

MINNESOTA STATUTES 1953 ANNOTATIONS

322.06 LIMITED PARTNERSHIPS

870

322.06 LIABILITY FOR FALSE STATEMENTS IN CERTIFICATE

HISTORY. 1858 c 69 s 13; PS 1858 c 124 s 13; GS 1866 c 30 s 13; 1872 c 55 s 1; GS 1878 c 30 s 13; GS 1894 s 2342; RL 1905 s 2824; GS 1913 s 6119; 1919 c 498 s 6; GS 1923 s 7358; MS 1927 s 7358.

322.07 LIMITED PARTNER NOT LIABLE TO CREDITORS

HISTORY. 1858 c 69 s 2, 3; PS 1858 c 124 s 2, 3; GS 1866 c 30 s 2, 3; GS 1878 c 30 s 2, 3; GS 1894 s 2331, 2332; RL 1905 s 2820; GS 1913 s 6115; 1919 c 498 s 7; GS 1923 s 7359; MS 1927 s 7359.

322.10 RIGHTS OF A LIMITED PARTNER

HISTORY. 1858 c 69 s 17; PS 1858 c 124 s 17; GS 1866 c 30 s 16; 1872 c 55 s 2; GS 1878 c 30 s 16; GS 1894 s 2345; RL 1905 s 2831; GS 1913 s 6126; 1919 c 498 s 10; GS 1923 s 7362; MS 1927 s 7362.

322.19 ASSIGNMENT OF LIMITED PARTNER'S INTEREST

There must be a partnership in reality and not a mere pretense of one to entitle the partners to divide the income tax burden according to their respective interests as they appear on the face of the articles of partnership; and where a father as sole owner conveyed undivided interests in realty occupied by business to each of six children, some of whom were minors, and upon appointment as guardian, transferred the property of minors to a partnership of himself and other children under agreement limiting partnership of minors, preventing assignment of their interests and subjecting their share of the profits to the decision of others, the minors performing no service and contributing no capital and not active in the business, the partnership income of the minors was taxable to the father. *State v Hitchcock*, 228 M 335, 37 NW(2d) 378.

322.25 REQUIREMENTS FOR AMENDMENT AND FOR CANCELANON OF CERTIFICATE

HISTORY. Amended, 1951 c 214 s 1.

322.26 PARTIES TO ACTIONS

HISTORY. GS 1866 c 30 s 14; GS 1878 c 30 s 14; GS 1894 s 2343; RL 1905 s 2829; GS 1913 s 6124; 1919 c 498 s 26; GS 1923 s 7378; MS 1927 s 7378.

CHAPTER 323

PARTNERSHIPS

NOTE: Sections 323.02 to 323.43 are a codification of Laws 1921, Chapter 487. These sections are identical with the Uniform Partnership Act approved by the National Conference of Commissioners on Uniform State Laws in 1914. There has been no amendment of this law. Prior to the enactment of chapter 487 there was no chapter in any compilation or revision of the Minnesota laws dealing with the subject of partnerships. The few sections found in compilations prior to 1921 dealt only incidentally with the subject. Except as repealed by chapter 487, they are still coded. GS 1913, Sections 7916 and 7917, particularly referred in the repealing section of chapter 487, are coded in the present statutes as sections 548.20 and 548.21.

States which have adopted the Uniform Act are: Alaska, Arkansas, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

MINNESOTA STATUTES 1953 ANNOTATIONS

871

PARTNERSHIPS 323.04

For annotations of those states that have adopted the Uniform Act, see Uniform Laws Annotated, Volume 7.

323.01 Unnecessary.

323.02 DEFINITIONS

A member of a partnership is not a third party under the Workmen's Compensation Act. 31 MLR 503.

Capital contributions, their "business purpose" in family partnerships. 33 MLR 714.

The relationship between parties to a fishing enterprise, whether it was a joint adventure or a partnership, was fiduciary in character and each owed to the others the highest degree of loyalty and good faith, but such relationship and its obligations were limited to the fishing enterprise. *Lipinski v Lipinski*, 227 M 511, 35 NW(2d) 708.

