

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 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.*, 206M627, 289 NW570. 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.*, 208M295, 293NW585. See Dun. Dig. 9928.

Modern statutes relating to execution of passive trusts in land do not execute passive trust of personality, but by analogy a passive trust of personality is treated as vesting both the legal and equitable title in the beneficiary upon the ground that trust is without purpose. *Larkin v. McCabe*, 211M11, 299NW649. See Dun. Dig. 9882.

It has been held that where income is given directly to life tenant and sole duty of trustee is to deliver or pay over trust property to remainderman on death of life beneficiary, a passive trust is created, and in Minnesota passive trusts of freehold interests in land are executed. *Id.*

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.*, 208M399, 294NW374. See Dun. Dig. 9895.

8087. Such conveyance fraudulent; etc.

Drees v. G., 208M399, 294NW374; note under §8086.

8089. Bona fide purchasers protected.

Where a constructive trust of embezzled funds comes into being for protection of an injured party, it is not cut off by any transfer of the property or of other property substituted for it until such property reaches the hands of a bona fide purchaser for value. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 9924.

Rights of bona fide purchasers at execution sale. 24 MinnLawRev805.

8090. Purposes of express trust.

1. In general.

Assignment of lease by trustees, who were under no contractual liability to lessor to carry out covenants of lease, was valid to terminate their liability as assignees of lease, notwithstanding that assignment was made to a person of no financial responsibility who had no intention to carry out lease. *S. T. McKnight Co. v. Central Hanover Bank & Trust Co.*, (CCA8), 120F(2d)310.

In construing a trust or will, where two possible constructions are open the court will adopt that construction which will result in sustaining the questioned provision to the end that the intention of the settlor or testator may be carried out. *Warner & Swasey Co. v. Rusterholz*, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.

In construing trust provision court should attempt to ascertain intentions of settlor from the instrument itself. *Id.*

Restraints on the alienation of an absolute interest in personality are void. *Id.*

Where trust provision gave corporation an option to purchase the stock transferred, should the beneficiary die or dispose of it while living, such option did not result in a repugnancy of the gift to the beneficiary. *Id.*

Any presumption indulged in must be one in favor of the validity of a bequest in a trust instrument. *Id.*

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*, 206M516, 289NW666. 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*, 207M263, 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*, 207M144, 291NW289. See Dun. Dig. 9937.

Parties cannot void a fiduciary disability by collusive arrangements with third persons. *Turner v. E.*, 207M455, 292NW257. See Dun. Dig. 3833.

That much of trust estate consists of personalty 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.*, 208M295, 293 NW585. 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.*, 208M295, 293NW 585. See Dun. Dig. 9928.

A trustee is entitled to compensation for services rendered by him as such, but a trustee who is also a cotenant and claims entire title adverse to other cotenants and appropriates rents and profits to his own use is not entitled to compensation. *Larkin v. McCabe*, 211M11, 299 NW649. See Dun. Dig. 9944.

Modern statutes relating to execution of passive trusts in land do not execute passive trust of personality, but by analogy a passive trust of personality is treated as vesting both the legal and equitable title in the beneficiary upon the ground that trust is without purpose. *Id.* See Dun. Dig. 9882.

In case of a trust which is invalid because law does not permit it to be created, donor's title is unaffected and property remains as a part of his estate. *Id.* See Dun. Dig. 9882.

A trust created by delivery of chattels to a third person is valid although beneficiary had no notice of it. *Id.* See Dun. Dig. 9886a.

Depository of securities as a gift is treated as a trustee for donee. *Id.* See Dun. Dig. 9886a.

In construing trust indenture, entire instrument must be considered, aided by surrounding circumstances, due weight being given to all its language, with some meaning being given, if possible, to all parts, expressions, and words used, discarding and disregarding no parts as meaningless, if any meaning can be given them consistently with rest of instrument. *Watland*, 211M84, 300 NW195. See Dun. Dig. 9888a.

A letter to a bank enclosing a draft "payable to" a certain brewing company, "to be deposited with the brewery for credit of" plaintiff, "on the understanding that it" was "subject to" plaintiff's withdrawal at any time, created a debtor-creditor relationship between plaintiff and brewing company, and not a trust relationship so as to render bank liable as participant in a breach thereof by cashing draft and crediting proceeds to brewery company's account. *Walz v. State Bank of Greenwald*, 211M317, 1NW(2d)375. See Dun. Dig. 9875.

