

CHAPTER 501

USES AND TRUSTS

501.01 ABOLISHED IN PART.

HISTORY. R.S. 1851 c. 44 s. 1; P.S. 1858 c. 32 s. 1; G.S. 1866 c. 43 s. 1; G.S. 1878 c. 43 s. 1; G.S. 1894 s. 4274; R.L. 1905 s. 3240; G.S. 1913 s. 6701; G.S. 1923 s. 8081; M.S. 1927 s. 8081.

The statute of Elizabeth, 1601, was only a declaration of the common law. Charitable trusts are controlled by the provisions of this chapter.

Based upon the report of the Butler revision commission, the New York legislature at the 1827-1828 session enacted a chapter on uses and trusts, effective January 1, 1830, and substantially in its present form. (New York Revised Statutes of 1830, Part II, Chapter 2). Michigan followed New York in 1847, Wisconsin in 1849, and Minnesota in 1851. (Revised Statutes of the Territory of Minnesota, 1851, Chapter 44). This statute in part abolished the common law as to trusts, but the courts must still rely on the common law to interpret the statutes.

"This crude and reckless legislation (The New York Revised Statutes of 1830) seems to have been as unsuccessful in practice as it deserved to be. It has led to great litigation and there has been the utmost difference of opinion on points which ought to have been put beyond doubt." Gray, *Restraints on Alienation*, 2nd Edition, Section 282.

The statute applied only to real estate until the enactment of Laws 1875, Chapter 53, the provisions of which put real and personal property on the same basis.

Beneficiary must be certain or capable of being rendered certain; and no unincorporated, voluntary association, whose membership is fluctuating and uncertain, can be the cestui que trust. Certainty may be obtained by incorporation. *Lane v Eaton*, 69 M 141, 71 NW 1031.

Deed to certain persons who are to convey the described property to a certain synod on incorporation held valid upon performance. *Trustees v Froislie*, 37 M 447, 35 NW 260; *Kohle v Synod*, 81 M 7, 83 NW 460.

Bequests to certain bishops held void for uncertainty as to beneficiaries. *Shanahan v Kelly*, 88 M 202, 92 NW 948.

Laws 1901, Chapter 95, authorizes the city of Owatonna to become trustee of a fund to be used in the maintenance of a kindergarten. *Owatonna v Rosebrock*, 88 M 318, 92 NW 1122.

Will is valid as an executory devise to a corporation to be formed in the future to furnish charity to worthy poor of St. Paul, and is not an evasion of the laws relating to uses and trusts. *Watkins v Bigelow*, 93 M 210, 100 NW 1104.

Where the agent buys with his own money, without advancement by the principal, and any right of the principal rests upon verbal agreement which is denied, no resulting trust can arise. *Dougan v Bemis*, 95 M 220, 103 NW 882.

When the dominant and ultimate provision is ascertained, no construction of a subsidiary provision is permissible which runs counter to the main purpose. *Andrews v Wells-Dickey Trust Co.* 163 M 35, 205 NW 65.

Findings of the jury defeat the contention that a trust resulted. *Byer v Byer*, 159 M 149, 198 NW 412.

Common law as to trusts in real and personal property prevailed in our territory prior to the enactment of Laws 1851, Chapters 43, 44. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Laws 1875, Chapter 53, abolished personal property trusts except as authorized by statute. *Congdon v Congdon*, 160 M 343, 200 NW 76.

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Income from stock in companies owning mining properties based on leases, constitutes income from personal property and is not rents and profits. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Trust upheld notwithstanding a clause relieving the trustee from interference by the courts, and in the absence of a clause reserving power of revocation. *Butler v Badger*, 128 M 99, 150 NW 233.

Trusts in both real and personal property are abolished except as authorized by statute. *Mattson v Northern Ensilage Co.* 171 M 237, 213 NW 893.

An executory trust requires a consideration. An executed trust does not. *Mattson v Northern Ensilage Co.* 171 M 237, 213 NW 893.

Where the trust instrument vests the 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. *Mattson v Northern Ensilage Co.* 171 M 237, 213 NW 893.

Beneficiaries of a trust must be certain or capable of being made certain. Those who furnished financial aid to the grantor are capable of being made certain. *Mattson v Northern Ensilage Co.* 171 M 237, 213 NW 893.

Beneficiary must comply with conditions precedent prescribed by the trust instrument to acquire rights under it. *Mattson v Northern Ensilage Co.* 171 M 237, 213 NW 893.

Property held in trust for a debtor may be subjected to the payment of claims of all his creditors. *Bank v Knauft*, 172 M 83, 214 NW 771.

Taxes on unproductive property held in trust for a life beneficiary may be charged to the corpus of the estate where the trustee exercises discretion in holding such property for a more advantageous market. *Trust Co. v Moore*, 185 M 342, 241 NW 63.

Facts, including failure of an attempted oral trust, do not justify a holding that the instrument constitutes a constructive trust. *Wunder v Wunder*, 187 M 108, 244 NW 683.

A trust or a debt is created depending on the manifested intention of the parties. If the intention is that the money be kept as a separate fund, a trust is created. *Canby v Bank*, 192 M 571, 257 NW 520.

Charitable trust upheld as not retroactive; and not an infringement of religious liberty. *Lundquist v Church*, 193 M 474, 259 NW 9.

Validity of disposition of property by life insurance trust. *Cochran v Whitley*, 196 M 60, 264 NW 427.

Validity of oral trusts in personalty, and evidence to sustain it. *Salschneider v Holmes*, 205 M 459, 286 NW 347.

Creation of a gift on condition for charitable purposes. Citizen may maintain action for enforcement. *Langer v Red Wing*, 206 M 627, 289 NW 570.

Purposes of express trusts, section 501.12; Laws 1915, Chapter 98; Laws 1927, Chapter 180.

Taxation. *Weills v Commissioner of Internal Revenue*, 63 F(2d) 426.

Charitable trusts. 1 MLR 220.

Future interests in property. 4 MLR 319.

Doctrine of cy prés as to charitable trusts. 7 MLR 175.

Rules as to suspension of the power of alienation. 9 MLR 316, 14 MLR 75.

Spendthrift trusts. 15 MLR 576, 21 MLR 80.

Personal property trusts to be in writing. 17 MLR 313, 341.

Revocation by settlor. 19 MLR 226.

Reservation of control by settlor. 19 MLR 821.

Legal effect of gift to charitable institutions. 23 MLR 671.

501.02 EXECUTED USES CONFIRMED.

HISTORY. R.S. 1851 c. 44 s. 2; P.S. 1858 c. 32 s. 2; G.S. 1866 c. 43 s. 2; G.S. 1878 c. 43 s. 2; G.S. 1894 s. 4275; R.L. 1905 s. 3241; G.S. 1913 s. 6702; G.S. 1923 s. 8082; M.S. 1927 s. 8082.

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Future interests in property. 4 MLR 319.

Suspension of power of alienation. 9 MLR 317.

Necessity for a writing creating personal property trusts. 17 MLR 313.

501.03 RIGHT OF POSSESSION AND PROFITS A LEGAL ESTATE.

HISTORY. R.S. 1851 c. 44 s. 3; P.S. 1858 c. 32 s. 3; G.S. 1866 c. 43 s. 3; G.S. 1878 c. 43 s. 3; G.S. 1894 s. 4276; R.L. 1905 s. 3242; G.S. 1913 s. 6703; G.S. 1923 s. 8083; M.S. 1927 s. 8083.

Where the income is given directly to the life tenant and the sole duty of the trustee is to deliver or pay over the trust property to the remainderman on death of the life beneficiary, a passive trust is created. Passive trusts of freehold interest in land are executed by sections 501.04, 501.05. In many other jurisdictions this result is accomplished by the statute of uses, Henry VIII, Chapter 10. Analogous to the rule applicable to passive trusts of land, a passive trust of personalty is treated as vesting both the legal and the equitable title in the beneficiary on the ground that the trust is without purpose. *Larkin v McCabe*, 211 M 23, 299 NW 649.

501.04 ACTIVE TRUSTS NOT AFFECTED.

HISTORY. R.S. 1851 c. 44 s. 4; P.S. 1858 c. 32 s. 4; G.S. 1866 c. 43 s. 4; G.S. 1878 c. 43 s. 4; G.S. 1894 s. 4277; R.L. 1905 s. 3242; G.S. 1913 s. 6703; G.S. 1923 s. 8083; M.S. 1927 s. 8083.

Conveyance deemed direct to societies and not to trustees, eo nomine, in trust for them. *Trustees v Froislie*, 37 M 452, 35 NW 260.

Will construed as a devise in fee, with a conditional limitation to the issue of the devisee in case of his death within ten years of the decease of the divisor. At common law, a fee could be limited on a fee in the nature of an executory trust. *Whitney v Whitney*, 42 M 548, 44 NW 1030.

A conveyance of land from one person to another, in trust for a third, the trustee having no active duty to perform, constitutes a passive trust, and the trustee takes no title, but the title vests in the beneficiary. *Thompson v Conant*, 52 M 208, 53 NW 1145.

Certificate of sale of school land to party, the consideration having been paid by another, and the transaction being without her knowledge, is within the prohibition against resulting trusts, and the grantee is vested with good title. *Haaven v Hoaas*, 60 M 313, 62 NW 110.

The mere recording of a deed by a grantor, without the knowledge of the grantee, in the absence of other circumstances, will not, as a general rule, amount to a delivery. *Babbit v Burnett*, 68 M 260, 71 NW 22.

Will granting life estate to husband on conditions, is a life estate only, and on death of husband the property passes to the heirs of the devisor. *Rosbach v Weidenbach*, 95 M 343, 104 NW 137.

