it can be done by any fair and reasonable construction of the instrument creating it. *Stacey v. T.*, 196M202, 264NW809. See Dun. Dig. 9888.

Law requires of trustee more than good faith and honest judgment; his judgment must be enlightened and guided by approved rules applicable to investment of trust funds, bearing in mind that same must be guarded carefully and invested cautiously. *Champ v. B.*, 197M49, 266NW94. See Dun. Dig. 9930.

A trustee cannot purchase or deal in trust property for his own benefit or on his own behalf either directly or indirectly. *Malcolmson v. G.*, 199M258, 272NW157. See Dun. Dig. 9934.

A trustee should be surcharged with assets purchased without vouchers or record giving information respecting source and time of purchase. *Id.* See Dun. Dig. 9945.

A trust agreement was enforceable in equity where there was delivery to an attorney, though trustee refused to act or to accept. *Edgar's Trust*, 200M340, 274NW226. See Dun. Dig. 9884.

Trust agreement executed by one having a lien on an estate in course of foreclosure was supported by consideration where heirs still had right to oppose confirmation of sale. *Id.*

Evidence held to show that trust agreement was not obtained by fraud. *Id.* See Dun. Dig. 9930.

A trustee is bound to employ such diligence and such prudence as in general prudent men of discretion and intelligence in such matters employ in their own like affairs. *Fortune v. F.*, 200M367, 274NW524. See Dun. Dig. 9931.

In determining whether acts of a trustee have been prudent, we must look at facts as they were at time of their occurrence, not aided or enlightened by those which subsequently take place. *Id.*

There is a clear distinction between acts of trustees in making investment of trust funds and their acts in making, or failing to make, prompt disposition of securities received from hands of creator of trust. *Id.*

Trustees, when acting honestly and exercising ordinary prudence within limits of their trust, are not liable for mere errors of judgment. They should not be held liable for unfortunate results which they could not be expected to foresee and were powerless to prevent. *Id.*

Upon record, held that beneficiary acquiesced in trustee's conduct respecting holding of stocks placed with them by settlor, who was also cestui que trust. *Id.*

Trustee's attorney's fees incurred in resisting cause held not recoverable as against beneficiary. *Id.* See Dun. Dig. 9942.

Trust created pursuant to will authorizing trustee to invest trust funds in first mortgages on real estate, municipal or corporation bonds, or any other form of income-bearing property, except real estate, does not authorize investments in corporate stocks. *First Minneapolis Trust Co.*, 202M187, 277NW899. See Dun. Dig. 9931.

Where a will creating a trust authorizes trustees to invest in securities, and it appears that word "securities" is used to comprehend corporate stocks, trustees are authorized to invest trust funds in corporate stocks. *First National Bank & Trust Co.*, 202M206, 277NW909. See Dun. Dig. 9931.

Creation of every trust involves separation of legal and beneficial interests. *First Trust Co. v. N.*, 204M244, 283NW236. See Dun. Dig. 9875.

A beneficiary may sue in his own name to enforce his rights under a trust where trustee fails or neglects to do so, and he may be permitted to intervene where trustee is a party and fails or neglects to protect his interest as beneficiary. *Veranth v. M.*, 284NW849. See Dun. Dig. 9894.

On accounting of trustee, who was also life tenant entitled to income, it was error to surcharge her with interest on principal sum improperly withdrawn by her. *Clarke's Will*, 204M574, 284NW876. See Dun. Dig. 9945.

Money or other property received by a trustee as proceeds of sale or exchange of capital of trust property is capital, not income, and it was duty of trustee (who was also life tenant) to allocate to corpus, rather than income, all dividends of corporation so far as they consisted of increases in its capital (profits on sale of securities). *Id.* See Dun. Dig. 9888a.

Where all the stock of a securities holding company is owned by a trustee who has in consequence complete control of company, latter is but another self for trustee, and its action in respect to dividends will be considered that of the trustee. *Id.* See Dun. Dig. 9888a.