A "credit" is a debt due in consequence of a contract of hire or borrowing of money and connotes no more than a chose in action. *Id.*

A deposit in a savings account in name of depositor as trustee for another with right to withdraw whole or any part thereof or otherwise revoke trust creates a tentative trust only, valid under our statutes, which is revocable by depositor during his lifetime and enforceable by beneficiary as an irrevocable trust only after depositor's death. *Guardianship of Overpeck*, 211M576, 2NW (2d)140, 138ALR1375. See Dun. Dig. 9886a.

An equitable conversion is a constructive, not an actual, change of realty into personality or personality into realty, and is a judicial device for giving effect to the intention of testators, donors, and perhaps others, and doctrine is based on maxim that equity regards that as done which ought to have been done. *Hencke's Estate*, 212M407, 4NW (2d)353. See Dun. Dig. 313v.

An equitable conversion results only where there is a positive and imperative direction to sell at all events, and a mere power of sale does not work an equitable conversion, and under such a power the title remains in the heirs, devisees, and legatees until divested by an actual sale. *Id.* See Dun. Dig. 313s, 9936.

A trust, which is the condition which arises when one person is vested with legal title to property for benefit of another, implies two estates or interests, one equitable and one legal, trustee holding legal title and the beneficiary beneficial or equitable interest. *Droege v. Brockmeyer*, 214M182, 7NW(2d)538. See Dun. Dig. 9875.

Under an agreement whereby decedent turned over money to son-in-law to be used for his maintenance and care during his lifetime and any balance to be divided equally among the children after his death, nothing vested in children during decedent's lifetime, but funds remained an open and running account. *Id.* See Dun. Dig. 9888a.

Where plaintiff's intestate while being cared for by his daughter was in such failing physical condition as to lead to belief that his early demise was probable and no reasonable length of time could be anticipated for safe investment of funds left with his daughter's husband out of which to pay for decedent's nursing and care, such fund during decedent's lifetime was not subject to an interest charge against the husband, fund remaining under decedent's control during his lifetime. *Id.* See Dun. Dig. 9941.

Without language limiting provision that whole of share of certain beneficiary of a trust should pass to certain other persons, it clearly means that outright title shall pass. *Silverson's Will*, 214M313, 8NW(2d)21. See Dun. Dig. 9888a.

Discounts in trust investments—principal or income. 24MinnLawRev201.

Merger—where there is identity between the trustees and the beneficiaries. 27MinnLawRev100.

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.*, 206M423, 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.*, 209M357, 296NW411. See Dun. Dig. 9916.

A constructive trust is a remedial device by which holder of legal title is held to be a trustee for benefit of another who in good conscience is entitled to a beneficial interest without reference to intention, or lack of it, of the parties. *Larkin v. McCabe*, 211M11, 299NW649. See Dun. Dig. 9915.

Trustee of a constructive trust is entitled to reimbursement for lawful expenditures in securing and protecting the estate of the beneficiary. *Id.* See Dun. Dig. 9923a.

Bonds issued by a city in 1899 to refund bonds issued in 1882 by a city to a railroad, or bearer, were express contract obligations of city to pay a specified sum of money on a certain date, and an action on such bonds accrued to holder on due date and not upon later date when demand for payment was made, notwithstanding that taxes were levied for their payment and turned over to city treasurer for purpose of paying such bonds, as against contention that tax money transmitted to treasurer became a trust fund. *Batchelder v. City of Faribault*, 212M251, 3NW(2d)778. See Dun. Dig. 9916.

Where owner of car suffered personal injuries and property damage and collected collision insurance for property damage and then brought action against wrongdoer for both personal injuries and property damage, undertaking the management of the entire case, whatever damage there was to car was held in trust by plaintiff for the insurance company and burden was then on him as trustee to protect the cestui que trust, and if he desired assistance in protecting that interest he should have demanded it, and if he wanted to know how much jury would include in its verdict for damage to car, he should have asked for a special finding, and not having asked for the finding, the only inference is that he was satisfied to take the amount he had received from the insurer as a basis for computing what he would hold in trust for it, less the expense of presenting that phase of the case, not including cost of expert witnesses to the personal injuries. *Hayward v. State Farm Mut. Automobile Ins. Co.*, 212M500, 4NW(2d)316, 140ALR1236. See Dun. Dig. 9945.