An express trust terminates by court decree where the entire beneficial interest has become vested in the cestui que trust. *Simmons v Trust Co.* 136 M 357, 162 NW 450.

Creditors of beneficiary of trust estate cannot reach property or income held by trustee during the continuance of the trust. *Bank v Olafson*, 181 M 289, 232 NW 337.

A trust created by delivery of chattels to a third person is valid although the beneficiary had no notice of it. A completed gift cannot be revoked by the donor. *Larkin v McCabe*, 211 M 11, 299 NW 649.

Future estates in property. 4 MLR 329.

Rules to suspension of the powers of alienation. 9 MLR 316.

Spendthrift trusts. 21 MLR 85.

Power of grantor to create by direct conveyance to himself and another to create a joint tenancy. 23 MLR 386.

501.05 PASSIVE TRUSTS ABOLISHED.

HISTORY. R.S. 1851 c. 44 s. 5; P.S. 1858 c. 32 s. 5; G.S. 1866 c. 43 s. 5; G.S. 1878 c. 43 s. 5; G.S. 1894 s. 4278; R.L. 1905 s. 3243; G.S. 1913 s. 6704; G.S. 1923 s. 8084; M.S. 1927 s. 8084.

Where the legal title to lands which are partnership property, is held by one or more of the partners, a trust in favor of the partnership arises by operation of law. Such trust is not done away with by the statute of uses and trusts. *Arnold v Wainwright*, 6 M 358 (241).

Legal estate for life was vested in cestue que trust by the writs of conveyance "to use and occupy the same for and during the term of his natural life," and that interest was assignable and subject to levy. *Bank v Moran*, 30 M 165, 14 NW 805.

Conveyance of land to one person in trust for a third, the trustee having no active duty to perform, constitutes a passive trust, and the trustee takes no title, and the property right conveyed vests in the beneficiary. *Thompson v Conant*, 52 M 208, 53 NW 1145.

Where land is purchased in the name of and mortgaged by a trustee, although the trust is passive, the mortgage is valid and may be foreclosed. *Wright v Nichols*, 55 M 338, 56 NW 1118.

Deed to certain persons in trust for a synod presently to be incorporated, is valid, and conveys the property to the synod immediately on completion of the incorporation and transfer. *Kohle v Synod*, 81 M 7, 83 NW 460.

Construction of trust in personalty. *Trust Co. v Matheson*, 187 M 468, 246 NW 1.

Constructive trust denied, and facts distinguished from a case where trustee is held to be trustee ex maleficio. *Ives v Pillsbury*, 204 M 142, 283 NW 140.

Future interests in property. 4 MLR 319.

Suspension of the power of alienation. 9 MLR 317.

Trusts; statute of uses. 17 MLR 233.

Necessity of writing for personal property trusts. 17 MLR 313.

501.06 LIMITING PRECEDING SECTIONS.

HISTORY. R.S. 1851 c. 44 s. 6; P.S. 1858 c. 32 s. 6; G.S. 1866 c. 43 s. 6; G.S. 1878 c. 43 s. 6; G.S. 1894 s. 4279; R.L. 1905 s. 3244; G.S. 1913 s. 6705; G.S. 1923 s. 8085; M.S. 1927 s. 8085.

Parol evidence admissible to establish a resultant trust in a partnership. *Sherwood v Railway*, 21 M 127.

An agent employed and financed to purchase land for his principal, and who takes the title in his own name will be adjudged to hold title as trustee for his principal, and if property is sold, the proceeds may be impressed with the trust. *Kreamer v Deusterman*, 37 M 469, 35 NW 276.

Where one party obtains title by fraud, violation of fiduciary relation or similar manner, equity will impress a trust upon the property in favor of the one entitled to it. *Nester v Gross*, 66 M 371, 69 NW 39.

Resulting trust may under certain circumstances fail if the transaction fall within the statute of frauds. *Dougan v Bemis*, 95 M 220, 103 NW 882.

Rights of joint adventures are similar to those of partners, and where one of the adventurers holds lands as a part of the adventure, he does so in trust for the common adventure. *Irvine v Campbell*, 121 M 192, 141 NW 408.

Trustee of a constructive trust is entitled to reimbursement for what has been lawfully expended in protecting the estate of the beneficiary. *Bank v Wade*, 165 M 396, 206 NW 728.

One may contract with another to give him his property at his death. If he fails to do so, and the circumstances are such that compensation cannot be made in money, an action in specific performance may lie and the property charged with a trust in favor of the promisee. *Simonson v Moseley*, 183 M 525, 237 NW 413.

Suspension of the power of alienation. 9 MLR 317.

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501.07 RESULTING TRUSTS.

HISTORY. R.S. 1851 c. 44 s. 7; P.S. 1858 c. 32 s. 7; G.S. 1866 c. 43 s. 7; G.S. 1878 c. 43 s. 7; G.S. 1894 s. 4280; R.L. 1905 s. 3245; G.S. 1913 s. 6706; G.S. 1923 s. 8086; M.S. 1927 s. 8086.

Except as provided in sections 501.08 and 501.09, this section abolishes the common law rule of a resulting trust where a conveyance of land is made to one person for a valuable consideration paid by another. *Sumner v Sawtelle*, 8 M 309 (272); *Connelly v Sheridan*, 41 M 18, 42 NW 595; *Haaven v Hoaas*, 60 M 313, 62 NW 110; *Anderson v Anderson*, 81 M 329, 84 NW 112; *Stitt v Rat Portage Lbr. Co.* 96 M 27, 104 NW 561.

Where one pays the consideration for land, and on his request the conveyance is made to another, the entire estate, legal and equitable, except as to the creditors of the one paying the consideration, vests in the grantee. No trust results to the party paying the consideration, except in favor of his creditors. *Sumner v Sawtelle*, 8 M 309 (272).

It is immaterial whether the conveyance is made for the benefit of the person paying the money or for another. *Connelly v Sheridan*, 41 M 18, 42 NW 595.

Certificate for sale of school land is a conveyance; and where purchaser causes same to be made and issued to another, the title is in that other, and there is no resulting trust in the purchaser who paid the money. *Haaven v Hoaas*, 60 M 313, 62 NW 110.

Testimony as to an oral agreement, and the fact that there has been a part performance, does not relieve against the statute. *Anderson v Anderson*, 81 M 329, 84 NW 112.

A verbal declaration of trust in realty is void under this section. *Connelly v Sheridan*, 41 M 18, 42 NW 595; *Walford v Farnham*, 44 M 159, 46 NW 295; *Paetzold v Paetzold*, 53 M 39, 54 NW 933; *Bank v Parsons*, 54 M 56, 55 NW 825; *Luse v Reed*, 63 M 5, 65 NW 91; *Ryan v Williams*, 92 M 506, 100 NW 380.

Effect of statute on executory contracts for the sale of land. *Johnson v Krassin*, 25 M 117; *Haaven v Hoaas*, 60 M 313, 62 NW 110; *Railroad v Lund*, 91 M 45, 97 NW 452.

Effect where title is taken as security for a loan. *Stitt v Rat Portage Lbr. Co.* 96 M 27, 104 NW 561; *Grout v Stewart*, 96 M 230, 104 NW 966; *Janochosky v Kurr*, 120 M 471, 139 NW 944.

Resulting trusts as to personality not abolished. *Dunn v Dewey*, 75 M 153, 77 NW 793; *Shanahan v Kelly*, 88 M 202, 92 NW 948.

Partnership in real property. *Sitt v Rat Portage Lbr. Co.* 98 M 52, 107 NW 824.

Other related citations: *Wentworth v Wentworth*, 2 M 277 (238); *Evans v Folsom*, 5 M 422 (342); *Irvine v Marshall*, 7 M 286 (216); *Sumner v Sawtelle*, 8 M 309 (272); *Foster v Berkey*, 8 M 351 (310); *Holmes v Campbell*, 10 M 401 (320); *Gill v Newell*, 13 M 462 (430); *Durfee v Pavitt*, 14 M 424 (319); *Johnson v Johnson*, 16 M 512 (462); *Bank v Kidd*, 20 M 234 (212); *Rogers v McCauley*, 22 M 384 (132); *Reich v Reich*, 26 M 97, 1 NW 804; *Hersey v Burnett*, 28 M 86, 9 NW 590; *Moffatt v Tuttle*, 35 M 301, 28 NW 509; *King v Remington*, 36 M 15 at 35, 29 NW 352; *Conlon v Grace*, 36 M 276, 30 NW 880; *Frost v Steele*, 46 M 1, 48 NW 413; *Overmire v Haworth*, 48 M 372, 51 NW 121; *Blake v Boisjoli*, 51 M 296, 53 NW 637; *Haaven v Hoaas*, 60 M 313, 62 NW 110; *School District v Peterson*, 74 M 122, 76 NW 1126; *Bank v Lawrence*, 77 M 282, 79 NW 1016; *Barnes v Mendenhall*, 80 M 383, 83 NW 391; *Laythe v Minnesota Loan*, 101 M 152, 112 NW 65; *Henderson v Murray*, 108 M 76, 121 NW 214; *Waters v Northern Pacific*, 141 M 480, 170 NW 703; *Spiess v Spiess*, 149 M 314, 183 NW 822; *Amundson v Hanson*, 150 M 287, 185 NW 252; *Leach v Leach*, 167 M 491, 209 NW 636.

Where land is conveyed to the wife, the consideration being paid by the husband, no trust results in favor of the husband but the wife takes full title. *Nelson v Nelson*, 149 M 286, 183 NW 354.

Property vests in husband, although paid for by bigamous wife. *Gunnison v Johnson*, 149 M 183, 183 NW 822.

