

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 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.



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MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

7352-14. Violation a gross misdemeanor.—In the event of any newspaper failing to file and register as provided for in Section 1 of this act, the party printing or publishing the same shall be guilty of a gross misdemeanor. (Act Apr. 21, 1931, c. 293, §4.)

7352-15. Court to determine ownership.—In the event of the publication of any newspaper within the 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 publication 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 57

Limited Partnership

LIMITED PARTNERSHIP ACT

7353 to 7383.

The Uniform Limited Partnership Act has been adopted by: Alaska, California, Colorado, Idaho, Illinois, Iowa,

Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wisconsin.

CHAPTER 57A

Partnership

The Uniform Partnership Act has been adopted by: Alaska, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, Wyoming.

PART I

PRELIMINARY PROVISIONS

7385. Definition of terms.

The corporate partner. 14MinnLawRev769.

7387. Rules of construction.

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

PART II.

NATURE OF A PARTNERSHIP

7389. Partnership defined.

"Investment contract" embracing profit sharing scheme, offered by broker to customers, held not to create partnership. Securities & Exchange Com. v. W., (USDC-Minn), 12FSupp245.

Joint ownership of land does not create a partnership or make the owners joint adventurers. Pratt v. M., 182 M250, 234NW464. See Dun. Dig. 4948b, 7346, 7350.

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, 248NW752. 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.

As between owner of stock pledged by borrower without knowledge of owner and person signing as surety before delivery of note, such surety held not partner of borrower as affecting primary liability on note, and right to exoneration of stock pledged. Stewart v. B., 195 M543, 263NW618. See Dun. Dig. 7346.

Pledgor of stock and endorsers held co-sureties and each entitled to contribution. Id. See Dun. Dig. 1925.

Written contract with respect to mortgages transferred by bank to plaintiff's decedent held to have created a joint adventure of such nature that plaintiff is entitled to contribution for losses from certain directors and stockholders of bank. Minars v. B., 197M595, 268NW197. See Dun. Dig. 4948b.

Evidence held to sustain finding that renting of two adjoining farms to one tenant was not a joint adventure, as affecting division of expenses of maintenance. Patterson v. R., 199M157, 271NW336. See Dun. Dig. 4948b.

Relationship between two brokerage firms based upon agreement for use by one or the other as its exclusive correspondent for execution of orders of itself and its customers in consideration for which it was to be furnished free wire service held not one of partnership. Korns v. T., (DC-Minn), 22FSupp442, 36AmB(NS)854, app. dism'd, (CCA8), 102F(2d)993, —AmB(NS)—.

When persons associate together and do business as a corporation, and latter is defectively organized, their rights, duties, and liabilities, as between themselves, should be determined and governed by express or implied terms, conditions, and limitations contemplated by their agreement, and they are not partners unless they have agreed to be such. Thompson v. M., 202M318, 278NW153. See Dun. Dig. 2092.

A partnership has as its basis a contract, and respective interests of each member can only be altered by a modification of it, and a single member by himself alone cannot accomplish such an alteration. Keough v. S., 285NW809. See Dun. Dig. 7350.

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

7392. Partner agent of partnership.

Where a partnership is a party to a contract, the acts of one member thereof bind the partnership. 174M297, 219NW180.

A partnership is not liable on a note given, without authority or consent of copartners, by one member of a firm for funds for his individual purposes, where payee plaintiff knew that he was borrowing money for such purposes. *Security State Bank of Hibbing v. R.*, 201M472, 276NW743. See Dun. Dig. 7363.

A partnership was not liable on a note signed in its name by one of partners and given to bank in payment of partner's individual obligation, to bank's knowledge, though one of partners was a director and member of examining and discount committee of bank. *First State Bank v. R.*, 202M350, 278NW523. See Dun. Dig. 7363.

7393. Conveyance of real property of the partnership.

(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

7401. Rules determining rights and duties of partners.

Evidence as to conduct of brokerage business, held to support finding that partner's interest was seven-sixteenths and not 44.3%, the basis of his contribution. *Burnett v. H.*, 187M7, 244NW254. See Dun. Dig. 7381.

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.

General rule is that one partner is not entitled to compensation for services not performed in course of partnership business, in absence of an agreement therefor, express or implied. *Start v. S.*, 201M491, 276NW820. See Dun. Dig. 7380b.

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.

Parties, whether enterprise be a copartnership or a joint enterprise, occupy a position of trust and must exercise most scrupulous good faith toward each other. *Kitzman v. P.*, 204M343, 283NW542. See Dun. Dig. 7374.

(1).