Where one was defrauded and paid money to a person who happened to be general agent of an insurance company, fraud being independent of employment as agent, there existed a constructive trust in favor of defrauded person, but he had no right of action against insurance company to whom agent paid the money to cover up embezzlement of premiums, company having no knowledge of the embezzlement or fraud practiced by agent. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 9924.

Where a constructive trust of embezzled funds comes into being for protection of an injured party, it is not cut off by any transfer of the property or of other property substituted for it until such property reaches the hands of a bona fide purchaser for value. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 9876.

Where an owner of property who transfers it is induced to do so by the fraud, duress, or undue influence of the transferee, transferee holds property upon a constructive trust for the transferor, and that trust includes proceeds of the property. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 9916.

Where a claimant's money is wrongfully used in discharge of a debt of the wrongdoer, claimant is not entitled to recover his money from the creditor if creditor had no notice of the wrong, since creditor is then in position of a bona fide purchaser. *Blumberg v. Taggart*, 213M39, 5NW(2d)388. See Dun. Dig. 9924.

The Minnesota law of constructive trusts and analogous equitable remedies. 25MinnLawRev667.

2½. Spendthrift trusts.

A contract between a trustee and a cestui que trust providing for the payment to the trustee, as attorney for the beneficiary, of one-third of the amount recovered for the beneficiary from the trust estate is in violation of a spendthrift clause in the trust instrument which prohibits the assigning or encumbering of the beneficiary's interest in the estate or income prior to the distribution thereof. *Lee's Estate*, 214M448, 9NW(2d)245. See Dun. Dig. 9886c.

Creator of a trust may secure the enjoyment of it to the objects of his bounty by providing that it shall not be alienated by them or become subject to be taken by creditors, and such a clause has been held to apply to an attorney's claim for services rendered a beneficiary under a trust. *Id.*

3½. Administration of trust.

A broad and comprehensive discretion granted to trustees does not permit them to go beyond sound judgment and exercise of reasonable and prudent discretion. *Watland*, 211M84, 300NW195. See Dun. Dig. 9931.

Provision in trust indenture authorizing trustee upon death of donor to pay all of his just debts did not authorize trustee to advance money to donor during his lifetime to pay debts. *Id.* See Dun. Dig. 9888a.

Trustees who contract subject to approval of district court do not make themselves personally liable upon contract for failure to secure such approval. *Propp v. Johnson*, 211M159, 300NW615. See Dun. Dig. 9928a.

Word "securities" in a will creating a trust empowering trustee to invest in securities whether authorized or not included corporate stock, both preferred and common. *McCann's Will*, 212M233, 3NW(2d)226. See Dun. Dig. 9888a.

When creator of a trust intentionally and unmistakably reposes discretion in his trustee, court will not substitute its discretion for that of trustee except when necessary to prevent abuse of discretion. *Id.* See Dun. Dig. 9927a.

A trustee is bound to employ such diligence and such 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. *Id.* See Dun. Dig. 9931.

Broad discretionary powers in a testamentary trust do not permit trustees to go beyond sound judgment in their exercise thereof. *Id.* See Dun. Dig. 9931.

Where a will appoints an executor and a trustee and defines duties and powers of each of them, the executor has no right and cannot be compelled to exercise a discretionary power of sale devised exclusively to the trustee. *Hencke's Estate*, 212M407, 4NW(2d)353. See Dun. Dig. 3614b, 9936.

The sound and equitable principle requiring of a trustee a degree of loyalty to and fair dealing with his cestui que trust far beyond and above that displayed in business transactions in the workaday world has been preserved from earliest English common law. *Lee's Estate*, 214M448, 9NW(2d)245. See Dun. Dig. 9930.

Concealment by trustee of material facts, or failure to inform the cestui of his illegal position without ratification and under ratification, will give the cestui the right to treat the confirmation as void. *Id.*

A trustee cannot make any private profit out of his trust, and the fiduciary character of his position precludes him from taking any advantage of his influence as trustee, or of any information acquired by reason of his trust, for purposes of private gain. *Id.* See Dun. Dig. 9937.

Equity will scrutinize dealings between the fiduciary and his cestui que trust, and whenever such dealings are the basis of a claim by the fiduciary, the burden is on him to show that they were fair, made in good faith, upon an adequate consideration and a full understanding. *Id.* See Dun. Dig. 9937.