Legal title passed to trustee of trust fund upon delivery thereof to him by trustor upon express oral agreement that he was to invest same and use it for her support and maintenance during life and turn over and

deliver to her sister, what remained after paying debts and funeral expenses. *Salscheider v. H.*, 286NW347. See Dun. Dig. 9875.

Assignment of beneficial interest in spendthrift trust enforced as a contract to assign. *23MinnLawRev110.*

Liability of corporate trustee for negligence in certifying bonds. *15MinnLawRev477.*

Validity of imperfect gift as declaration of trust. *15 MinnLawRev484.*

Insurance trust as non-testamentary disposition. *18 MinnLawRev391.*

Spendthrift trusts in Minnesota. *18MinnLawRev493.*

Methods of avoiding trustee's personal liability to contracts. *18MinnLawRev860.*

Principal and income—amortization of premiums and accumulation of discounts with respect to bonds. *20Minn LawRev203.*

Validity and effect of exculpatory clauses in trust instruments. *20MinnLawRev210.*

2. Implied or constructive trusts.

Attorney redeeming from mortgage foreclosure sale as trustee of mortgagors. *Slagle v. S.*, 187M1, 244NW79. See Dun. Dig. 9598, 9607.

There was no constructive trust in favor of son's wife in proceeds of policy where father furnished entire consideration for life insurance on son payable to estate, but forthwith assigned to father. *Wunder v. W.*, 187M108, 244NW682. See Dun. Dig. 4812, 4813, 9916.

Agreement of second mortgagee on compromise and satisfaction of second mortgage that he would stay off and would not redeem from foreclosure of first mortgage was not an agreement not to purchase land from first mortgagee after expiration of period of redemption. *Newgard v. F.*, 196M548, 265NW425. See Dun. Dig. 9915.

Because of inherent improbabilities and evasiveness, evidence held insufficient in quality to warrant reversal of a decision, refusing to establish resulting trust in postal savings certificates and bonds. *Pearson v. H.*, 200M250, 273NW677. See Dun. Dig. 9924c.

Mortgagor giving grant to mortgagee and making him a mortgagee in possession could not be shown to create a trust based on constructive fraud where evidence necessary to entitle mortgagor to recovery of rents and profits would violate parol evidence rule. *Seifert v. M.*, 203M415, 281NW770. See Dun. Dig. 9915, 9916.

Where owner of property is induced by fraud of transferee to part with it, latter holds it upon constructive trust for transferor including proceeds. *Penn Anthracite Mining Co. v. C.*, 287NW15. See Dun. Dig. 9915.

Constructive trust raised when fiduciary takes a new interest in leased premises for his own benefit. *13Minn LawRev711.*

3. Duration of trusts.

A trustee, whose resignation has been accepted by court, its final account settled, and a new trustee appointed, in interim between such appointment and qualifying of new trustee is not an aggrieved party entitled to an appeal from order of court requiring it to pay over trust funds in its possession. *Malcolmson v. G.*, 199M358, 271NW455. See Dun. Dig. 9894.

Trustee of assets of old bank for purpose of securing new bank taking over assets for three years, held entitled to bring suit on note in assets after three-year period before accounting. *Farmers Nat. Bank v. B.*, 198M195, 269NW409. See Dun. Dig. 9891.

6. Subd. 3.

Testamentary trust conferring title on trustee to real and personal property, with authority in the trustee to sell and mortgage the land and invest the proceeds, and directing that the income be paid annually to testator's daughter during her life, but, in certain contingencies, for a shorter period, held valid, and creditors of the daughter cannot reach the property or the income while in the hands of the trustee. *181M289, 232NW337.* See Dun. Dig. 3854.