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Husband purchased lot and had deed made to his niece. After his death it was held there was no resulting trust to the widow, and the title was in the niece. *Nash v Kirchoff*, 157 M 418, 196 NW 488.

Husband unable to read or write entrusted his wife with \$2,000 with which to purchase a home. She took the title in her own name. Held, (1) the presumption of a gift to the wife is rebuttable; (2) equity will impress a constructive trust in favor of the husband; and (3) trust exists pro tanto the amount of the fund advanced when the amount is definite and constitutes an aliquot part of the whole. *Sieger v Sieger*, 162 M 322, 202 NW 742.

Purchaser of real property borrowed a part of the money used in the purchase from a third party, giving a note therefor. It is held that he acquired no equitable or mortgage lien. *Soukup v Wenisch*, 163 M 365, 204 NW 35.

When land is purchased with the money of the wife and title taken in the name of husband and wife as tenants in common, there is no resulting trust in favor of the wife, and the interest of the husband is subject to the claims of his creditors. *Schmitz v Wenzel*, 166 M 435, 208 NW 184.

Deed of land purchased by plaintiff's husband, now deceased, in the name of his niece, was delivered and title vested in her. There was no resulting trust in the husband, and a deed by the niece, the name of the grantee blank was inoperative. *Nash v Kirchoff*, 166 M 464, 208 NW 193.

Money given to son by father as a gift was used to purchase property, but as the title was taken in the name of the father, the title vested in him. *Durand v Durand*, 175 M 549, 221 NW 908.

Creditors of beneficiary trust cannot reach property or income held by trustee. *Bank v Olafson*, 181 M 289, 232 NW 337.

Lease taken by promoter of bank to be organized was not adopted by bank by occupying the premises, improving same and paying the rent if the covenants were such that the bank could not lawfully assume the lease. *Viegel v O'Toole*, 183 M 407, 236 NW 710.

Payment by a pastor for land and conveyance of same to trustee of a church does not create a trust in his favor. *Board v Trustees*, 183 M 485, 237 NW 181.

Rights of the creditors not involved, a grant to one, for a consideration paid by another, vests title in the named grantee. *Drees v Gosling*, 208 M 399, 294 NW 374.

A wife's ownership of an automobile is established by presumption, as it was purchased in her name and paid for partly with her funds, and partly by a trade-in of the husband's automobile. *State v Buick Sedan*, 216 M 129, 12 NW(2d) 1.

At the time the property was purchased Anton Lund was in full control of the corporation and had entire right to the profits and dividends. The taking over the property was merely a method of drawing dividends. There is no evidence to sustain a finding of a trust in favor of the corporation. *Estate of Lund*, 217 M 627, 15 NW(2d) 426.

Money of wife invested in husband's name. 8 MLR 553.

Suspension of the power of alienation. 9 MLR 321.

Bequest on condition that divorce be obtained. 14 MLR 104.

Statutory provisions affecting purchase. 18 MLR 575.

Oral partnership for deal in lands; money-resulting trusts. 19 MLR 584.

Constructive trusts relating to real property. 23 MLR 708.

501.08 FRAUD AGAINST CREDITORS.

HISTORY. R.S. 1851 c 44 s. 8; P.S. 1858 c. 32 s. 8; G.S. 1866 c 43 s. 8; G.S. 1878 c. 43 s. 8; G.S. 1894 s. 4281; R.L. 1905 s. 3246; G.S. 1913 s. 6707; G.S. 1923 s. 8087; M.S. 1927 s. 8087.

1. Application of rule
2. Action to enforce trust
3. Generally

1. Application of rule

Applicable only to realty. *Baker v Terrell*, 8 M 195 (165); *Shanahan v Kelly*, 88 M 202, 92 NW 948.

Trust arises only on a conveyance. *Durfee v Pavitt*, 14 M 424 (319); *Nash v Kirschhoff*, 157 M 418, 196 NW 488.

Does not arise when consideration is paid to discharge a moral obligation. *Walford v Farnham*, 47 M 95, 49 NW 528.

Trust arises, if at all, at the time of the purchase and conveyance, and the statute does not apply to the case of improvements made by one person on the land of another. *Frost v Steele*, 46 M 1, 48 NW 413.

Inapplicable to subsequent creditors. *Stone v Myers*, 9 M 303 (287); *Matthews v Torinus*, 22 M 132; *Hersey v Bennett*, 28 M 86, 9 NW 590; *King v Remington*, 36 M 15, 29 NW 352; *Fullerton v Northwestern*, 48 M 490, 51 NW 475.

Trust arises whether debtor is solvent or insolvent. *Wolford v Farnham*, 44 M 159, 46 NW 295; 47 M 95, 49 NW 528.

Effect on trust of payment of mortgage assumed as part of purchase price. *Leonard v Green*, 34 M 137, 24 NW 915.

Effect on trust of discharge of debtor in bankruptcy. *Evans v Staalle*, 88 M 253, 92 NW 951.

Grantee with knowledge of the fraud selling to third party may be charged as for conversion. *Chamberlain v O'Brien*, 46 M 80, 48 NW 447.

Presumption of fraud is rebuttable. *Reich v Reich*, 26 M 97, 1 NW 804; *Blake v Boisjoli*, 51 M 296, 53 NW 637.

Where a debtor pays for a conveyance to his wife, the fact that they use it as a homestead will not prevent a trust from arising. *Sumner v Sawtelle*, 8 M 309 (272); *Rogers v McCauley*, 22 M 384.

Rights of creditors not involved, a grant of land to one, for a consideration paid to another, vests title in the named grantee. *Dees v Gosling*, 208 M 399, 294 NW 374.

Citation of relative cases. *Evans v Folsom*, 5 M 422 (342); *North v Bradway*, 9 M 183 (169); *Phoenix v Gardner* 13 M 462 (430); *Connelly v Sheridan*, 41 M 18, 42 NW 595; *Re C. A. Welch, Insolvent*, 43 M 7, 44 NW 667; *Wheeler v Winnebago*, 62 M 429, 64 NW 920; *Dehancey v Finnegan*, 86 M 255, 90 NW 387, *Irish v Daniels*, 100 M 189, 110 NW 968.

2. Action to enforce trust

A trust cannot be enforced by seizure and sale, but only by action. *Moffatt v Tuttle*, 35 M 301, 28 NW 509; *King v Remington*, 36 M 15, 29 NW 352.

Except as against a non-resident debtor, an action will not lie by a creditor until he has recovered judgment on his claim, and exhausted his legal remedies. *Overmire v Haworth*, 48 M 372, 51 NW 121; *Gorton v Massey*, 12 M 145 (83); *Moffatt v Tuttle*, 35 M 301, 28 NW 509.

Action by receiver in insolvency will not lie although claims of the creditors are not in judgment and not liens. *Chamberlain v O'Brien*, 46 M 80, 48 NW 447.

Limitation of actions. *Dale v Wilson*, 39 M 330, 40 NW 161.

The judgment debtor is a proper but not a necessary party. The husband of a wife sought to be charged is not a necessary party. *Leonard v Green*, 34 M 137, 24 NW 915.

A complaint held sufficient. *Evans v Staalle*, 88 M 253, 92 NW 951.

Joinder of causes of action. *North v Boardway*, 9 M 183 (169).

Effect of complaint alleging that transfer was made to defraud creditors. *Leonard v Green*, 34 M 137, 24 NW 915.

Competency of husband or wife as witnesses. *Leonard v Green*, 30 M 496, 16 NW 399; *Bank v Lawrence*, 77 M 282, 79 NW 1016, 80 NW 363; *Evans v Staalle*, 88 M 253, 92 NW 951.

Burden of proof as to payment of consideration. *Frost v Steele*, 46 M 1, 48 NW 413.

Burden of rebutting presumption. *King v Remington*, 36 M 15, 29 NW 352; *Wolford v Farnham*, 44 M 159, 46 NW 295; *Frost v Steele*, 46 M 1, 48 NW 413; *Blake v Boisjoli*, 51 M 296, 53 NW 637.

Evidence as to fraudulent intent. *Wolford v Farnham*, 44 M 159, 46 NW 295; 47 M 95, 49 NW 528.

Finding as to fraudulent intent. *Wolford v Farnham*, 44 M 159, 46 NW 295.

3. Generally

Bigamous wife furnishing capital to purchase land in husband's name denied declaration of construction or ex maleficio trust because of her knowledge of the facts. *Speiss v Speiss*, 149 M 314, 183 NW 822.

Scope of uniform fraudulent conveyance act. 7 MLR 456.

When may a creditor proceed under uniform act. 7 MLR 543.

Presumption of resulting trust or gift. 8 MLR 554.

Validity of bequests on condition legatee obtain a divorce. 14 MLR 104.

Constructive trusts in cases of agency. 17 MLR 745.

Statutory provisions affecting purchase money; resulting trusts. 18 MLR 576.

Oral partnership agreement for the purpose of dealing in land. 19 MLR 584.

501.09 LIMITING THE EFFECT OF SECTION 501.07.

HISTORY. R.S. 1851 c. 44 s. 9; P.S. 1858 c. 32 s. 9; G.S. 1866 c. 43 s. 9; G.S. 1878 c. 43 s. 9; G.S. 1894 s. 4282; R.L. 1905 s. 3247; G.S. 1913 s. 6708; G.S. 1923 s. 8088; M.S. 1927 s. 8088.

Contract of preemptor about to preempt land, by which he agrees to give another an interest in said land, is void. *Evans v Folsom*, 5 M 422 (342).

Parol agreement insufficient to create a trust. *Randall v Constans*, 33 M 329, 23 NW 530.