A trustee cannot rely on ratification to protect himself unless he can prove that the cestui que trust had full knowledge of all relevant facts regarding the act to be ratified and its consequences upon the cestui. *Id.* See Dun. Dig. 9937.

8. Subd. 5.

Validity of oral trust in personality. 24MinnLawRev 138.

11. Rights of creditors.

Rules concerning invalidity of transfers made with intention of defrauding creditors had no application to an accounting of trustees who used part of the corpus to pay debts of trust donor, there being no obligation at time trust was created and rights of remaindermen being involved. *Watland*, 211M84, 300NW195. See Dun. Dig. 3854, 9945.

It is against public policy to permit owner of property creating a trust to create for his own benefit an interest in that property which cannot be reached by his creditors. *Id.* See Dun. Dig. 3854, 9887a.

12. Corpus and income.

Under a trust indenture providing that out of the net income of trust estate donor was to be paid \$1,000 quarterly, and if that sum should prove insufficient with which to meet all needs of life of donor and he made demand therefor trustees could pay him other and further sum "from the income of said trust estate, provided the payment thereof in the discretion of the trustees is not burdensome upon this trust estate", trustees were limited to income available for the payments so to be made. *Watland*, 211M84, 300NW195. See Dun. Dig. 9886d.

General rule is that where gains result from sale of trust securities accretions belong to and are a part of trust principal and may not be treated as income. *Id.*

13. Accounting.

Corpus of trust having been wrongfully invaded by trustees they should be held responsible for loss thereby caused. *Watland, 211M84, 300NW195. See Dun. Dig. 9939.*

In action between children of an intestate for an accounting of profits following death of life tenant in 1938, court did not err in using figures for last six months of 1930, in view of fact that defendants were actively engaged in running the business and in a position to account to their coheirs and failed to do so, even though it worked a hardship on defendants. *Lewis v. Lewis, 211M587, 2NW(2d)134. See Dun. Dig. 9945.*

When a court of equity charges a trustee with interest on a trust fund, it is charged, not as interest upon a loan or forbearance of money, but as measure of profits which he is proved or presumed to have made or is estopped from saying that he did not make, or which he ought to have made, but did not make. *Droege v. Brockmeyer, 214M182, 7NW(2d)538. See Dun. Dig. 9941.*

In action by administrator to have defendants declared trustees of fund left in hands of son-in-law for the care of decedent during his lifetime, balance to be equally distributed between children after his death, evidence held to sustain findings that defendants were entitled to substantial credit for their services rendered to decedent over a long period of years. *Id. See Dun. Dig. 9945.*

In action by administrator to have defendants declared trustees of certain fund and for an accounting thereof, plaintiff can claim no rights greater than those possessed by decedent at the time of his death. *Id. See Dun. Dig. 9945.*

An attorney, who was a cotrustee and had charge of books and records of trust and managed the property thereof, by an agreement to obtain for the beneficiary additional income, was agreeing to do that which his trust obligation already required of him, and if there were doubtful questions presented as to whether a part of the estate should constitute the corpus or income of the trust property, it was his duty to call upon the court for an interpretation of trust provisions in order to carry out the intentions of the trustor, and by his conduct in entering into the agreement with the beneficiary in consideration of an interest in what might be obtained for them he forfeited his right to compensation. *Lee's Estate, 214M448, 9NW(2d)245. See Dun. Dig. 9944.*

Where an attorney was a cotrustee of an estate and in control of books and records thereof and knew of a depreciation account, and obtained an agreement from beneficiaries entitled to income to increase their income for one-third of the increase, without making full disclosure to the beneficiary, a contention that because a beneficiary consented to the agreement and received the benefits thereof she ratified the transaction and cannot, through the representative of her estate, be heard to complain, is without merit. *Id.*

Court may deny compensation to a trustee who has not faithfully performed his duties. *Id.*

Whatever gains accrue through unauthorized use of trust fund belong to the cestui. *Young v. Blandin, 215M111, 9NW(2d)313. See Dun. Dig. 9939.*

The liability of a fiduciary for loss arising out of his unauthorized use of the beneficiaries' funds is well established. *Id.*

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., 206M627, 289NW570. See Dun. Dig. 9878.*

Enforcement of restrictions upon gifts to charitable corporations. *24MinnLawRev568.*

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., 206M627, 289NW570. See Dun. Dig. 9894.*

8090-4. Property trustee authorized to acquire.—

In acquiring, investing, reinvesting, exchanging and managing property, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other individual or corporate obligations, and corporate stocks, which an ordinarily prudent person of discretion and intelligence, who is a trustee of the property of others, would acquire as such trustee. (Act Apr. 24, 1943, c. 635, §1.)