Creditor's right to reach beneficiary's interest under Minnesota and similar statutes. *15MinnLawRev670.*

7. Subd. 4.

If direction for an accumulation is not a condition precedent to vesting of gift, provision for accumulation does not render gift invalid, but where accumulation is a condition precedent to vesting of gift in charity, and period of accumulations transgresses rule against remoteness, gift is void ab initio. *City of Canby v. B.*, 192M571, 257NW520. See Dun. Dig. 9886b.

8. Subd. 5.

181M289, 232NW337.
A testamentary trustee failing to faithfully discharge its duties could not properly charge fees for services, expenses and attorneys' fees. *Rosenfeldt's Will*, 185M425, 241NW573. See Dun. Dig. 9944.

Evidence held to sustain finding that exchange of preferred for common stock by testamentary trustees was done with full knowledge of beneficiaries under determination of court that it was for best interest of trust. *Ferguson's Will*, 193M235, 258NW295. See Dun. Dig. 9929.

Evidence held to sustain finding that purchase of corporate stock by testamentary trustee from trust estate was not a direct purchase by such trustee from himself as trustee and that beneficiary's purchase of preferred stock was not a condition of or induced by distribution of common stock. *Id.* See Dun. Dig. 9934.

In order to obtain a secure investment yielding a reasonable income, a fiduciary such as a testamentary trustee

tee is generally permitted to supplement, when and if necessary, funds of estate with other funds, thereby placing combined funds in same investment. *Bowden v. C.*, 194M113, 259NW815. See Dun. Dig. 9931.

A participating first mortgage trust certificate held to be within class of authorized investments of a testamentary trustee. *Id.* See Dun. Dig. 9931.

In action against trustee by beneficiaries under a trust created in a will, alleging negligence and wrongdoing in administration thereof and requesting a new interpretation of a provision of will and a surcharging of trustee's account, wherein trustee prevailed in every respect, trustee was entitled to recover reasonable attorneys' fees paid in conduct of its defense. *Andrist v. F.*, 194M 209, 260NW229. See Dun. Dig. 9944.

No testamentary trustee may lawfully lend trust funds to himself, and this applies to a bank. *Henton v. R.*, 194 M524, 261NW8. See Dun. Dig. 9937.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. *Melgaard's Will*, 200M493, 274NW641. See Dun. Dig. 9893, 9927a.

A corporate trustee organized under §§7726-7740, cannot be required to give bond. *Butler v. B.*, 203M555, 282 NW462. See Dun. Dig. 9961.

Court did not abuse its discretion in requiring individual trustee acting in conjunction with a corporate trustee to give bond for less than value of estate, where it appears that security required is sufficient to protect beneficiaries. *Id.* See Dun. Dig. 9926(89).

Court did not abuse its discretion in refusing to direct that in future distributable income be paid monthly where there was no showing that such payment could or should be made. *Id.* See Dun. Dig. 9944a.

Where insured assigned policies to beneficiary, and she in turn assigned them in trust for her own benefit, including all rights and privileges and options which she held under the policy, corporate trustee could exercise any option provided in policies after death of insured, as against contention that trustee was not beneficiary who alone had right to exercise options after the death of insured. *First Trust Co. v. N.*, 204M244, 283NW 236. See Dun. Dig. 9888a.

Evidence held clear and satisfactory sustaining finding of creation of trust in personalty. *Salscheider v. H.*, 286NW347. See Dun. Dig. 9883.

An express oral trust in personalty is authorized by this subdivision. *Id.* See Dun. Dig. 9878.

What law governs the validity of inter vivos trusts of movables? 18MinnLawRev565.

b. Subd. G.

See also notes under §8081, supra.

Letter in which writer stated intention to make gift to addressee and to effect transfer of described mortgages, using the words, "all mortgages read in my name—but they are transferred over to you," held declaration of trust and not merely expression of desire to make gift, though writer retained possession of mortgages, and made collections thereon without keeping separate account thereof, and later made will in which addressee was not mentioned. *Bingen v. F.*, (CCA8), 103F(2d)260, rev'g (DC-Minn.), 23FSupp958.