To establish a partnership the evidence must show that the parties have entered into a contractual relation by which they have combined their property, labor and skill in an enterprise as principals for the purpose of joint profit. The question of partnership or no partnership is one of fact. In determining whether parol evidence is permissible a distinction is drawn between evidence tending to show that no enforceable contract has ever been made, and evidence to contradict, vary, or add to the terms of the written contract. When the offeree is aware that the offeror does not intend to be bound by the wording in the instrument, no contract is formed, even though signed. *Hamilton v Boyce*, 234 M 290, 48 NW(2d) 172.

A "partnership" is a contractual relation by which two or more persons have combined their property, labor and skill in an enterprise or business as principals for the purpose of joint profit. Under the statute, in determining whether a partnership exists, the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business. A "prima facie case" is one that prevails in the absence of evidence invalidating it, and if there is such evidence the issue is for the trier of fact. *Blumberg v Palm*, M, 56 NW(2d) 412.

Whether a partnership exists is a question of fact. Joint contribution to an enterprise and something in the nature of a community of interest are essential to the existence of a partnership; and where parties contribute their experience, capital and energies to a common enterprise in which they are to share the profits, a partnership may exist, notwithstanding the expressed intention not to create such relationship. *Hansen v Adent*, M, 57 NW(2d) 681.

In an action based on the theory that certain named defendants were partners of a deceased person in the operation of an insurance agency, the evidence was insufficient to support a finding that a partnership existed. *Halvorson v Geurkink*, M, 57 NW(2d) 793.

A partnership is a contractual relation as between parties. *Wallner v Schmitz*, M, 57 NW(2d) 821.

The filing of a claim in bankruptcy is not essential to the preservation of a lien. A mortgage creditor of the bankruptcy wherein the chattel mortgage up to the time of adjudication was in the possession of the bank and thereafter remained in possession of the trustee was not required to file his proof of claim as a secured creditor within the six-month statutory period of the act or lose his security. *Clem v Johnson*, 185 F(2d) 1011.

323.04 RULES OF CONSTRUCTION

In an action to recover for goods sold to an alleged partnership evidence that the defendant represented himself to a commercial agency as a partner, and plaintiff extended credit upon reliance of the commercial report, was sufficient to establish the defendant from denying that he was a partner as against the plaintiff. *Pump-It Inc. v Alexander*, 230 M 564, 42 NW(2d) 337.

MINNESOTA STATUTES 1953 ANNOTATIONS

323.06 PARTNERSHIPS

872

323.06 DETERMINATION OF WHETHER PARTNERSHIP EXISTS

Capital contributions, their "business purpose" in family partnerships. 33 MLR 714.

Where several documents are executed as part of one transaction, they will be read together, and each will be construed with reference to the other. The right to proceed to construct a low-cost housing project is authorized by a letter of intent containing a termination clause and authorizations to construct 500 units are given after and dependent upon the acceptance of the letter of intent. The letter of intent and the authorizations constitute one transaction and will be construed with reference to each other, with the result that the termination clause applies to the authorizations, and a cancellation of part of the units is not a breach of contract. *Fleisher v Winston*, 230 M 554, 42 NW(2d) 396.

To establish a partnership it must be shown that the parties have entered into a contractual relation by which they have combined their property, labor and skill in an enterprise or business as principals for the purpose of joint profits, and the question of partnership is one of fact. *Hamilton v Boyce*, 234 M 290, 48 NW(2d) 172.

A "partnership" is a contractual relation by which two or more persons have combined their property, labor and skill in an enterprise or business as principals for the purpose of joint profit. Under the statute, in determining whether a partnership exists, the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business. A "prima facie case" is one that prevails in the absence of evidence invalidating it, and if there is such evidence the issue is for the trier of fact. *Blumberg v Palm*, M, 56 NW(2d) 412.

Where father executed a "Deed of Gift" purporting to transfer a partnership interest in his business to his son in the army who knew nothing about the transaction and who contributed nothing to the business, a partnership, for income tax assignments, was not created. *MBTA*, May 9, 1953 (439).

323.07 PARTNERSHIP PROPERTY

Income tax; capital gains; holding period involving sale of partnership interest. 32 MLR 650.

323.08 PARTNERS ARE AGENTS OF PARTNERSHIP

A court of equity will mold its relief so as to determine the rights of all the parties, and will not allow the pleadings to prevent it from getting at the heart of the controversy. The relation between partners is essentially one of mutual trust and confidence and the utmost good faith is imposed upon each. Where bad faith is shown in the incorporation of a copartnership enterprise, action by the plaintiff was not waived by delay in rescinding the agreement after acquiring knowledge of the fraud. *Prince v Sonnesyn*, 222 M 528, 25 NW(2d) 468.

