

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

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State of Minnesota without the names of the owners and publishers thereof fully set forth in said newspaper, circular or publication, the court or the jury may determine such ownership and publisher on evidence of the general or local reputation of that fact and opinion evidence may be offered and considered by the court or jury in any case arising in connection with the ownership, printing or publishing of any such publication or of any article published therein either in a criminal action for libel by reason of such publica-

tion or in any civil action based thereon. (Act Apr. 21, 1931, c. 293, §5.)

7352-16. Definition.—By the term "newspaper" as expressed herein, shall be included any newspaper, circular or any other publication whether issued regularly or intermittently by the same parties or by parties, one of whom has been associated with one or more publication of such newspaper or circular, whether the name of the publication be the same or different. (Act Apr. 21, 1931, c. 293, §6.)

CHAPTER 57A

Partnership

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Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

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The evidence is not conclusive that there was a partnership between one of the defendants and a corporation now defunct. Mahlberg v. J., 182M578, 235NW280. See Dun. Dig. 2092, 7346.

A partnership may be legal result of an agreement notwithstanding an expressed intention not to create such a relationship. Randall Co. v. B., 189M175, 248NW 752. See Dun. Dig. 7346.

Contract between manager and prize fighter held one of joint enterprise or adventure and not one of employment. Safro v. L., 191M532, 255NW94. See Dun. Dig. 4948b, 5801.

The law of joint adventures. 15MinnLawRev644.

7390. Rules for determining the existence of a partnership.

One selling diamonds, held not shown to have been the partner of the owner. 180M447, 231NW408.

In action to recover on a printing bill, evidence held to justify finding that defendants were partners. Randall Co. v. B., 189M175, 248NW752. See Dun. Dig. 7349a(37).

In workmen's compensation case evidence held to show that two persons operating an apartment building and dividing the income were partners rather than tenants in common. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7349a.

Co-ownership of real estate does not create a partnership. Campbell v. S., 194M502, 261NW1. See Dun. Dig. 7346(8).

Bank suing co-owners of a farm as partners on a note purporting to be signed by them as a partnership was not thereafter stopped in a suit by a third party to claim that there was no partnership and that certain co-owner was alone liable on theory of having signed under an assumed name, first action being settled and there being no findings or judgment. Id. See Dun. Dig. 7348.

Profit sharing as a test of existence of partnership, 16MinnLawRev115.

7391. Partnership property.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

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(3).

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

7396. Partnership bound by partner's wrongful act.

One partner, not guilty of any negligence, is not liable for the negligence of his copartner, in the carrying on of the partnership business, except to the extent that the copartner is liable. Belleson v. S., 185M537, 242NW1. See Dun. Dig. 7370.

7398. Nature of partner's liability.

Belleson v. S., 185M537, 242NW1; note under §7396.

PART IV.

RELATIONS OF PARTNERS TO ONE ANOTHER

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At common law a partnership is not a person or an entity, and one partner cannot maintain an action at law on a matter arising out of partnership transactions against a copartner or the partnership without a dissolution and accounting. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7347.

Dependent widow of employee of a partnership could recover compensation from partnership and insurer, notwithstanding that she is a member of the partnership. Id. See Dun. Dig. 7406.

7404. Partner accountable as fiduciary.

Rule that parties negotiating for organization of a partnership or joint adventure deal at arm's length cannot be extended so as to permit a secret share in the profits to be made by an agent in the transaction. 175 M226, 220NW822.

Accounting by surviving partner to representative of deceased partner. 181M156, 231NW916.

PART V.

PROPERTY RIGHTS OF A PARTNER

7407. Extent of property rights of a partner.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

7408. Nature of a partner's right in specific partnership property.

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A partner's interest in specific partnership property is made nonassignable, and any attempt at such assignment is void. Windom Nat. Bank v. K., 191M447, 254NW 602. See Dun. Dig. 7380a.

Subd. (1).

Evidence does not sustain a finding that plaintiff alone paid the purchase price of furniture used in a hotel operated by plaintiff and defendant as copartners and afterwards sold by them. Stolp v. R., 190M382, 261NW 903. See Dun. Dig. 7381.

Subd. (2) (b).

A creditor of both a partnership and one of partners individually has no right, nothing more appearing, to apply payments made by partnership out of its own funds upon indebtedness of individual partner. Mastley v. M., 193M411, 258NW591. See Dun. Dig. 7368.

One partner cannot without consent of others, use funds of firm for payment of his individual debts. Id.

Subd. (2) (c).

Bond to release garnishment, reciting that there is a stated sum of money in the possession of the garnishee, held to estop the principal and sureties from denying that there was any garnishable property in the hands of the garnishee. 181M404, 232NW631. See Dun. Dig. 3975.

7409. Nature of partner's interest in the partnership.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7411.

7410. Assignment of partner's interest.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

7411. Partner's interest subject to charging order.

A receiver appointed on the application of a judgment creditor of a partner and acting under a charging order is entitled to any relief necessary to conserve the partnership assets for partnership purposes, and particularly to a decree nullifying unlawful efforts of a partner to assign or incumber his interest in specific partnership property. *Windom Nat. Bank v. K.*, 191M447, 254NW602. See Dun. Dig. 7404.

PART VI.

DISSOLUTION AND WINDING UP

7412. Dissolution defined.

Where money was loaned to partnership and subsequently one partner sold his interest to another partner, the selling partner was liable in action on note renewed after sale of his interest without knowledge on the part of the lender of such transfer of interest. 171M332, 214NW51.