The provisions of a trust created under subdivision 6 cannot be changed by parol. 171M237, 213NW893.

Where three trustees of a business trust lease property, signing lease "as trustees" and simultaneously therewith two of trustees execute a written guaranty personally guaranteeing performance of lease for first three years of eight-year term, as to trustee not signing said guaranty it is a question for jury whether it was intended that that one trustee was to be personally bound. *Wm. Lindeke Land Co. v. K.*, 190M601, 252NW 650. See Dun. Dig. 9928a.

A contract executed by trustees on behalf of a business trust is, like all other contracts, subject to the familiar rules for construing contracts. *Id.*

If it be assumed that trustee who did not sign guaranty of lease is personally bound, he is as a matter of law released when lessor, cognizant of fact that such trustee has resigned and that another has been elected in his stead, subsequently agrees to a modification of terms of lease with continuing trustees without consulting trustee who has resigned and without his knowledge or consent. *Id.*

Trustee signing personal guaranty of eight-year lease, held not to be personally bound beyond three-year period. *Id.*

A trust leaving income from fund to daughter for life and upon her death corpus in equal shares to offspring, each offspring to receive one-half upon attaining age of 25 years and other half upon attaining age of 35 years, was valid. *Jacobson v. M.*, 191M143, 253NW365. See Dun. Dig. 9882.

Where insured abandoned his wife leaving impression of having committed suicide and married another in a distant city and formed a corporation with another person and each member of corporation took out a life insurance policy making trust company beneficiary and legal owner of stock of corporation, insurance money going to wife of person first dying, and stock of corpo-

ration to surviving business associate, there was created a conventional life insurance trust which was contractual and a transaction inter vivos rather than testamentary, and original wife of insured had no right to insurance money, if trust agreement contemplated that second wife should be beneficiary. *Soper's Estate*, 196M60, 264NW 427. See Dun. Dig. 9887.

Testamentary trust held not invalid for reason that trustees had no active duties to perform, trustees having power of sale of land. *Stacey v. T.*, 196M202, 264NW809. See Dun. Dig. 9879.

No particular form of words is necessary to create a testamentary power to sell and convey realty, and a power of sale may be implied as well as express. *Id.* See Dun. Dig. 9886(22), 10298.

Testamentary trust held to contemplate sale and conveyance of land by trustee. *Id.*

Direction in testamentary trust to pay income to beneficiaries necessarily implied power to invest money. *Id.* See Dun. Dig. 9886(24).

Will creating a trust in residue of testator's estate, income to be distributed to widow and eight children or to grandchildren by right of representation, the principal to be distributed to beneficiaries in five-year installments, no title either in principal or income to vest in beneficiaries until actual distribution to them, and beneficiaries to have no power to assign, transfer, anticipate, or dispose of their interests prior to distribution, created a valid spendthrift trust, both as to corpus and income of trust estate, which protected same during transmission to and until actually received by beneficiaries. *Erickson v. E.*, 197M71, 266NW161. See Dun. Dig. 9890.

Neither corpus nor income of spendthrift trust could be reached to satisfy claims for alimony or support money for children. *Id.*

Church held to have acted within terms of gift for hospital purposes in delaying construction of building during period of high prices and in changing plan during a period of depression, and there was no such unreasonable delay as to require forfeiture of bequest or declaration of a resulting trust. *Wyman v. T.*, 197M62, 266NW 165. See Dun. Dig. 10287.

Trust deposit is valid unless disaffirmed by depositor in his lifetime or set aside for fraud or incompetency. *Coughlin v. F.*, 199M102, 272NW166. See Dun. Dig. 9836a.

Power of trustee to lease trust property. 14MinnLaw Rev274.

Right of support as condition upon cestui's living on trust property. 20MinnLawRev322.

Effect of statutes against accumulation on validity of a charitable trust for accumulation. 33MichLawRev1287.