The execution of an agency for the sale of land involves the performance of personal services of a non-delegable and non-assignable character. Where a partnership is dissolved by the withdrawal of a partner and thereby an agency conferred upon the partnership has been terminated by operation of law, the remaining partner has no right under the contract to enforce. *Egner v State Realty*, 223 M 305, 26 NW(2d) 464.

323.09 CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP

During the continuance of a partnership a deed from the partners in the partnership name may be registered without the wives of the partnership joining in the conveyance. OAG Aug. 30, 1950 (374-J).

323.11 NOTICE TO OR KNOWLEDGE OF THE PARTNERSHIP

Knowledge of a partner is attributable to the partnership. *Linneman v Swartz*, 235 M 107, 50 NW(2d) 47.

323.15 PARTNER BY ESTOPPEL

No one can become the agent of another except by the will of the principal, either express or implied from the particular circumstances. The power of an agent to bind his principal rests entirely upon the authority conferred upon him. Without such authority, for which the principal himself becomes, by act or conduct, responsible, the agent can bind himself only. Every person who undertakes to deal with an alleged agent is put upon inquiry and must discover at his peril that such pretended agent has authority, that is in its nature and extent sufficient to permit him to do the proposed act, and that its source can be traced to the will of the alleged principal.

Under the particular circumstances here, there were no acts of insurance company which misled plaintiff as to the position of the company's alleged agent to estop it from denying that he was its agent. *Mooney v Jones*, M, 54 NW(2d) 763.

Inconsistencies and evasions found in the testimony of a person claiming that the person with whom he was dealing was a partner made his credibility a question of fact for the jury. *Blumberg v Palm*, M, 56 NW(2d) 412.

Where an agent makes an unauthorized contract, the principal must accept or reject it as a whole; he cannot enforce provisions beneficial to himself and repudiate those beneficial to the other party. *Knaus v Donaldson*, 235 M 453, 51 NW(2d) 99.

In an action to recover for goods sold to an alleged partnership evidence that the defendant represented himself to a commercial agency as a partner, and plaintiff extended credit upon reliance of the commercial report, was sufficient to establish the defendant from denying that he was a partner as against the plaintiff. *Pump-It Inc. v Alexander*, 230 M 564, 42 NW(2d) 337.

323.17 RIGHTS AND DUTIES OF PARTNERS

Applicability of statutes making part ownership no defense in larceny by a partner. 32 MLR 68.

While relationship between partners is essentially one of mutual trust and confidence and, as such, the law imposes upon them the highest standard of integrity and good faith in their dealings with each other, nevertheless, in hearing the evidence and finding the facts, it is for the trier thereof to determine them; and where, as here, such trier upon conflicting evidence found for the defendants, such findings will not be disturbed upon appeal. *Venier v Forbes*, 223 M 69, 25 NW(2d) 704.

Where partners agree to dissolve the partnership in a going concern on a future date certain, which was the end of the fiscal year when the annual audit was made, and one partner agrees to purchase the interest of the other as of the date on which the selling partner turns the business over to the purchasing partner, he assumes control, the implication is justified that the purchasing partner shall pay the other partner the reasonable value of his interest in the partnership, although no price in dollars was fixed by the agreement. The agreement is not vulnerable to the contention that the minds of the partners did not meet because of the failure to state the exact price in dollars. Under such circumstances, the court should ascertain the reasonable value of such interest, either by taking evidence or by reference. The "going business" value, which is to be distinguished from "good will" should be included by such evaluation. *Marso v Graif*, 226 M 540, 33 NW(2d) 717.

An action for conversion of partnership property cannot be maintained by one partner against another where there has been no accounting or division of property by agreement. *Jacobs v Jacobs*, 227 M 451, 35 NW(2d) 611.

While a partnership is often treated as an entity for the purpose of liability to third persons, as regards liability among themselves the partners deal with each other as individuals. *Wallner v Schmitz*, M, 57 NW(2d) 821.

