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Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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CHAPTER 60

Uses and Trusts

8081. Uses and trusts abolished.

Provisions of will and deed of trustee conveying auditorium to city of Red Wing created a gift on condition and not a charitable trust. *Longcor v. C.*, 289NW570. See Dun. Dig. 9887.

Provision in deed making gift of an auditorium to a city on condition that income was to be used for benefit of auditorium only was valid. *Id.* See Dun. Dig. 9878.

The common law recognized and upheld charitable trusts, but legislature abolished all trusts except those authorized by statute. *Id.* See Dun. Dig. 9878.

8083. Who deemed to have legal estate in lands, etc.

A beneficiary's right to a beneficial interest under a trust may be vested although such interest is given through intervention of a trustee. *First & American Nat. Bank v. H.*, 293NW585. See Dun. Dig. 9928.

8086. Grant to one for money paid by another.

Where plaintiff purchased land, paying consideration therefor, and had title taken in the name of himself and defendant, making them tenants in common, title vested in defendant as to an undivided interest, rights of creditors not being involved, subject to any claims they may have against each other as tenants in common. *Drees v. G.*, 294NW374. See Dun. Dig. 9895.

8087. Such conveyance fraudulent; etc.

Drees v. G., 294NW374; note under §8086.

8089. Bona fide purchasers protected.

Rights of bona fide purchasers at execution sale. 24 *MinnLawRev*805.

8090. Purposes of express trust.

1. In general.

An express trust is one created by contract or agreement which directly and expressly points out the person, property, and purposes of the trust. *Burton's Estate*, 289NW66. See Dun. Dig. 9877.

In trial of claim against estate of a decedent based upon alleged oral trust as to money deposited in bank, court held not to err in granting estate new trial for insufficiency of evidence to support verdict. *Halweg's Estate*, 290NW577. See Dun. Dig. 9894.

Self or double dealing by a fiduciary renders transaction voidable by beneficiary, but where facts were fully disclosed to court, and action of guardian was on advice of independent counsel whose duty was to, and whose whole interest was that of, the ward, and transaction was approved by court, it can not thereafter be disaffirmed by ward. *Fiske's Estate*, 291NW289. See Dun. Dig. 9937.

Parties cannot void a fiduciary disability by collusive arrangements with third persons. *Turner v. E.*, 292NW257. See Dun. Dig. 3833.

That much of trust estate consists of personality does not prevent operation of rule that use of words of inheritance indicates an intention to pass an absolute interest. *First & American Nat. Bank v. H.*, 293NW585. See Dun. Dig. 9888a.

Where instruments creating trusts manifest an intention that gifts shall be vested, "divide and pay over rule" does not prevent vesting. *Id.*

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the State of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and superadded words being insufficient to cut it down to a lesser one. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 9928.

Discounts in trust investments—principal or income. 24 *MinnLawRev*201.

2. Implied or constructive trusts.

Equity will impose a constructive trust on land acquired by defendant as result of information received at a time when he was, for all practical purposes, an agent for plaintiff and under an obligation, by reason of his employment, to report such information, even though tract was of a type only occasionally purchased by his employer and notwithstanding absence of a finding that plaintiff would have purchased land had he known of it. *Whitten v. W.*, 289NW509. See Dun. Dig. 9920.

Where a person in a fiduciary relation to another acquires property, and acquisition or retention of property is in violation of his duty as fiduciary, he holds it upon a constructive trust for the other, and directors and officers of a corporation are fiduciaries. *Risvold v. G.*, 296NW411. See Dun. Dig. 9916.

8. Subd. 5.

Validity of oral trust in personality. 24 *MinnLawRev* 138.

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

Prior to passage of this act a trust could not be created either as to real or personal property. *Longcor v. C.*, 289NW570. See Dun. Dig. 9878.

Enforcement of restrictions upon gifts to charitable corporations. 24 *MinnLawRev*568.

8090-3. Same—Construction to effect intent, etc.

Where an auditorium is conveyed to a city, either under a charitable trust or as a gift on condition for public purposes, and instrument conveying property requires that all income be used only for auditorium purposes, a citizen and taxpayer of the city cannot maintain a representative suit to compel restoration of misapplied income to auditorium fund, attorney general being the only proper plaintiff. *Longcor v. C.*, 289NW570. See Dun. Dig. 9894.

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

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustee prevails. *Murray's Will*, 290NW312. See Dun. Dig. 10257.

8092. Profits of lands held in trust, etc.

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustee prevails. *Murray's Will*, 290NW312. See Dun. Dig. 10257.

8095. Trustees of express trust to possess estate.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the State of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and superadded words being insufficient to cut it down to a lesser one. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 9928.

A beneficiary is not prevented from taking a vested interest in a trust by this section, under which whole trust estate, in law and equity, vests in trustee and beneficiary takes no estate or interest in lands but may enforce performance of trust in equity. *Id.*

8098. Trust interest—Assignable when.

A beneficiary may devise and bequeath his interest in a trust, if it does not terminate at his death. *First & American Nat. Bank of Duluth v. H.*, 293NW585. See Dun. Dig. 9890, 10279.

8100-11. Appointment of trustee.

Where court duly appointed a trustee and liquidating agent of a bank in process of reorganization, and later appointed a co-trustee but upon inadequately published notice and authorized him to bring several suits, and court granted motion for removal of co-trustee, court had plenary jurisdiction of the res and acted within its jurisdiction in later directing co-trustee to proceed to judgment in suits commenced by him. *First State Bank of Sauk Centre*, 292NW185. See Dun. Dig. 9926.

8100-12. Trustee to file inventory.

Discounts in trust investments—principal or income. 24 *MinnLawRev*201.

8100-13. May apply to court for instructions.

An appeal lies from that part of an order, in proceedings by a trustee for accounting and distribution under L. 1933, c. 259, §3, allowing trustee's accounts and ordering distribution of estate, which determines who are entitled to take as distributees, since such part presents a distinct and separable question. *Holden's Trust*, 291NW 104. See Dun. Dig. 9927a.