[501.125]

8090-5. Shall not be compelled to dispose of property.—Unless the trust instrument or a court order

specifically directs otherwise, a trustee shall not be required to dispose of any property, real, personal, or mixed, or any kind of investment, in the trust, however acquired, until the trustee shall determine in the exercise of a sound discretion that it is advisable to dispose of the same, but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property. (Act Apr. 24, 1943, c. 635, §2.)

[501.125]

8090-6. Not to alter terms of will.—Nothing contained in this Act shall be construed as authorizing any departure from or variation of the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the trustee's duties and powers, but the terms "authorized securities," or "authorized investments," or "legal investments," or words of similar import, as used in any such instrument or in the statutes of this state in so far as they relate to the investment of trust funds by corporate trustees or by individual trustees, shall be taken to mean every kind of property, real, personal or mixed, and every kind of investment, which a trustee is authorized to acquire under the terms of Section 1 hereof. (Act Apr. 24, 1943, c. 635, §3.)

[501.125]

8090-7. Not to be construed to limit powers of court.—Nothing contained in this Act shall be construed as restricting the power of a court of proper jurisdiction to permit a trustee to deviate from the terms of any will, agreement, court order or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of trust property. (Act Apr. 24, 1943, c. 635, §4.)

[501.125]

8090-8. Who are trustees.—The term "trustee" as used in this Act shall include individual trustees and corporations having trust powers and the provisions hereof shall govern trustees acting under wills, agreements, court orders and other instruments now existing or hereafter made. (Act Apr. 24, 1943, c. 635, §5.)

[501.125]

Laws 1943, c. 635, provides that its provisions will become effective July 1, 1943. See §7714.

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

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. *Murray's Will, 207M7, 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 trustor prevails. *Murray's Will, 207M7, 290NW312. See Dun. Dig. 10257.*

8095. Trustees of express trust to possess estate.

While beneficiaries cannot modify the terms of a trust, they may by contract, make disposition of property rights acquired under a trust. *Warner & Swasey Co. v. Rusterholz, (DC-Minn), 41FSupp498. See Dun. Dig. 1520, 1749a, 2037, 2040a, 2112a, 3560, 5653, 7480, 9888a, 10258.*

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 super-added words being insufficient to cut it down to a lesser one. *First & American Nat. Bank of Duluth v. H., 208M295, 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.*

8097. Interest not disposed of.

To extent that a trust donor reserves an interest that interest is subject to claims of his creditors, but rights

of trust remaindermen cannot be reached beyond such interest. *Watland*, 211M84, 300NW195. See *Dun. Dig.* 9887a.

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.*, 208M295, 293NW 585. See *Dun. Dig.* 9890, 10279.

8100. Powers of district court, etc.

Revocation of a tentative trust on behalf of an incompetent ward by probate court is not the exercise of jurisdiction over a trust, but act of revocation is simply an exercise of ward's right to prevent trust from becoming irrevocable, and stands upon same basis as right of election under a will, and thus does not infringe on exclusive jurisdiction of district court over trusts and trustees. *Guardianship of Overpeck*, 211M576, 2NW(2d) 140, 138ALR1375. See *Dun. Dig.* 9893.

Although the interest of a contingent beneficiary under a testamentary trust is remote, he may upon reasonable cause apply to the court to have his interest properly secured. *Northwestern Nat. Bank & Trust Co. v. Pirich*, 214M313, 9NW(2d)773. See *Dun. Dig.* 9893, 9927a.

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*, 207M592, 292NW185. See *Dun. Dig.* 9926.

Revocation of a tentative trust on behalf of an incompetent ward by probate court is not the exercise of jurisdiction over a trust, but act of revocation is simply an exercise of ward's right to prevent trust from becoming irrevocable, and stands upon same basis as right of election under a will, and thus does not infringe on exclusive jurisdiction of district court over trusts and trustees. *Guardianship of Overpeck*, 211M576, 2NW(2d) 140, 138ALR1375. See *Dun. Dig.* 9893.