323.18 PARTNERSHIP BOOKS

Each partner has right to access to or inspection of partnership accounts and each owes to the other the duty to render on demand true and full information as

MINNESOTA STATUTES 1953 ANNOTATIONS

323.20 PARTNERSHIPS

874

to all things affecting the partnership; and dissolution does not dissolve the right of one partner to an accurate accounting by the other and to inspection of the partnership records. *Wilson v Moline*, 229 M 164, 38 NW(2d) 201.

323.20 PARTNER ACCOUNTABLE AS A FIDUCIARY

The relation between partners is essentially one of mutual trust and the law imposes on them the highest standard of integrity and good faith in their dealings with each other. *Prince v Sonnesyn*, 222 M 528, 25 NW(2d) 468.

The relationship between partners or joint entrepreneurs is one of mutual trust and confidence, and the law imposes upon them the highest standard of integrity and good faith in their dealings with each other. This does not prevent a partner from investing his capital in ventures outside the one in which he is jointly engaged provided there is no fraud or deceit practiced upon his associates. *Lipinski v Lipinski*, 227 M 511, 35 NW(2d) 38.

The relationship between parties to a fishing enterprise, whether it was a joint adventure or a partnership, was fiduciary and each owed to the others the highest degree of loyalty and good faith, but such relationship and its obligations were limited to the fishing enterprise. *Lipinski v Lipinski*, 227 M 511, 35 NW(2d) 708.

A partner having control of partnership account books has a duty to provide an accurate partnership accounting. Where the accounting partner in a turkey-raising partnership was also engaged in another partnership, in selling feed to the partnerships, from which he derived profits, and in selling to the general public, he was under a duty as a trustee to render to his turkey-raising partner clear and accurate accounts. *Wilson v Moline*, 229 M 164, 38 NW(2d) 202.

323.21 RIGHT TO AN ACCOUNT

A partner having control of partnership account books has a duty to provide an accurate partnership accounting. Where the accounting partner in a turkey-raising partnership was also engaged in another partnership, selling feed to the partnerships, from which he derived profits, and in selling to the general public, he was under a duty as a trustee to render to his turkey-raising partner clear and accurate accounts. *Wilson v Moline*, 229 M 164, 38 NW(2d) 202.

In an action for an accounting of profits derived from a partnership formed to raise turkeys, the operating partner is entitled to credit for moneys expended for gasoline, medicine, supplies, and miscellaneous expenses which may include the cost of labor necessary to clean and store the equipment on hand after marketing the turkeys. *Wilson v Moline*, 234 M 174, 47 NW(2d) 865.

The burden of proving the accuracy of accounts falls on the partner who has kept the records; and once a breach of good faith is shown doubts may be resolved against such partner. *Wilson v Moline*, 234 M 174, 47 NW(2d) 865.

323.23 PROPERTY RIGHTS OF A PARTNER

Where four parties purchase an apartment building under contract for a deed and jointly operated the property for rental purposes and also purchased jointly a small amount of bonds issued by another apartment operator, each individual party as a partner possessed a partner's interest which was a "capital asset" regardless of the nature of the partnership property. *Shapiro v U.S.*, 83 F. Supp. 375, 178 F(2d) 459.

323.24 NATURE OF A PARTNER'S RIGHT IN SPECIFIC PARTNERSHIP PROPERTY

Holding period for the purpose of computing federal income tax on capital gain resulting from sale of a partnership interest. 32 MLR 650.

A deed from partners in the partnership name may be registered under the Torrens system without the wives of the partners joining in the conveyance. OAG Aug. 30, 1950 (374-J).

323.26 ASSIGNMENT OF PARTNER'S INTEREST

Insurance policies are merely personal contracts between the insurer and the insured. They appertain to the person or party to the contract and not to the thing which is subjected to the risk against which the owner is protected. An insurable interest exists in both the partnership and the partners, and a partner has an insurable interest in the firm property which will support a policy taken out thereon for his own benefit. In the absence of an assignment or express stipulation of the parties to such an effect, contracts or policies of insurance do not attach to or run with the property insured, whether the property is real or personal. Where defendant sold a half interest in his medical practice to the plaintiff, and where at the time of the transaction defendant carried fire insurance coverage on his office equipment, and where at the same time plaintiff asked defendant, "Is this equipment covered by insurance?" and received the reply the defendant thought there was five or six thousand dollars on it, and where the partnership equipment was totally destroyed by fire and the defendant received the full amount of the policy, the policy under all the facts in the case was not an asset of the partnership and plaintiff is not entitled to receive one-half the proceeds of the policy. *Closuit v Mitby*, M, 56 NW(2d) 428.