Where an absolute deed is made to grantee, with the intention of establishing a trust, and as part of the transaction, a declaration of trust is duly executed by the parties in interest, such deed and agreement may be construed together as establishing a trust. *Randall v Constans*, 33 M 329, 23 NW 530.

If an agent employed to purchase lands for his principal, and with his money, upon the purchase thereof takes the title in his own name, without the consent of the principal, he is trustee for his principal, and the land being sold, the trust attaches to the proceeds of the sale. *Kreamer v Deustermann*, 37 M 469, 35 NW 276.

When a grant is made to one person, another paying the consideration, no trust results in favor of the person paying the money. *Connelly v Sheridan*, 41 M 18, 42 NW 595.

Upon a conveyance to one person for a consideration paid by another, no trust can arise in favor of anyone, not a creditor, unless in case of fraud. *Petzhold v Petzhold*, 53 M 39, 54 NW 933.

School treasurer took second mortgage on property from defaulting predecessor, and redeemed from foreclosure of first mortgage, taking title in his own name. Held, to be in trust for the district as against a judgment creditor of the redeeming treasurer. *School District v Peterson*, 74 M 122, 76 NW 1126.

An agent buying with his own money without advancement by principal, and principal's right resting on an oral agreement which is denied, no trust arises. *Dougan v Bemis*, 95 M 220, 103 NW 882.

Title vested in the husband, although money for the purchase was furnished by bigamous wife. *Speiss v Speiss*, 149 M 314, 183 NW 515.

Where the husband's earnings pay for land, but title is taken in the wife's name, she becomes the absolute owner. *Gunnarson v Johnson*, 149 M 329, 183 NW 823.

Husband bought land and had deed run to niece, who executed a deed in blank. Neither deed was recorded and both deeds in husband's desk when he

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died. Held, in action by the widow that deed by niece was a nullity and property passed to the niece without any resulting trust. *Nash v Kirschhoff*, 157 M 420, 196 NW 489.

Husband who could not read or write furnished \$2,000 used in buying a \$3,400 home, wife contrary to agreement, took title in her own name. A constructive trust was impressed in favor of the husband. Resulting and constructive trusts distinguished. *Sieger v Sieger*, 162 M 322, 202 NW 743.

Where a wife obtained title to undivided half interest in husband's homestead by misrepresentations and in violation of confidential relationship, she held title in trust for him. The transfer of \$14,500 bank account to wife was, in the instant case, not a transfer to avoid and hinder creditors within the rule that parties will be left where they placed themselves. *Crowly v Crowly*, 219 M 341, 18 NW(2d) 40.

Money of wife invested in husband's name. 8 MLR 554.

Validity of trusts on condition that legatee obtain a divorce. 14 MLR 104.

Constructive trusts applied to interests in land. 25 MLR 717.

501.10 BONA FIDE PURCHASERS PROTECTED.

HISTORY. R.S. 1851 c. 44 s. 10; P.S. 1858 c. 32 s. 10; G.S. 1866 c. 43 s. 10; G.S. 1878 c. 43 s. 10; G.S. 1894 s. 4283; R.L. 1905 s. 3248; G.S. 1913 s. 6709; G.S. 1923 s. 8089; M.S. 1927 s. 8089.

An equitable lien for the purchase money of real estate though valid as between vendor and vendee, will not follow the land into hands of bona fide holder, without notice of its existence. *Selby v Stanley*, 4 M 65 (34).

Where the legal title to lands, part of partnership property, is taken in name of a partner, a trust in favor of the partnership arises by operation of law. *Arnold v Wainright*, 6 M 358 (241).

A trustee who, without knowledge of his cestui que trust, purchases real estate, taking title in his own name, and furnishing part of the purchase price, has an interest that is attachable by his creditor. *Martin v Baldwin*, 30 M 537, 16 NW 449.

Where the agent uses the principal's money, and sends him a mortgage executed by one who has no interest in the land mortgaged, the agent later purchasing the land in his, the agent's, name, the principal would have a lien on the property on the ground of estoppel but the record not disclosing the fact and the agent having made a general assignment, the principal cannot enforce his lien against assignees representing creditors. *Robertson v Rentz*, 71 M 489, 74 NW 133.

The registry act places judgment creditors on the same footing as bona fide purchasers as against unrecorded conveyances, but not as against resulting trusts, which cannot be made a matter of record. *School District v Peterson*, 74 M 122, 76 NW 1126.

A principal is bound by the acts of his agent to the extent of the authority, expressed or implied, with which he has clothed him; but an agent's knowledge will not be imputed to his principal when the agent is engaged in an independent fraud, since it cannot be supposed that he will inform his principal of it. *Blumberg v Taggart*, 213 M 39, 5 NW(2d) 388.

Where an owner of property who transfers it is induced to do so by the fraud, duress, or undue influence of the transferee, the transferee holds the property upon a constructive trust for the transferor, and that trust includes the proceeds of the property. *Blumberg v Taggart*, 213 M 39, 5 NW(2d) 388.

A judgment against a vendor in an action to which the purchaser was not a party, decreeing that the vendor held title in trust for a third person's creditors, was no evidence of resulting trust as against purchaser who was in possession before notice of lis pendens was filed and the action commenced, notwithstanding contract for deed under which purchaser claimed had been only partially performed. *Roberts v Friedell*, 218 M 88, 15 NW(2d) 496.

Defects in the title of a judgment debtor. 24 MLR 806.

501.11 PURPOSES OF EXPRESS TRUSTS.

HISTORY. R.S. 1851 c. 44 s. 11; P.S. 1858 c. 32 s. 11; G.S. 1866 c. 43 s. 11; 1875 c. 53 s. 1; G.S. 1878 c. 43 s. 11; 1893 c. 83 s. 1; 1893 c. 84 s. 1; G.S. 1894 s. 4284; 1897 c. 80; 1901 c. 95; R.L. 1905 s. 3249; G.S. 1913 s. 6710; 1915 c. 98 s. 1; G.S. 1923 s. 8090; 1925 c. 133; M.S. 1927 s. 8090; 1929 c. 1101; 1931 c. 65 s. 1.

Subd. 1. To Sell Lands for Benefit of Creditors. A deed of trust to sell land for the benefit of the grantor's creditors, which authorizes the trustee to sell on credit, is void in toto, as against grantor's creditors. *Greenleaf v Edes*, 2 M 264 (226).

Assignee holding title to property under a general assignment for the benefit of creditors, may maintain an action in respect to such property in his own name and without joining the creditors. *Langdon v Thompson*, 25 M 509.

Acceptance by creditor of terms of a trust deed in which there is an agreement to refrain from enforcement, waives the right to perfect a mechanic's lien. *Cushing v Hurley*, 112 M 83, 127 NW 441.

A citizen may do as he will with his own only when it is lawful. Whether it is lawful depends on whether the disposition conflicts with the rules of law which may be applicable. *Congdon v Congdon*, 160 M 357, 200 NW 81.

Authorized purposes of trusts of real property. 9 MLR 317.

Subd. 2. To Sell, Mortgage and Convey Land to Satisfy Charges Thereon.

A mortgage of real property to trustees in trust to pay debts of mortgagor, is a valid trust and may be enforced by trustees without joining the cestui que trust. *Moulton v Haskell*, 50 M 367, 52 NW 960.

Trust not invalid on ground trustees had no active duties, where they had the power of sale. *Stacey v Taylor*, 196 M 208, 264 NW 809.

Devise of residuary estate using the words "to be held by them in trust", "said trustees", "in trust" throughout the instrument created a trust. *Stacey v Taylor*, 196 M 208, 264 NW 809.

Joint adventures. 13 MLR 711.

Subd. 3. To Receive Rents and Profits and to Apply them to the Use of any Person.

Life estate of cestui que trust is assignable and attachable. *Bank v Moran*, 30 M 165, 14 NW 805.

Where a single trust embraces both personal and real property, and an unconditional power of sale is given to the trustees, and the converted fund is subject to a valid trust, the power of alienation is not suspended and the trust is not in contravention of the statute. *Charlemagne Tower's Estate*, 49 M 371, 52 NW 27.

Will is valid as an executory devise to a charitable corporation to be organized in the future, and is not an evasion of the laws relating to trusts. *Watkins v Bigelow*, 93 M 210, 100 NW 1104.

Royalties from mineral leases; lives in being and 20 years. *Trust Co v Douglas*, 135 M 413, 161 NW 163.

Creditors of beneficiary cannot reach property or income during time of performance of trust even if the time may vary under certain contingencies. *Bank v Olafson*, 181 M 289, 232 NW 337.

Subd. 4. To Receive the Rents and Profits of Land.

The period of duration of an express personalty is determined by statute. *Congdon v Congdon*, 160 M 357, 200 NW 81.

An endorsee "for collection" has the right under the negotiable instruments act to prosecute an action on the note. *Bank v Brown*, 198 M 195, 269 NW 409.

A trustee who has resigned, and whose final account has been settled, has no right to appeal from a court order even though its successor has not as yet qualified. *Malcolmsen v Bank*, 199 M 258, 271 NW 455.

Rules against restraints on alienation. 8 MLR 186.

Authorized purposes of trusts of real property. 9 MLR 317.

Spendthrift trusts. 15 MLR 571.

Subd. 4. Receipt and Accumulation of Rents and Profits.

Trust cannot be carried during the minority of the grandchildren for they are not the real beneficiaries of the accumulations from the ore royalties, but only receive a part of the income derived from the investment thereof. *Trust Co. v Douglas*, 135 M 413, 161 NW 163.

Accumulation allowable when derived from royalties on severance of iron ores. *Congdon v Congdon*, 160 M 357, 200 NW 76.