On dissolution of partnership, unimpaired contribution to capital was a "debt" due to partner on the books of the firm. *Burnett v. H.*, 187M7, 244NW254. See Dun. Dig. 7396.

7418. Power of partner to bind partnership.

Where money was loaned to a partnership and defendant partner thereafter sold his interest to another

partner, defendant was liable on a renewal of the loan note after the transfer, plaintiff having no notice of the transfer of interest. 171M332, 214NW51.

7421. Rights of partners to application of partnership property.

Burnett v. H., 187M7, 244NW254; note under §7412.

A creditor of both a partnership and one of partners individually has no right, nothing more appearing, to apply payments made by partnership out of its own funds upon indebtedness of individual partner. *Mastley v. M.*, 193M411, 258NW591. See Dun. Dig. 7368.

7423. Rules for distribution.

Where a partner contributes more than his share of a partnership funds, he is not entitled to interest on the excess, in the absence of an agreement to that effect. 177M602, 225NW924.

Burnett v. H., 187M7, 244NW254; note under §7412. Where several contributed property of an unequal value in the purchase of land, one of them was entitled to an interest based upon the value to which all the parties agreed, and not the actual value. *Kallusch v. K.*, 185M3, 240NW108. See Dun. Dig. 4949.

Dependent widow of employee of a partnership could recover compensation from partnership and insurer, notwithstanding that she is a member of the partnership. *Keegan v. K.*, 194M261, 260NW318. See Dun. Dig. 7406.

CHAPTER 58

Corporations

GENERAL PROVISIONS

7420. Existing corporations continued.

Paterson v. S., 186M611, 244NW281; notes under §§7447, 7447-1.

Where a corporation was organized under Laws 1876, c. 28, with perpetual succession, it maintained that succession, notwithstanding the repeal by §10963 of the law under which it was organized, in view of the provisions of this section. *Op. Atty. Gen.*, May 3, 1930.

7432. Public service corporations—Purposes of.

Street car company was not liable to one injured while climbing a pole upon which it had permitted city to attach a fire alarm wire. 171M395, 214NW658.

Contract between city and power company for furnishing of electricity delivered at city's power plant was not franchise within meaning of restrictions in city charter. *Northern States Power Co. v. C.*, 186M209, 242NW714.

Power company could not serve public in city granting only right to deliver and meter power at city's power plant. *Northern States Power Co. v. C.*, 186M209, 242NW714. See Dun. Dig. 2996a.

7433. State and local control—Eminent domain.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

3. Governmental control.

Matter of regulating rates for public service companies is left to the city council of South St. Paul, and fact that ordinance granting twenty-five year franchise was submitted to the people did not affect such power. *Op. Atty. Gen.*, Sept. 12, 1930.

No state department has authority to regulate rates of electric light and power companies. *Op. Atty. Gen.*, Feb. 7, 1930.

City may impose regulations upon a common carrier operating motorbusses upon its streets for transportation of passengers for hire, and may compel its acceptance of a franchise as a condition to its use of such streets. *City of St. Paul v. T.*, 187M212, 245NW33. See Dun. Dig. 6618.

Where a city, such as Duluth, is operating under a home rule charter it has authority to regulate the rate of a public service corporation and to require such reasonable extension as fact warrants. *Op. Atty. Gen.* (624c-11), Aug. 20, 1934.

7434. Municipality may purchase.

City of Hutchinson could purchase public utility plant at the end of every term of five years notwithstanding provision in franchise to contrary. *Op. Atty. Gen.*, Mar. 24, 1932.

7435. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

Paterson v. S., 186M611, 244NW281; note under §7447.

7436. Mortgage loan and land companies.

The First Bank Stock Corporation and the Northwest Bank Corporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. *Op. Atty. Gen.*, Aug. 29, 1930.

7440. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

Op. Atty. Gen., July 6, 1931; note under §7441.

7441. Financial corporations.

Neither a foreign corporation duly authorized to conduct a safe deposit business nor a domestic corporation, unless a bank or trust company, can conduct a safe deposit business within the state. *Op. Atty. Gen.*, July 6, 1931.

7441-1. Proceedings in organization of state banks legalized and validated.—Wherever heretofore any persons have in good faith attempted to incorporate any state bank under the provision of any general law of the state of Minnesota relating to the incorporation of banks, but where the incorporation was defective because after the commencement of the proceedings to so incorporate but prior to their completion, the Revised Laws 1905 took effect and repealed the law under which such incorporation was being attempted; but where any such incorporation was completed in substantial compliance with any general law of the state of Minnesota repealed by the Revised Laws 1905 relating to the incorporation of banks, and where a certificate was issued by the proper department or official of the state of Minnesota authorizing any such bank to transact business, and where ever since any such bank has transacted a banking business and exercised its powers in all respects as though lawfully incorporated as a state bank, and has at all times been recognized as a state bank by the superintendent of banks or commissioner of banks or banking department of the state of Minnesota; then the incorporation of any such bank is hereby legalized and validated and any such state bank is hereby declared to be a valid corporation de jure and shall be so deemed in all courts and as to all transactions past and future. All amendments to the articles of incorporation of any such bank which, except for the defects in its incorporation, were lawfully adopted, are hereby legalized and validated, and the corporate existence of any such bank may be renewed in the same manner and under the same conditions as though lawfully incorporated. This act shall not affect any action now pending in any court. (Act Apr. 11, 1935, c. 150.)

7442. Insurance corporations.

State v. Brown, 250NW2; note under §3315.

7443. How organized—Certificate.—Any three or more persons may form a corporation for any of the purposes specified in this subdivision by complying with the conditions hereinafter prescribed; provided,