8090-1. Express trusts for charitable, benevolent, etc.

A bequest to a church for promotion of foreign and inner missions was not invalid because it authorized court to exercise judicial cy pres doctrine. *Lundquist v. F.*, 193M474, 259NW9. See Dun. Dig. 9885.

Bequest to a church for promotion of foreign and inner missions is valid under this act. *Id.* See Dun. Dig. 9878.

Bequest to church for promotion of foreign and inner missions was valid though will was executed before the passage of this act, will being ambulatory and effective only as of date of death. *Id.* See Dun. Dig. 10204.

In view of §8081, abolishing all trusts not expressly authorized, charitable trusts were not upheld in this state until passage of this act. *Id.* See Dun. Dig. 9878.

A devise or bequest, although in form an outright gift, made to institution whose sole reason for existence and whose entire activity is charitable, is in purpose and practical effect a charitable trust, and takes, not beneficially, but as trustee, to use gift in furtherance of particular charity designated in will. *Peterson's Estate*, 202M31, 277NW529. See Dun. Dig. 1418.

Minnesota's statute of charitable trusts. 14MinnLaw Rev587.

Legal effect of gift to charitable corporations. 23 MinnLawRev670.

8090-2. Same—Validity and construction.

Bequest to church for promotion of foreign and inner missions held not invalid for indefiniteness or uncertainty of beneficiary. *Lundquist v. F.*, 193M474, 259NW9. See Dun. Dig. 9885.

No charitable trust is invalid because it violates rule against perpetuities. *Id.* See Dun. Dig. 7480.

8090-3. Same—Construction to effect intent—Administration.

If a general charitable intent, as distinguished from a special one, can be spelled out, cy pres will be applied to effectuate intent. *Peterson's Estate*, 202M31, 277NW 529. See Dun. Dig. 1419.

Legislative recognition of historical doctrine of judicial cy pres has been given by enactment. *Id.*

8091. Devise of lands, when it creates only a power.

Wells v. C., (CCA8), 63F(2d)425, reviewing 19BTA213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

8092. Profits of lands held in trust, etc.

Wells v. C., (CCA8), 63F(2d)425, reviewing 19BTA1213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

Will leaving residue in trust, income to be distributed to widow and children or grandchildren, held to create a valid spendthrift trust both as to corpus and income, which could not be reached to satisfy claims to alimony or support money for children. Erickson v. E., 197M71, 267NW426. See Dun. Dig. 9886.

8093. Express trust a power in trust, when.

Wells v. C., (CCA8), 63F(2d)425, reviewing 19BTA1213; note under §8090. Certiorari granted 53SCR528. Rev'd 289US670, 53SCR761.

8095. Trustees of express trust to possess estate.

Any recovery in an action to have the purposes of a trust carried out must be for the benefit of the trust estate as such and not for the benefit of plaintiff personally. Whitcomb v. W., 176M280, 223NW296.

A beneficiary has no legal or equitable interest in specific property held by a trustee to be sold at the discretion of the trustee with the approval of the district court, the proceeds to be reinvested in case of sale and the income therefrom to be distributed to various beneficiaries. McWhinney v. G., 183M141, 235NW676. See Dun. Dig. 9928(95).

8097. Interest not disposed of.

Where compensation is commuted under §4286, and dependent beneficiary dies before receiving whole sum placed in trust for his benefit under §4286, depositing insurer may not recover balance unexpended at time of beneficiary's death. Employers' Mut. L. Ins. Co. v. E., 192M398, 256NW663. See Dun. Dig. 564, 9891a.

Two instruments whereby one of three brothers assigned his interest as beneficiary under his father's life insurance to the other two brothers, and they in turn agreed to pay first brother \$50 a month as long as he should live or until the fund was exhausted, held together to create a trust, and on death of brother, the unexhausted portion of the trust fund passed to his heirs. Jordan v. J., 193M428, 259NW386. See Dun. Dig. 9387.