In a gift to a trustee of money and accumulated income over a term of years for the benefit of an incorporated city, if the direction for an accumulation is not a condition precedent to the vesting of the gift, the provision for accumulation does not render the gift invalid. *Canby v Bank*, 192 M 571, 257 NW 520.

Where the accumulation is a condition precedent to the vesting of the gift in charity, and the period of accumulations transgresses the rule against remoteness, the gift is void ab initio. *Canby v Bank*, 192 M 571, 257 NW 520.

Subd. 5. To Receive and Dispose of Personalty under Order of Court.

The declaration of a trust must be reasonably certain in its material terms, including the property embraced within the trust, the beneficiaries in whose behalf it is created, the nature and quantity of the estate, and the manner in which the trust power is to be executed. *Atwater v Russell*, 49 M 57, 51 NW 629.

All express trusts, including charitable trusts, in both real and personal property, are hereby abolished by our statute relating to uses and trusts, except as authorized by statute, and under the statute the beneficiary of a trust must be certain, or capable of being rendered certain, or the trust is void. *Shanahan v Kelly*, 88 M 202, 92 NW 948.

Depositor deposited in a savings bank a sum in his own name "in trust for" his brother, kept the passbook and made nominal withdrawals. Held, after his death that if it was the intention of the depositor thus to establish a trust in favor of the beneficiary, it was an express trust authorized by the statute, and the issue as to the intention is a question of fact for the jury. *Walso v Latherner*, 140 M 455, 168 NW 355.

A trust to invest funds for the benefit of a class is not invalid because it may suspend the power of alienation beyond the period fixed by statute where personal property only is the subject of the trust. *In re Trust under Will of Bell*, 147 M 63, 179 NW 650.

Trust for accumulation from royalties from mineral leases in this case, held invalid. *Trust Co. v Douglas*, 135 M 413, 161 NW 158.

Laws 1875, Chapter 53, abolished personal property trusts except as authorized by statute. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Evidence sufficient to support a finding that the assignment was to secure the assignee and also a bank for existing indebtedness and future advances. Such assignment being collateral security, may be shown by parol to be for the benefit of persons other than the assignee alone. *Bank v Hendrickson*, 165 M 446, 206 NW 723.

Creditors of beneficiary of trust estate cannot reach property or income held by trustee. *Bank v Olafson*, 181 M 289, 232 NW 337.

On showing that trustee did not faithfully discharge its duties, its account may be surcharged with loss carelessly incurred and it may be denied its expenses and fees. *Rosenfeldt's Will*, 185 M 425, 241 NW 573.

An express trust authorizing the trustee to sell securities and reinvest the funds is valid and authorized by statute, and bearer bonds situated in this state are subject to the jurisdiction of our district court. *Trust Co. v Matheson*, 187 M 470, 246 NW 2.

Trust giving wide discretionary power allows sale, reinvestment, and exchange of securities. *Trust Co. v Emmett*, 193 M 235, 258 NW 295.

In order to obtain a secure investment yielding a reasonable income, a fiduciary such as a testamentary trustee is generally permitted to supplement the funds of the estate with other funds, thereby placing combined funds in same investment. *Bowden v Trust Co.* 194 M 113, 259 NW 815.

Trustee, successful in litigation, is entitled to recover reasonable attorneys' fees paid by it in the conduct of its defense. *Andrist v Trust Co.* 194 M 209, 260 NW 229.

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Where bank as testamentary trustee mingles trust funds with its own assets, a successor trustee may recover from the receiver as the act constitutes the bank a trustee ex maleficio. *Henton v Bank*, 194 M 524, 261 NW 8.

The district court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees. Such orders are in effect judgments rendering their subject matter res judicata. It is voidable on a showing of fraud. *Bank v Melgaard*, 200 M 493, 274 NW 641.

An individual trustee acting with a corporate trustee may be required by the court to give bond, but the corporate trustee is not so required. *Butler v Trust Co.* 203 M 555, 282 NW 462.

Assignment from the beneficiary to the corporate trustee, of rights, under policies of insurance vested in it, all rights, privileges and options accruing to the beneficiary. *Trust Co. v N. W. Mut. Life*, 204 M 244, 283 NW 236.

Section 513.03 is not applicable to express oral trusts in personalty where full possession of the property is passed by the trustor to the trustee. *Salscheider v Holmes*, 205 M 459, 286 NW 347.

No evidence of an express trust. *Estate of Lund*, 217 M 627, 15 NW(2d) 426.

An express trust such as in the instant case is one created by the parties in language directly and expressly pointing out the persons, property, and purposes of the trust. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

Trustee and remainderman having accepted, are estopped from denying the validity of the provisions. *Koffend's Will*, 218 M 206, 15 NW(2d) 590.

The wife of the beneficiary under the oral trust was insane. The trustee conveyed the property to a grantee who had full knowledge of the wife's interest. On the death of the beneficiary and his insane wife, an undivided one-third passed to the children of the wife. *Peterson v Anderson*, 218 M 383, 16 NW(2d) 185.

Trustor created a fund with which to pay premiums on life policy and providing the proceeds after his death should go to his children, held valid in that it did not create a perpetuity. *Wells v Commissioner of Internal Revenue*, 63 F(2d) 426.

Charitable trusts; gifts. 1 MLR 221.

Creation of future interests in chattels personal, not in trust. 8 MLR 315.

Authorized purposes of trusts of personal property. 9 MLR 320.

Creditor's right to reach beneficiaries' interests. 15 MLR 576.

Necessity for a writing for personal property trusts. 17 MLR 313.

Law governing validity of inter vivos trusts. 18 MLR 565.

Validity of oral trusts in personalty of movables. 24 MLR 138.

Subd. 6. Scope and Duration.

All express trusts, including charitable trusts, in both real and personal property, are abolished by our statute relating to uses and trusts, except as herein authorized, and under the statute the beneficiary of the trust must be certain, or capable of being rendered certain, or the trust is void. *Shanahan v Kelly*, 88 M 202, 92 NW 948.

A devise of land which suspends the power of alienation for a fixed period, without reference to lives in being, is void; and where a legal and an illegal trust are created by will and so connected as to constitute one general scheme, the legal trust must fall with the illegal one. *Rong v Haller*, 109 M 191, 123 NW 471.

A common law assignment for the benefit of creditors, which requires a release of the debtor in consideration of the right to participate in the proceeds of the trust, is invalid as to creditors not assenting to same. *Moore v Bettingen*, 116 M 142, 133 NW 561.

A perpetual trust in personalty may be created for the purposes therein designated, subject to the control of the district court as therein specified, and the gift of a security which may be converted, or a conveyance of land "to convert", may be held a valid trust. *Association v Horn*, 120 M 404, 139 NW 805.

Trust for accumulation from ore royalties in this case held invalid. *Trust Co. v Douglas*, 135 M 413, 161 NW 158.

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Accumulations of income from personal property not prohibited. *Congdon v Congdon*, 160 M 344, 200 NW 76.

A lease for 25 years in trust for others than lessees is void, and cannot be enforced as a power. In re *Application of Chapman*, 168 M 1, 211 NW 325.

Where the trust instrument vests the 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. An executory trust requires a consideration; an executed trust does not. *Mattson v Harvester Co.* 171 M 237, 213 NW 893.

Provisions of a trust created under section 501.11 (6) cannot be changed by parol. *Mattson v Harvester Co.* 171 M 237, 213 NW 893.

The beneficiaries of a trust must be certain or capable of being made certain. Where limited to those who furnished uncompensated financial aid to the grantor for a specific purpose, they are capable of being made certain. *Mattson v Harvester Co.* 171 M 237, 213 NW 893.

Powers and liabilities of trustees regarding guaranty of terms of lease of trust property, and modification of amount of rent. *Lindeke v Kalman*, 190 M 601, 252 NW 650.

Trust leaving income to testator's daughter for life with remainder in equal shares to daughter's offspring, not void because of postponement of enjoyment by offspring. *Jacobson v Trust Co.* 191 M 143, 253 NW 365.

If it is the intention that the money be kept and used as a separate fund for the benefit of a third person, a trust is created. If the direction for an accumulation is not a condition precedent to the vesting of the gift, the provision for accumulation does not render the gift invalid. *City of Canby v Bank of Canby*, 192 M 571, 257 NW 520.

A conventional life insurance trust held contractual and, as such, a transaction inter vivos rather than testamentary in character, and resulting in the legal wife recovering under the policy rather than the bigamous wife possibly intended under the policy. *Cochran v Whitby*, 196 M 60, 264 NW 427.

Legal title passed to the trustee upon delivery by the trustor upon the express oral agreement that he was to invest the same and use it for the support and maintenance of the trustor during her life, and the remainder to Christina Schlick. *Salscheider v Holmes*, 205 M 459, 286 NW 347.

Oral trusts in personalty were not abolished by section 501.01. *Salscheider v Holmes*, 205 M 459, 286 NW 347.

Certain words contained in a letter deemed a declaration of trust as to certain mortgages and not a mere expression of desire to make a gift. *Bingen v First Trust Co. of St. Paul*, 103 F(2d) 260.

Charitable trusts in Minnesota. 1 MLR 221.

Passing of the corporation in business. 2 MLR 407.

Validity of a perpetual trust; escheat. 3 MLR 68.

Rules against restraints on alienation. 8 MLR 186.

Suspension defined. 8 MLR 308.

Authorized purposes of trusts of real property. 9 MLR 316.

Power of trustee to lease trust property. 14 MLR 274.

Charitable trusts; Minnesota statute not retroactive. 14 MLR 611.

Definiteness and certainty of testamentary trust. 14 MLR 704.

Creditor's right to reach beneficiaries' interest. 15 MLR 581.

Necessity for a writing for personal property trusts. 17 MLR 313.