8100-12. Trustee to file inventory.

It is not for the court to read into a trust instrument provisions which do not expressly appear or which do not arise by implication from plain meaning of words used. *McCann's Will*, 212M233, 3NW(2d)226. See *Dun. Dig.* 9888a.

To determine whether acts of a trustee have been prudent, court must consider facts as they existed at the time acts were performed. *Id.* See *Dun. Dig.* 9931.

Discounts in trust investments—principal or income. 24MinnLawRev201.

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*, 207M211, 291NW104. See *Dun. Dig.* 9927a.

On petition for instructions as to testamentary trust which was not ambiguous or equivocal, trial court's order striking out paragraphs alleging extrinsic evidence of an intent contrary to that expressed in the will was justified. *Silverson's Will*, 214M313, 8NW(2d)21. See *Dun. Dig.* 9927b.

Although a contingent remainderman can have no action for damages for waste, he may have equitable relief to prevent waste or dissipation of the trust estate or to prevent a disposition of the property contrary to the intention of the trustor. *Northwestern Nat. Bank & Trust Co. v. Pirich*, 215M313, 9NW(2d)773. See *Dun. Dig.* 9888a.

8106-1. Suspension of fiduciary powers during war service—Definitions.—When used in this Act unless the context otherwise requires:

(a) "War Service" shall be deemed to include the following, during the period that the United States shall be engaged in war with any foreign nation:

(1) Active membership in the military, naval or air forces of the United States or any of its allies.

(2) Acceptance for membership in the military, naval or air forces of the United States or any of its allies and awaiting induction into that service.

(3) Participation in any work abroad in connection with a governmental agency of the United States or any of its allies, with the Red Cross, or with any other similar service.

(4) Internment by an enemy, or absence from the United States and inability to return.

(5) Any service arising out of or in connection with the war, which in the opinion of the court pre-

vents the fiduciary from giving the proper attention to his duties.

(b) "Fiduciary" shall be deemed to refer to a trustee of a testamentary trust or of an express trust, a guardian of the person or estate of any person, an executor of a will, an administrator of the estate of a decedent, or an advisor or consultant in a testamentary or express trust.

(c) Words importing the masculine gender as used herein, include the feminine. (Act Apr. 19, 1943, c. 497, §1.)

[501.45]

8106-2. Powers of fiduciary may be suspended—

Petition.—Whenever any fiduciary contemplates entering war service, such fiduciary may petition, or whenever any fiduciary is engaged in war service, such fiduciary or cofiduciary or any interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of his war service and until the further order of the court, and in like manner any one of such persons may petition for the reinstatement of such fiduciary upon his return. (Act Apr. 19, 1943, c. 497, §2.)

[501.45]

8106-3. Same—Notice of hearing.—Notice of the hearing on the petition shall be given to such persons and in such manner as the court may direct. (Act Apr. 19, 1943, c. 497, §3.)

[501.45]

8106-4. Same—Hearing—Order.—Upon a hearing on the petition or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(a) Order the suspension of the powers and duties of the fiduciary who is in war service for the period of the war service and until the further order of the court;

(b) Appoint a successor fiduciary to serve for the period of suspension of the powers and duties of the fiduciary and until the further order of the court, if upon suspension of his powers and duties, there is no fiduciary to exercise the powers and duties of the fiduciary who is in war service, or if in the opinion of the court the appointment of a cofiduciary is advisable.

(c) Decree that the ownership and title to the trust res shall vest in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers and discretions, or such of the powers and discretions as are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary; or

(d) Make such further orders in the premises as the court may deem advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary.

(e) Reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

Upon a petition therefor, the court shall thereafter order the reinstatement of the fiduciary when his war service has terminated if it appears that the trust is not fully executed or administration of the estate is not completed. (Act Apr. 19, 1943, c. 497, §4.)

[501.45]

8106-5. Same—Responsibility of fiduciary.—The fiduciary shall have no responsibility for the acts and doings of his cofiduciary or successor fiduciary during the period of the suspension of his powers and duties, but he is not hereby relieved of responsibility for his own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed hereunder shall have no responsibility for the acts and doing of the predecessor fiduciary. (Act Apr. 19, 1943, c. 497, §5.)

[501.45]