8098. Trust interest—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; provided, the power to sell and/or sign and/or transfer such beneficial interest shall in no manner be abridged or curtailed, where such beneficial interest in the first instance shall have been acquired by purchase; 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. (R. L. '05, §3257; G. S. '13, §6718; Mar. 13, 1931, c. 66, §1.)

Sec. 2 of Laws 1931, c. 66, provides that act shall take effect on its passage.

8100. Powers of district court—Sale Mortgage and lease, etc.

An order accepting the resignation of a trustee, settling his account and directing him to pay over funds in his hands to his successor, is a final order affecting substantial rights in a special proceeding and appealable as such. Rosenfeldt's Will, 184M303, 238NW687. See Dun. Dig. 302.

Allowance of \$600 for services of trustee and his attorneys in resisting beneficiary's efforts to surcharge of trustee's account, which resulted in a surcharge of \$2,500 and interest thereon, is unreasonable and unjustified, and must be eliminated and not allowed. Drake's Will, 195M464, 263NW439. See Dun. Dig. 9942, 9944.

Additional compensation allowed was not excessive for services shown. Id. See Dun. Dig. 9944.

The trustee did not forfeit his right to compensation because of the fact that he resisted beneficiary's successful effort to have his final account surcharged as to an item. Id.

Facts held not to bring case within rule that, where a trustee has been guilty of fraud, bad faith, or inexcusable negligence in management of trust property, he should not be allowed any compensation. Id.

Allowance for services of trustee in connection with unauthorized investment was error. Id.

Fact that trustee had charged in his annual accounts and received \$150 per year to cover actual office and other expenses in managing trust property did not amount to a waiver of a claim for an additional sum as compensation for his services when he made his final account. Id.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. Melgaard's Will, 200M493, 274NW641. See Dun. Dig. 9893.

Where during bank holiday as a condition to continuing in business a bank reorganized and questionable securities were removed from assets and transferred to a trustee who made distribution but had on hand a substantial sum in unclaimed dividends, commissioner of banks had no official duty to perform in regard thereto, unclaimed dividends being in hands of a trustee appointed under a trust agreement and subject to supervision of district court under §8100, and not being subject to §7614, and not dormant or abandoned within meaning of §7658-21, the pertinent statute being §7306 requiring payment of unclaimed dividends into court for benefit of persons entitled thereto. Op. Atty. Gen. (29B-14), August 21, 1939.

Deviation from expressed terms of trust. 20MinnLawRev447.

8100-1. Sale, mortgage, pledge, lease, etc., of property held in trust, etc.

Beneficiary of trust held estopped from attacking exchange of property by trustee. Warner Hardware Co. v. S., 186M229, 242NW718. See Dun. Dig. 9936.

Where executor embezzled trust fund and fraudulently had himself appointed trustee and led beneficiary for some years to believe that he had fund as trustee, beneficiary when discovering fraud had right to have a trustee appointed for fund to bring action upon bond of executor, since beneficiary had no cause of action himself against executor for failure to pay over or account for trust funds. Shave v. U., 199M538, 272NW597. See Dun. Dig. 3580k.

Trustees liquidating trust funds created in reorganization of bank may borrow money from the reconstruction finance corporation and pledge assets of trust as collateral to loan. Op. Atty. Gen. (29a-12), Aug. 30, 1934.

Oral partnership agreement for purpose of dealing in land. 19MinnLawRev581.

8100-2. Same—Leases—Authority of trustee—Order of court for lease.

Transactions involving purchase of bonds by trustee without conforming to standard of duty are voidable at election of beneficiaries. Malcolmson v. G., 199M258, 272NW157. See Dun. Dig. 9931.

Burden of proving that his actions conformed to standard of his duty falls upon trustee and not upon beneficiary on petition by trustee for allowance of final account and discharge. Id. See Dun. Dig. 9945.