Vested remainder in personalty; payment postponed. 18 MLR 891.

Right of support; cestuis living on property. 20 MLR 322.

Validity of oral trust in personalty. 24 MLR 138.

Subd. 7. Any City May Receive Grants, Gifts, Devises and Bequests.

Deposit in bank with declaration that the fund, plus interest, was at the expiration of a term of years to be turned over to a city held to be a legal trust. *City of Canby v Bank of Canby*, 192 M 571, 287 NW 520.

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In the absence of fraud a husband is not entitled to an equitable lien upon his wife's property for the value of his services in improving the property. *Martin v Tucker*, 217 M 104, 14 NW(2d) 105.

Where an exigency endangers the value of trust property, and even if there is no express trust, the court may appoint a trustee to sell the property and re-invest the proceeds. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

Where a business opportunity occurs which a corporation might seize, and if one of the directors accepts the opportunity he becomes constructive trustee for the corporation and legally should account for the profits, but if the corporation declines or neglects the opportunity the profit is the property of the director. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913; *Boxrud v Ronning*, 217 M 518, 15 NW(2d) 113.

Charitable trusts. 1 MLR 222.

Suspension of the power of alienation. 9 MLR 323.

Charitable trusts. 14 MLR 589.

501.12 EXPRESS TRUSTS FOR CHARITABLE, EDUCATIONAL, RELIGIOUS, AND OTHER PUBLIC USES.

HISTORY. 1927 c. 180 ss. 1 to 4; M.S. 1927 ss. 8090-1, 8090-2, 8090-3, 8090-4.

Devise to church in support of missions held valid; and statute constitutional. *Lundquist v Church*, 193 M 474, 259 NW 9.

Section 501.12 held to be legislative recognition of the doctrine of cy pres, and a mandate to the court to apply the rule. *Peterson v Board*, 202 M 31, 277 NW 529.

A devise or bequest, although in form a gift, when made to an institution whose sole reason for existence and whose entire activity is charitable, is in effect a charitable trust. Parol testimony may be received to disclose a later ambiguity. *Peterson v Board*, 202 M 31, 277 NW 529.

Will created a gift on condition for charitable purposes rather than a charitable trust. *Longcor v City of Red Wing*, 206 M 627, 289 NW 570.

A public cemetery is not a charitable corporation under this section. *Christgau v Woodlawn*, 208 M 263, 293 NW 619.

Where securities were conveyed to a clergyman as trustee by his wife under ten year trust requiring use of the income for charitable and educational purposes and under which the wife retained no power of revocation and could not receive any income or benefit therefrom and had no control over the corpus, trust income was not "income of the settlor" within the meaning of the revenue act, so as to permit taxation thereof against the wife. *Pierce v United States*, 51 F. Supp. 51; 137 F(2d) 428.

It may be assumed that an ordinarily "prudent person" would invest in share accounts of savings and loan associations. OAG Feb. 9, 1944 (53d).

Enforcement of charitable subscriptions. 12 MLR 654.

Minnesota's statute of charitable trusts. 14 MLR 587.

Spendthrift trusts. 18 MLR 493.

Charitable trusts. 19 MLR 606.

Legal effect of gift to charitable trusts. 23 MLR 670.

Enforcement of restrictions upon gifts to charitable corporations. 24 MLR 570.

501.125 TRUSTEE MAY INVEST AS WOULD AN ORDINARILY PRUDENT PERSON.

HISTORY. 1943 c. 635 ss. 1 to 5.

501.13 DEVISES AS POWERS.

HISTORY. R.S. 1851 c. 44 s. 12; P.S. 1858 c. 32 s. 12; G.S. 1866 c. 43 s. 12; G.S. 1878 c. 43 s. 12; G.S. 1894 s. 4285; R.L. 1905 s. 3250; G.S. 1913 s. 6711; G.S. 1923 s. 8091; M.S. 1927 s. 8091.

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Testamentary trust declared valid, based upon the clear intention of the trustor to confine the income to the grandchildren living at the time the class came into the enjoyment of such income. *Long v Disque*, 207 M 7, 290 NW 312.

An irrevocable trust creating a fund with which to pay premiums on policies of insurance on trustor's life, and providing distribution of proceeds of policies to trustor's children, is valid. *Wells v Commissioner of Internal Revenue*, 63 F(2d) 425.

501.14 TRUST PROFIT SURPLUS SUBJECT TO CREDITORS' RIGHTS.

HISTORY. R.S. 1851 c. 44 s. 13; P.S. 1858 c. 32 s. 13; G.S. 1866 c. 43 s. 13; G.S. 1878 c. 43 s. 13; G.S. 1894 s. 4286; R.L. 1905 s. 3251; G.S. 1913 s. 6712; G.S. 1923 s. 8092; M.S. 1927 s. 8092.

Trustor created a trust in the residue of his estate, the income from which and the corpus were to be distributed in stated instalments to the widow and children, or to grandchildren by right of representation. Title did not vest until actual distribution. There was no power of assignment in the beneficiaries. Held, to be a valid spendthrift trust both as to corpus and income, and protected from creditors of beneficiaries during transmission. *Erickson v Erickson*, 197 M 71, 266 NW 161, 267 NW 426.

Trust shows clear intent to confine distribution to grandchildren living at the time class came into enjoyment. *Long v Disque*, 207 M 7, 290 NW 312.

Applied as to fund created to pay premiums on life policies on trustor's life. *Wells v Commissioner of Internal Revenue*, 63 F(2d) 425.

Spendthrift trusts. 18 MLR 495.

Validity of restraints upon the involuntary alienation of beneficiaries' right to receive the principal of a trust. 21 MLR 80.

501.15 EXPRESS TRUSTS; POWERS IN TRUST.

HISTORY. R.S. 1851 c. 44 s. 14; P.S. 1858 c. 32 s. 14; G.S. 1866 c. 43 s. 14; G.S. 1878 c. 43 s. 14; G.S. 1894 s. 4287; R.L. 1905 s. 3252; G.S. 1913 s. 6713; G.S. 1923 s. 8093; M.S. 1927 s. 8093.

Where an absolute deed is made to a grantee, with the intention of establishing a trust, and, as part of the transaction, an agreement or declaration of trust is duly executed, such deed and agreement are to be construed together as establishing the trust; and where the trust is not one authorized by statute, and is an act which may be lawfully performed under a power, it will be upheld as a power in trust. *Randall v Constans*, 33 M 329, 23 NW 530.

Deed to certain trustees to purchase, and establish, the village of Lanesboro, and improve the property and sell lots, if it did not create a valid trust, did create a valid power in trust. *Carson v Cochran*, 52 M 67, 53 NW 1130.

Devise and bequest in will construed and held to so far suspend the power of alienation as to invalidate the instrument either as a trust or a power in trust. *Rong v Haller*, 109 M 191, 123 NW 471.

A trusteeship created by will by which the trustee was empowered to sell property and divide the proceeds, amounts to nothing more than a power in trust, and vests no title in the grantee. *Whitaker v Meeds*, 146 M 160, 178 NW 597.

A lease which attempts to put the leasehold estate in lessees in trust for others and for a term of 25 years without references to a life in being is void as a trust and cannot be deemed a power in trust. *In re Application of Chapman*, 168 M 1, 211 NW 325.

Facts construed and trust held valid. *Trust Co. v Matheson*, 187 M 470, 246 NW 2.

Applied to a fund to be used in paying life insurance premiums. *Wells v Commissioner of Internal Revenue*, 63 F(2d) 425.

501.16 LEGAL TITLE IN BENEFICIARY.

HISTORY. R.S. 1851 c. 44 s. 15; P.S. 1858 c. 32 s. 15; G.S. 1866 c. 43 s. 15; G.S. 1878 c. 43 s. 15; G.S. 1894 s. 4288; R.L. 1905 s. 3253; G.S. 1913 s. 6714; G.S. 1923 s. 8094; M.S. 1927 s. 8094.

Authorized purposes of trusts of real property. 9 MLR 317.

501.17 TRUSTEES TAKE ESTATE, WHEN.

HISTORY. R.S. 1851 c. 44 s. 16; P.S. 1858 c. 32 s. 16; G.S. 1866 c. 43 s. 16; G.S. 1878 c. 43 s. 16; G.S. 1894 s. 4289; R.L. 1905 s. 3254; G.S. 1913 s. 6715; G.S. 1923 s. 8095; M.S. 1927 s. 8095.

A voluntary assignee, holding title under a general assignment for benefit of creditors, may maintain an action in his own name, without disclosing the representative character in which he sues. *Langdon v Thompson*, 25 M 509.

Complaint had because the beneficiary under terms of an express trust, brought an action to recover property without joining the trustees as parties. *Whitcomb v Wright*, 176 M 280, 223 NW 296.

A decree of the district court, in proceedings under the registration act, to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against attaching creditors. *McWhinney v Gage*, 183 M 141, 235 NW 676.

Certain words in trust agreement and in the will manifest an intention to pass the fee interests to the named beneficiaries; and a beneficiary is not prevented from taking a vested interest in a trust under section 501.17. *Bank v Higgins*, 208 M 295, 293 NW 586.

The fundamental essential of any trust is separation of the legal estate from the beneficial enjoyment, since there can be no trust where both the legal title and the beneficial interest are in the same person. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

Destructibility of spendthrift trusts. 5 MLR 546.

501.18 SECTION 501.17 QUALIFIED.

HISTORY. R.S. 1851 c. 44 s. 17; P.S. 1858 c. 32 s. 17; G.S. 1866 c. 43 s. 17; G.S. 1878 c. 43 s. 17; G.S. 1894 s. 4290; R.L. 1905 s. 3255; G.S. 1913 s. 6716; G.S. 1923 s. 8096; M.S. 1927 s. 8096.