Where four persons purchased an apartment building under contract and thereafter jointly operated the premises as rental property, and in addition purchased bonds of another apartment project, and one of the partners sold his one-fourth interest, the sale was of capital assets, taxable as a long-term "capital gain." *Shapiro v United States*, 178 F(2d) 459.

323.28 DISSOLUTION

Under the Uniform Partnership Act as well as under the prior law the withdrawal of a member from the partnership dissolves the partnership. *Egner v States Realty Co.*, 223 M 305, 26 NW(2d) 464.

To establish a partnership the evidence must show that the parties have entered into a contractual relation by which they have combined their property, labor and skill in an enterprise as principals for the purpose of joint profit. The question of partnership or no partnership is one of fact. In determining whether parol evidence is permissible a distinction is drawn between evidence tending to show that no enforceable contract has ever been made, and evidence to contradict, vary, or add to the terms of the written contract. When the offeree is aware that the offeror does not intend to be bound by the wording in the instrument, no contract is formed, even though signed. *Hamilton v Boyce*, 234 M 290, 48 NW(2d) 172.

323.29 PARTNERSHIP NOT TERMINATED BY DISSOLUTION

When a partnership ceases the powers of the partners derived from the partnership relation cease. It is only during the existence of the partnership that a member can execute an agency conferred upon the firm. Under the Uniform Partnership Act, as well as under the law as it existed prior thereto, the withdrawal of the member from the partnership dissolves the partnership. *Egner v State Realty*, 223 M 305, 26 NW(2d) 464.

323.31 DISSOLUTION BY DECREE OF COURT

Where partners agree to dissolve the partnership in a going concern on a future day certain, which was the end of the fiscal year when the annual audit was made, and one partner agrees to purchase the interest of the other as of the date on which the selling partner turns over the business to the purchasing partner, who assumes control, the implication is justified that the purchasing partner shall pay the other partner the reasonable value of his interest in the partnership although no price in dollars was fixed by the agreement. The agreement is not vulnerable to the contention that the minds of the partners did not meet because of the failure to state the exact price in dollars. Under such circumstances, the court should ascertain the reasonable value of such interest either by taking evidence or by reference. Included in such evaluation, the "going business" value, which is to be distinguished from "good will," should be included. *Marso v Graif*, 226 M 540, 33 NW(2d) 717.

323.32 DISSOLUTION TERMINATES AGENCY OF PARTNER

When a partnership ceases, the powers of the partners derived from the partnership relation also cease and it is only during the existence of the partnership that a member can execute an agency conferred upon the firm. Under the Uniform Partnership Act as well as under the law as it existed prior thereto, the withdrawal of the member from the partnership dissolves the partnership. *Egner v State Realty*, 223 M 305, 26 NW(2d) 464.

Where partners agree to dissolve the partnership in a going concern on a future day certain, which was the end of the fiscal year when the annual audit was made, and one partner agrees to purchase the interest of the other as of the date on which the selling partner turns over the business to the purchasing partner, who assumes control, the implication is justified that the purchasing partner shall pay the other partner the reasonable value of his interest in the partnership although no price in dollars was fixed by the agreement. The agreement is not vulnerable to the contention that the minds of the partners did not meet because of the failure to state the exact price in dollars. Under such circumstances, the court should ascertain the reasonable value of such interest either by taking evidence or by reference. Included in such evaluation, the "going business" value, which is to be distinguished from "good will," should be included. *Marso v Graif*, 226 M 540, 33 NW(2d) 717.

Insurance policies are merely personal contracts between the insurer and the insured. They appertain to the person or party to the contract and not to the thing which is subjected to the risk against which the owner is protected. An insurable interest exists in both the partnership and the partners, and a partner has an insurable interest in the firm property which will support a policy taken out thereon for his own benefit. In the absence of an assignment or express stipulation of the parties to such an effect, contracts or policies of insurance do not attach to or run with the property insured, whether the property is real or personal. Where defendant sold a half interest in his medical practice to the plaintiff, and where at the time of the transaction defendant carried fire insurance coverage on his office equipment, and where at the same time plaintiff asked defendant "Is this equipment covered by insurance" and received the reply the defendant thought there was five or six thousand dollars on it, and where the partnership equipment was totally destroyed by fire and the defendant received the full amount of the policy, the policy under all the facts in the case was not an asset of the partnership and plaintiff is not entitled to receive one-half the proceeds of the policy. *Closuit v Mitby*, M, 56 NW(2d) 428.