8100-11. Appointment of trustee.—Upon petition of any person appointed as trustee of an express trust by any will or other written instrument, or upon petition of any beneficiary of such trust, the district court of the county where in such trustee resides or has his place of business, shall consider the application to confirm the appointment of the trustee and specify the manner in which he shall qualify. Thereafter such district court shall have jurisdiction of such trust as a proceeding in rem. (Act Apr. 15, 1933, c. 259, §1.)

Premium on a trustee's bond, which trust instrument provides shall be payable out of trust estate, should be allocated to gross income where trust instrument provides that expenses of administration shall be payable from such funds. Butler v. B., 203M555, 282NW462. See Dun. Dig. 9944.

Trustees liquidating trust funds created in reorganization of bank may borrow money from the reconstruction finance corporation and pledge assets of trust as collateral to loan. Op. Atty. Gen. (29a-12), Aug. 30, 1934.

8100-12. Trustee to file inventory.—Any trustee whose appointment has thus been confirmed shall file with the clerk of said district court an inventory containing a true and complete list of all property received by the trustee belonging to the trust estate. Thereafter such trustees shall render to such court at least annually a verified account containing a complete inventory of the trust assets and itemized principal and income accounts. (Act Apr. 15, 1933, c. 259, §2.)

Trial court did not abuse its discretion in refusing to set aside orders allowing and confirming annual account of a trustee in order that beneficiary, who had consent to such order, could file objection to the account. Fleischmann v. N., 194M227, 234, 260NW310. See Dun. Dig. 5108.

No allowance for expenditure is proper to a trustee with respect to securities purchased by trustee without complying with standard of duty of a trustee. Malcolmson v. G., 199M258, 272NW157. See Dun. Dig. 9931.

8100-13. May apply to court for instructions.—Any trustee whose appointment has thus been confirmed, at any time thereafter may petition the court for instructions in the administration of the trust or for a construction of the trust instrument, or upon or after

the filing of any account, for the settlement and allowance thereof. Upon the filing of such petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of such trust. Notice of such hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least 20 days before the date of such hearing, and by mailing a copy thereof to each party in interest then in being, at his last known address, at least 10 days before the date of such hearing or in such other manner as the court shall order and if such court shall deem further notice necessary it shall be given in such manner as may be specified in such order. Upon such hearing the court shall make such order as it deems appropriate, which order shall be final and conclusive as to all matters thereby determined, and shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from such order within 30 days from the entry thereof, by filing notice of appeal with the clerk of district court, who shall mail a copy of such notice to each adverse party who has appeared of record. (Act Apr. 15, 1933, c. 259, §3.)

While testamentary trustees are under direction of court, they are not officers of court. *McLaughlin v. M.*, 192M203, 255NW839. See Dun. Dig. 9927.

Where discretion is conferred upon testamentary trustee in respect of exercising of a power, exercise thereof is not subject to control by court, except to prevent abuse by trustee of his discretion. *Ordean's Will*, 195M120, 261NW706. See Dun. Dig. 9927a.

Only a trustee whose appointment has been confirmed under §8100-11 can petition under this section, and in absence of such confirmation an order pursuant to petition for allowance of final account and discharge from duties as trustees is not included in provisions of section, and a respondent cannot avail himself of 30 day limitation provided for appeal. *Malcolmson v. G.*, 199M258, 272NW157. See Dun. Dig. 9945.

Court has no power to allow or to instruct corporate trustee to invest in corporate stock, unless will so provides. *First Minneapolis Trust Co.*, 202M187, 277NW899. See Dun. Dig. 9927a.

Courts will instruct corporate trustees to invest in manner prescribed by statute. *Id.*

A corporate trustee may invest in corporate stocks where such investment is authorized by terms of trust. *First National Bank & Trust Co.*, 202M206, 277NW909. See Dun. Dig. 9931.