501.19 REVERSION IN GRANTOR.

HISTORY. R.S. 1851 c. 44 s. 18; P.S. 1858 c. 32 s. 18; G.S. 1866 c. 43 s. 18; G.S. 1878 c. 43 s. 18; G.S. 1894 s. 4291; R.L. 1905 s. 3256; G.S. 1913 s. 6717; G.S. 1923 s. 8097; M.S. 1927 s. 8097.

Same person was named as executor and as trustee, with power of sale and distribution, and the title passed to the beneficiaries subject to the power of sale; and after his discharge by a proper court he was functus officio, and any deed or act of his a nullity. *Whitaker v Meeds*, 146 M 160, 178 NW 597.

There is no reversion of the balance of the fund since plaintiff was not the creator of a trust. *Insurance Co. v Bank*, 192 M 398, 256 NW 663.

Two written instruments were executed contemporaneously. One of three brothers assigned his interest in an insurance policy to the other two, and they in turn agreed to pay him \$50.00 per month or until the fund was exhausted. On payment of the policy, the fund was credited to the assigning brother, who died before the fund had been exhausted. It was held that a trust was created and the heirs of the deceased brother could recover the balance of the fund. *Jordan v Jordan*, 193 M 428, 259 NW 386.

501.20 ALIENATION RESTRAINED; LIMITATION.

HISTORY. R.S. 1851 c. 44 s. 19; P.S. 1858 c. 32 s. 19; G.S. 1866 c. 43 s. 19; G.S. 1878 c. 43 s. 19; G.S. 1894 s. 4292; R.L. 1905 s. 3257; G.S. 1913 s. 6718; G.S. 1923 s. 8098; M.S. 1927 s. 8098; 1931 c. 66 s. 1.

Distinguishing and defining the rule against the power of alienation as to real and personal property. *Charlemagne Tower's Estate*, 49 M 371, 52 NW 27.

Lapse of devise; election by widow. *Mechling v McAllister*, 135 M 357, 160 NW 1016.

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Express trust may be terminated by decree of court when the entire beneficial interest, including the estate in reversion, has become vested in the cestui que trust and the character and purpose expressed in the trust instrument does not preclude the right of termination. *Simmons v Trust Co.* 136 M 357, 162 NW 450.

Validity of perpetual trust; escheat. 3 MLR 68.

Destructibility of spendthrift trust. 5 MLR 547.

Rules against restraint on alienation. 8 MLR 186.

Political questions in federal courts. 8 MLR 483.

Restrictions on duration of trusts in personalty. 9 MLR 328.

Restrictions on duration of trusts in real property. 9 MLR 350.

Doctrine of *Claffin v Claffin*. 9 MLR 566.

Creditor's right to reach beneficiary's interest. 15 MLR 571.

Spendthrift trusts. 18 MLR 495.

Termination by consent of beneficiaries. 19 MLR 230.

Validity of restraints upon the involuntary alienation of beneficiary's right to receive the principal. 21 MLR 84.

501.21 EFFECT OF OMITTING TRUST IN CONVEYANCE.

HISTORY. R.S. 1851 c. 44 s. 20; P.S. 1858 c. 32 s. 20; G.S. 1866 c. 43 s. 20; G.S. 1878 c. 43 s. 20; G.S. 1894 s. 4293; R.L. 1905 s. 3258; G.S. 1913 s. 6719; G.S. 1923 s. 8099; M.S. 1927 s. 8099.

As against an innocent purchaser for value, a deed absolute on its face cannot be shown by evidence de hors the record to be a mortgage. *Locke v Hayter*, 123 M 367, 143 NW 917.

Scope of the uniform fraudulent conveyance act. 7 MLR 456.

Defects in title of the judgment debtor. 24 MLR 806.

501.22 TRUST ESTATES.

HISTORY. R.S. 1851 c. 44 s. 21; P.S. 1858 c. 32 s. 21; G.S. 1866 c. 43 s. 21; G.S. 1878 c. 43 s. 21; G.S. 1894 s. 4294; 1905 c. 339 s. 1; R.L. 1905 s. 3259; G.S. 1913 s. 6720; G.S. 1923 s. 8100; M.S. 1927 s. 8100.

Plaintiff executed an irrevocable trust reserving the income to herself for life, balance to be distributed. The trust was upheld against the petition of a guardian appointed by the probate court. *Butler v Badger*, 128 M 99, 150 NW 233.

Undue influence as a ground for relief from a voluntary trust. 19 LRA 767.

A court of equity has power to direct the execution of an express trust upon request from the trustees for guidance in the performance of their duties. *Congdon v Congdon*, 160 M 343, 200 NW 76.

The administration and settlement of a testamentary trust under the orders and supervision of the district court is a special proceeding. 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 Estate*, 184 M 303, 238 NW 687.

The compensation, the good faith, and the final accounting of the trustee are matters for determination by the trial court. *Drake v Drake*, 195 M 464, 263 NW 439.

The district court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees and to direct disposition of the trust property. Such orders are in essence judgments, binding upon the parties and rendering their subject matter res judicata. *Bank v Will of Melgaard*, 200 M 493, 274 NW 641.

A deposit in a savings bank in the name of the depositor as trustee for another, with the right to withdraw the whole or any part, or otherwise revoke the trust, creates a tentative trust only, revocable by the depositor during his life, but irrevocable after the depositor's death. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

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It is not an abuse of discretion to order the revocation of a tentative trust in order to use the money for the ward's comfort and support and expenses of her guardianship. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

See *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749; *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

Unclaimed dividends, in the hands of a trustee appointed to conserve and liquidate certain assets of a reorganized bank, are to be paid in to court for the benefit of persons entitled to them, and are not such dormant moneys as are under the jurisdiction of the commissioner of banks. OAG Aug. 21, 1939 (29B-14).

Destructibility of spendthrift trusts. 5 MLR 547.

Purchaser of equitable title. 6 MLR 114.

Rules against restraints on alienation. 8 MLR 186.

Restrictions on duration of trusts of personal property. 9 MLR 328.

Deviation from express terms of trust. 20 MLR 447.

501.23 SALE, MORTGAGE, PLEDGE, OR LEASE OF PROPERTY IN TRUST CREATED BY WRITTEN INSTRUMENT; VOID, WHEN; DISTRICT COURT POWERS.

HISTORY. 1925 c. 360 s. 1; M.S. 1927 s. 8100-1.

A trustee of an express trust to convey land can pass the title thereof by his deed only to the cestui que trust, or those claiming under him. *State v Germania Bank*, 106 M 164, 118 NW 683.

In determining the power of a trustee under a trust agreement, not only the language thereof but the purpose of the trust and the situation of the parties in interest are to be considered. *Warner v Shimon*, 186 M 229, 242 NW 718.

Where an executor has embezzled a trust fund and by false representations obtained from the court in 1925 an approval of his account and a discharge of his surety, and by further devices covered the delinquency so that discovery was not made until 1932, it was held that action would lie as against the surety notwithstanding the statute of limitations. *Shave v U. S. Fid. & Guar. Co.* 199 M 533, 272 NW 597.

District courts having jurisdiction in personam of trustees and beneficiaries have power to settle by order accounts of trustees, and direct disposal of trust property, and these orders are in essence "judgments", and render the subject matter res judicata. *Bank v Will of Melgaard*, 200 M 493, 274 NW 641.

In the reorganization of a bank, a liquidating committee or trustee may borrow money from and pledge assets to the reconstruction finance corporation. OAG Aug. 31, 1934 (29a-12).

Leasing of trust property. 14 MLR 281.

Oral partnership agreements for the purpose of dealing in land. 19 MLR 581.

Deviation from expressed terms of trust. 20 MLR 447.

501.24 LEASES; AUTHORITY OF TRUSTEE; ORDER OF COURT FOR LEASE.

HISTORY. 1925 c. 360 s. 2; M.S. 1927 s. 8100-2.

501.25 SALE; APPLICATION FOR; PETITION, NOTICE, AND ORDER FOR HEARING; FILING.

HISTORY. 1925 c. 360 s. 3; M.S. 1927 s. 8100-3.

501.26 NOTICE OF HEARING; SERVICE.

HISTORY. 1925 c. 360 s. 4; M.S. 1927 s. 8100-4.

501.27 INCOMPETENTS; NOTICE; SERVICE; GUARDIAN AD LITEM.

HISTORY. 1925 c. 360 s. 5; M.S. 1927 s. 8100-5.

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501.28 HEARING; FINAL ORDER; REPORT OF SALE; CONVEYANCE BY TRUSTEE; DISPOSITION OF PROCEEDS; BONDS.

HISTORY. 1925 c. 360 s. 6; M.S. 1927 s. 8100-6.

501.29 FINAL ORDER, EFFECT OF; OBJECTIONS, TIME FOR.

HISTORY. 1925 c. 360 s. 7; M.S. 1927 s. 8100-7.

501.30 PERSONS ENTITLED TO OBJECT.

HISTORY. 1925 c. 360 s. 8; M.S. 1927 s. 8100-8.

501.31 FINAL ORDERS AND CONVEYANCES VALID AS TO PERSONS SERVED WITH NOTICE.

HISTORY. 1925 c. 360 s. 9; M.S. 1927 s. 8100-9.

501.32 LIMITATION; LIABILITY OF PERSONS PAYING MONEY TO TRUSTEE.

HISTORY. 1925 c. 360 s. 10; M.S. 1927 s. 8100-10.

501.33 TRUSTEE; CONFIRMATION OF APPOINTMENT; COURT JURISDICTION.

HISTORY. 1933 c. 259 s. 1; M. Supp. s. 8100-11.