323.35 DISCHARGE OF EXISTING LIABILITIES ON DISSOLUTION

Dissolution of a partnership alone did not discharge existing liabilities of any partner from indebtedness previously incurred. *United States v Seppa*, 12 FRD 251.

323.38 ADJUSTMENT OF RIGHTS ON DISSOLUTION FOR FRAUD

Where partners agree to dissolve the partnership in a going concern on a future day certain, which was the end of the fiscal year when the annual audit was made, and one partner agrees to purchase the interest of the other as of the date on which the selling partner turns over the business to the purchasing partner, who assumes control, the implication is justified that the purchasing partner shall pay the other partner the reasonable value of his interest in the partnership although no price in dollars was fixed by the agreement. The agreement is not vulnerable to the contention that the minds of the partners did not meet because of the failure to state the exact price in dollars. Under such circumstances, the court should ascertain the reasonable value of such interest either by taking evidence or by reference. Included in such evaluation, the "going business" value, which is to be distinguished from "good will," should be included. *Marso v Graif*, 226 M 540, 33 NW(2d) 717.

323.39 DISTRIBUTION ON DISSOLUTION

Under the Uniform Partnership Act setting forth rules to be observed in settling accounts between partners after dissolution, subject to any "agreement to the contrary," a contract of settlement in the form of release from one partner to another would be such an agreement. A complaint which, while stating a cause of action, also

admits facts which constitute a defense to the action is vulnerable to attack on the ground that it does not state a cause of action. A release is a proper instrument for dissolution of a partnership and for the settlement of distribution of the partnership assets. While such release may be set aside if obtained by duress, a bare allegation of duress without stating facts which constitute such duress, is not a sufficient allegation to avoid the release. *Wallner v Schmitz*, M....., 57 NW(2d) 921.

TRADE REGULATIONS

CHAPTER 325

MANUFACTURES AND SALES

325.01 DEFINITIONS

HISTORY. 1913 c 167 s 1, 2; MS 1927 s 3966, 3967, 3976-1, 3976-42, 3976-51, 3976-83; 1929 c 358 s 1; 1937 c 116 s 2, 3; 1937 c 117 s 1; 1937 c 412 s 13; 1937 c 456 s 1; 1939 c 403 s 2; 1941 c 326 s 2.

Validity under the Robinson-Patman Act if a uniform delivered price of one seller. 31 MLR 599, 32 MLR 129.

Liability of factor for sale of goods obtained by his principal through fraud. 32 MLR 86.

Unfair competition; legality of basing point pricing; cement institute case. 33 MLR 283.

Vertical integration under the Sherman Act. 33 MLR 398.

Application of Sherman Act to major league baseball. 33 MLR 428.

Unfair competition. 33 MLR 447.

Agreements among competitors. 33 MLR 331.

Incidental and reasonable restraints of trade. 33 MLR 331.

Control of competitors. 33 MLR 349.

Relations affecting consumers. 33 MLR 353.

Agreements relating to patents. 33 MLR 360.

Simplification and standardization of products. 33 MLR 362.

Joint advertising and other public relations. 33 MLR 367.

Co-operative lobbying. 33 MLR 370.

Protection of consumers against themselves. 33 MLR 374.

Law of free enterprise. 33 MLR 672.

Federal jurisdiction over unfair competition; Lanhan Act. 37 MLR 268.

A geographical name indicative of place of manufacture cannot be appropriated as a trade-mark, but a geographical name may acquire a secondary significance that will support an action for unfair competition. To support such action for unfair competition, public consciousness of manufacturer's personal identity need not be shown, but it must be shown that the thing asserted to carry the secondary meaning has come to signify origin from a single, though anonymous, source, though newer forms of trade deceit may be developed where literal language of this rule is inadequate. *California Apparel Creators v Wieder*, 162 F(2d) 893.

These statutes relate to evidence or proofs. The proof is not conclusive. It is only prima facie. If a retailer is accused of selling below cost and he proves that his actual