Trustees are entitled out of trust estate to expenses incurred in legal proceedings relating to administration of trust. *Butler v. B.*, 203M555, 282NW462. See Dun. Dig. 9944.

8100-14. Guardian may be appointed.—If any person upon whom the court has ordered that personal service be made is a minor or otherwise incompetent to act in his own behalf and has no general guardian within the state, or if any party in interest is unascertained or not in being, or unknown to the trustee or outside the State of Minnesota, the court itself shall be deemed to represent such person or persons, but may, upon the application of the trustee or any other person interested therein, appoint a guardian ad litem for any such minor or incompetent person. (Act Apr. 15, 1933, c. 259, §4.)

8100-15. Application.—This Act shall not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. The word "person" as used herein shall refer to an artificial as well as to a natural person. (Act Apr. 15, 1933, c. 259, §5.)

In action by holder of trust certificates against trustee for conversion because it foreclosed and bid in trust property without plaintiff's knowledge or consent thereby releasing guarantors, plaintiff is not entitled to recover where guarantors were insolvent at time their obligation matured. *Sneve v. F.*, 195M700, 261NW700. See Dun. Dig. 6145 (10).

8100-16. Not to limit jurisdiction of court.—Nothing in this Act contained shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees. (Act Apr. 15, 1933, c. 259, §6.)

8101. Effect of misconduct of trustees.

Trustee held to have power to exchange property for other properties and cash. *Warner Hardware Co. v. S.*, 186M229, 242NW718. See Dun. Dig. 9936.

8103. Death of trustee—Trust, how executed.

While district court may become temporary repository of title in case of a vacancy arising in a testamentary trusteeship, there can arise no liability of the court or its judges under covenants of a lease which happened to be part of the trust property. *McLaughlin v. M.*, 192M203, 255NW839. See Dun. Dig. 9928.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. *Melgaard's Will*, 200M493, 274NW641. See Dun. Dig. 9893.

8106. Powers of court.

District court may appoint a new trustee in place of a municipality which has no authority to administer testamentary trust. *Op. Atty. Gen.* (59a-40), Aug. 3, 1938.

CHAPTER 61

Powers

8107. Powers abolished, except, etc.

An agent owes the utmost fidelity to his principal. *Nat'l. Pole & Treating Co. v. G.*, 182M21, 233NW810. See Dun. Dig. 152.

Actual authority of sales agent to receive payment for merchandise may be implied from circumstances. *Nat'l. Radiator Corp. v. S.*, 182M342, 234NW648. See Dun. Dig. 161(43).

In action by a salesman to recover a commission, evidence held sufficient to sustain verdict for plaintiff. *Sigvertsen v. M.*, 182M387, 234NW688. See Dun. Dig. 5812.

8112. Special power defined.

Termination and release of powers of appointment. 20MinnLawRev448.

8115. Particular estate with power of disposition.

Will held to give an absolute beneficial power of alienation, and life estate was changed into a fee absolute as respected the right of a mortgagee or purchaser, but subject to the future estate of children. 172M48, 215NW196.

Testator's wife not having power to dispose of property at time judgment creditor made levy and execution upon her interest therein nor at time he commenced pro-

ceedings in probate court, §§8115-8117, 8119, relating to powers, has no application to convert such power into a fee available to creditors. *Stucky v. B.*, 198M445, 270NW141. See Dun. Dig. 10288.

8116. Power of disposition creates fee—when.
Life estate with absolute power of disposal. 18MinnLawRev488.

8119. What powers of disposition absolute.
172M48, 215NW196; note under §8115.

8128. General power, when in trust.
Obligation of holder of general power in trust not to use it for his own benefit. 23MinnLawRev390.

8142. When power is irrevocable.
Power to revoke a trust without express provision therefor. 17MinnLawRev231.

8165. Power of sale in mortgage deemed part of security.

A mortgage of land is no longer a conveyance, but creates only a mere lien or security. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 6145.