The burden of proving that the trustee had no financial interest in an individual capacity in the making of trust investments falls upon the trustee, and on his failing to do so, the beneficiaries have the right to reject these investments. *Malcolmson v Bank*, 198 M 562, 272 NW 157.

A qualified corporate trustee need not give a bond, but an individual acting as co-trustee must do so. *Butler v Trust Co.* 203 M 555, 282 NW 462.

An order adjusting and allowing the final account of an executor is the equivalent of a judgment or decree adjudging the amount due the estate from the executor, and may not be vacated, after the expiration of the time for appeal, except under the provisions of section 544.32 or 548.14. *Estate of Flora Woodworth*, 207 M 563, 292 NW 192.

The court having plenary jurisdiction of the res of the trust, did not abuse its discretionary power in waiving defect in the procedure of the appointment of the trustee, and permitting him to continue with cases pending. *Cooper v Rien*, 207 M 592, 292 NW 185.

Laws 1933, Chapter 259 (501.33) relates to procedure, not to the jurisdiction, in administering trust property. Courts of equity have long been recognized as possessed of authority to supervise the administration of trusts. *Wertin v Wertin*, 217 M 51, 13 NW(2d) 749.

The decision of the Minnesota state court that the trust beneficiary had no interest in dividends received during taxable years by the trust in form of deferred debenture notes was conclusive upon the tax court and upon the circuit court of appeals, so that such dividends did not constitute income distributable to the beneficiary, so as to make the dividends taxable to the beneficiary. *Eisenmenger v Commissioner*, 145 F(2d) 103.

Liquidating trustees in bank reorganization cases may borrow money from and pledge assets to the reconstruction finance corporation. 1934 OAG 43, Aug. 30, 1934 (29a-12).

501.34 TRUSTEE TO FILE INVENTORY.

HISTORY. 1933 c. 259 s. 2; M. Supp. s. 8100-12.

Illustration of trustees account upheld. *Fleischmann v Trust Co.* 194 M 227, 260 NW 310.

Trustee whose account has been filed and allowed and a successor trustee appointed, cannot be a party to an appeal from the court's order in the interim

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between the date of his discharge and the qualification of the new trustee. *Malcolmsen v Bank*, 199 M 258, 271 NW 455.

501.35 MAY APPLY TO COURT FOR INSTRUCTIONS.

HISTORY. 1933 c. 259 s. 3; M. Supp. s. 8100-13.

A testamentary trustee, accepting a leasehold as part of the trust property, becomes an assignee thereof and as such liable on the covenants of the lease, running with the title, to pay rent and taxes. *McLaughlin v Trust Co.* 192 M 203, 255 NW 839.

Where discretion is conferred upon the trustee in respect of the exercising of a power, the exercise thereof is not subject to control by the court, except to prevent an abuse by the trustee of his discretion. *Bank v City of Duluth*, 195 M 120, 261 NW 706.

A trustee whose resignation has been accepted by the court, its account settled, and a new trustee appointed, may not appeal from a court order during the interim before the qualification of the new trustee. *Malcolmsen v Bank*, 199 M 258, 271 NW 455.

Trust created pursuant to will authorizing trustee to invest trust funds in first mortgages on real estate, municipal or corporation bonds, or any other kind of income-bearing property except real estate, does not authorize investments in corporate stocks. *Jones v Trust Co.* 202 M 187, 277 NW 899.

It is the duty of a corporate trustee, where the trust instrument directs the mode of investment of trust funds, to comply with the directions. In this case the word "securities" deemed to include corporate stocks. *Mpls. Security v Bank*, 202 M 206, 277 NW 909.

No bond may be required of a corporate trustee, but an individual co-trustee must be bonded. *Butler v Trust Co.* 203 M 555, 282 NW 462.

See *Eisenmenger v Commissioner I. R.* 145 F(2d) 103.

501.36 GUARDIAN MAY BE APPOINTED.

HISTORY. 1933 c. 259 s. 4; M. Supp. s. 8100-14.

501.37 APPLICATION.

HISTORY. 1933 c. 259 s. 5; M. Supp. s. 8100-15.

A trustee is not an officer of the court and trust property is not in custodia legis. *Gunn v Smith*, 71 M 281, 73 NW 842.

In an action by holder of trust certificates against trustee for conversion because it foreclosed and bid in the trust property without plaintiff's consent or knowledge, thereby releasing guarantors, it is held that plaintiff sustained no damage inasmuch as the guarantors were insolvent at the time. *Sneve v Bank*, 195 M 77, 261 NW 700.

501.38 NOT TO LIMIT JURISDICTION OF COURT.

HISTORY. 1933 c. 259 s. 6; M. Supp. s. 8100-16.

501.39 MISAPPLICATION OF PAYMENT TO TRUSTEE.

HISTORY. R.S. 1851 c. 44 s. 22; P.S. 1858 c. 32 s. 22; G.S. 1866 c. 43 s. 22; G.S. 1878 c. 43 s. 22; G.S. 1894 s. 4295; R.L. 1905 s. 3260; G.S. 1913 s. 6721; G.S. 1923 s. 8101; M.S. 1927 s. 8101.

Trustee holding certain properties under a trust agreement permitted to exercise his best judgment in exchanging one property for another. *Warner v Shimon*, 186 M 229, 242 NW 718.

501.40 TERMINATION OF TRUSTEES' ESTATE.

HISTORY. R.S. 1851 c. 44 s. 23; P.S. 1858 c. 32 s. 23; G.S. 1866 c. 43 s. 23; G.S. 1878 c. 43 s. 23; G.S. 1894 s. 4296; R.L. 1905 s. 3261; G.S. 1913 s. 6722; G.S. 1923 s. 8102; M.S. 1927 s. 8102.

An express trust may be terminated by decree of court when the entire beneficial interest in and to the trust property, including the estate in reversion, has become vested in the cestui que trust, and the character and purpose of the trust as expressed in the instrument creating it does not conflict with or preclude the right of termination. *Simmons v N. W. Trust Co.* 136 M 357, 162 NW 450.

Spendthrift trusts; validity of restraints. 21 MLR 87.

501.41 TRUST TO VEST IN DISTRICT COURT ON DEATH OF TRUSTEE.

HISTORY. R.S. 1851 c. 44 s. 24; P.S. 1858 c. 32 s. 24; G.S. 1866 c. 43 s. 24; G.S. 1878 c. 43 s. 24; G.S. 1894 s. 4297; R.L. 1905 s. 3262; G.S. 1913 s. 6723; G.S. 1923 s. 8103; M.S. 1927 s. 8103.

A testamentary trustee, accepting a leasehold as part of the trust property, becomes an assignee thereof and as such liable on the covenants of the lease, running with the title, to pay rent and taxes. *McLaughlin v Trust Co.* 192 M 203, 255 NW 839.

The district court has the power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees and to direct disposition of the trust property. Such orders are in essence judgments binding as such upon the parties and rendering their subject matter res judicata. *Melgaard's Estate*, 200 M 493, 274 NW 641.

Substitute trustees; discretionary powers. 13 MLR 165.

501.42 RESIGNATION OF TRUSTEE.

HISTORY. R.S. 1851 c. 44 s. 25; P.S. 1858 c. 32 s. 25; G.S. 1866 c. 43 s. 25; G.S. 1878 c. 43 s. 25; G.S. 1894 s. 4298; R.L. 1905 s. 3263; G.S. 1913 s. 6724; G.S. 1923 s. 8104; M.S. 1927 s. 8104.

The district court has the power, with jurisdiction in personam of trustees and beneficiaries, to settle by order accounts of trustees and direct disposition of property, and such orders are in essence judgments, binding as such upon the parties and rendering their subject matter res judicata. *Melgaard v Bank*, 200 M 493, 274 NW 641.

501.43 REMOVAL OF TRUSTEE.

HISTORY. R.S. 1851 c. 44 s. 26; P.S. 1858 c. 32 s. 26; G.S. 1866 c. 43 s. 26; G.S. 1878 c. 43 s. 26; G.S. 1894 s. 4299; R.L. 1905 s. 3264; G.S. 1913 s. 6725; G.S. 1923 s. 8105; M.S. 1927 s. 8105.

The statute gives the right to "any person interested in the execution of an express trust" to bring an action for the removal of a trustee. *Goncilier v Foret*, 4 M 13 (1).

The court may remove an assignee for any misconduct in the administration of his trusts under the assignment, which shows such removal to be necessary in order "to ensure a faithful performance of the trust". *Clark v Stanton*, 24 M 232.

See *Melgaard v Bank*, 200 M 493, 274 NW 641.

501.44 POWERS OF COURT.

HISTORY. R.S. 1851 c. 44 s. 27; P.S. 1858 c. 32 s. 27; G.S. 1866 c. 43 s. 27; G.S. 1878 c. 43 s. 27; 1889 c. 82 s. 1; G.S. 1894 s. 4300; R.L. 1905 s. 3265; G.S. 1913 s. 6726; G.S. 1923 s. 8106; M.S. 1927 s. 8106.

Denial by the members of a cemetery association of any trust relation to the lot owners, and a refusal to account for money receipts, authorizes judicial interference to compel recognition of the trust relation. *Brown v Maplewood*, 85 M 498, 89 NW 872.

See *Melgaard v Bank*, 200 M 501, 274 NW 646.

Under the statute, and the rule of cy pres the district court may appoint a new trustee in place of a named municipality which is not legally qualified to administer a testamentary trust. OAG Aug. 3, 1938 (59a-40).

501.45 SUSPENSION OF FIDUCIARY POWERS DURING WAR SERVICE.

HISTORY. 1943 c. 497.