A partner making false entries in books to conceal misappropriation of funds is guilty of forgery in third degree. *State v. MacGregor*, 202M579, 279NW372. See Dun. Dig. 3794.

A partner may be guilty of a larceny or embezzlement or misappropriation of partnership funds. *Id.* See Dun. Dig. 2998, 3003.

7405. Right to an account.

In accounting of partnership in operation of a farm, fodder corn and hay furnished by one of partners in operation of farm was properly considered as an "expense" for which he was entitled to a credit. *Stark v. S.*, 201M491, 276NW820. See Dun. Dig. 7401.

Partnership contract between lawyers, as modified held to entitle plaintiff to 65% of fees. *Grimes v. T.*, 201M541, 277NW236. See Dun. Dig. 7357.

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.

A partnership has as its basis a contract, and respective interests of each member can only be altered by a modification of it, and a single member by himself alone cannot accomplish such an alteration. *Keough v. S.*, 285NW809. See Dun. Dig. 7350.

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

Action in conversion for partnership property cannot be maintained by partner against his copartner where there has been no accounting or no division of such

property by agreement. *Ruschoff v. W.*, 185M579, 242 NW296. See Dun. Dig. 1935(33).

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, 254NW602. See Dun. Dig. 7380a.

Where, after a dissolution by death of one partner, property of firm is garnished in a suit against surviving partners for recovery of money, representatives of estate of deceased partner, who are also defendants in suit, have such interest that they are proper parties to suit and garnishment. *Fulton v. O.*, 195M247, 262NW570. See Dun. Dig. 7394.

Title to property of every kind passes to surviving partners for purpose of winding up partnership and settling its liabilities and affairs. *Id.* See Dun. Dig. 7396.

Right of separate creditor of partner to reach partnership assets by execution. 23MinnLawRev539.

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, 251NW903. 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.

Modern conception of a partnership as a joint enterprise with a view of gain leaves question of losses and sharing thereof to be determined from evidence in particular case. *Kitzman v. P.*, 204M343, 283NW542. See Dun. Dig. 7378.

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, 214 NW51.

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.

7417. Right of partner to contribution from copartners after dissolution.

Whether plaintiff paid entire purchase price of furniture used by plaintiff and defendant in hotel partnership, held question of fact for trial court as affecting right to recover from defendant half of proceeds of sale of such furniture. *Stolp v. R.*, 195M372, 263NW118. See Dun. Dig. 7402.

Contract of joint adventure held to require contribution by defendants for losses due to the insolvency of two of the co-adventurers who were parties to the contract. *Minars v. B.*, 203M563, 282NW472. See Dun. Dig. 4949.

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.

(1).

Promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from partnership matters", did not give holder preference over other creditors of partnership, and, unless individual signers held funds of partnership when sued, there could be no recovery. Selover v. S., 201M562, 277NW205. See Dun. Dig. 7401.

7423. Rules for distribution.

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

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.

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.

(b).

Promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from partnership matters", did not give holder preference over other creditors of partnership, and, unless individual signers held funds of partnership when sued, there could be no recovery. Selover v. S., 201M562, 277NW205. See Dun. Dig. 7401.

7426. Accrual of actions.

Conversion action arising out of partnership between two attorneys held properly dismissed on pleadings by municipal court, since rights of parties must be determined by an accounting action and conversion will not lie until termination of partnership. Grimes v. T., 200M321, 273NW816. See Dun. Dig. 7406.

CHAPTER 58 Corporations

GENERAL PROVISIONS**7429. Existing corporations continued.**

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

General franchise to be a corporation is subject to conditions and limitations as to its exercise imposed by grant, which are part of franchise itself; especially so of method fixed by grant to implement and assure intended corporate succession. State v. Quinlivan, 193M65, 268NW858. See Dun. Dig. 1998.

Where a corporation was organized under Laws 1876, c. 23, 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.

City may impose regulations upon a common carrier operating motorbuses 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.

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.

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.

7. Rates.

Village operating under Laws 1885 is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. Op. Atty. Gen. (624-6), Sept. 16, 1937.

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 Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

An agricultural credit corporation organized to lend money to those engaged in production or marketing of agricultural products could not have been organized under §7440, but is governed by §7436, and is subject to §2026-1, relating to assessment and taxation of bank and mortgage loan company stock. Op. Atty. Gen. (92b-1), July 15, 1937.

7440. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

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

An agricultural credit corporation organized to lend money to those engaged in production or marketing of agricultural products could not have been organized under §7440, but is governed by §7436, and is subject to §2026-1, relating to assessment and taxation of bank and mortgage loan company stock. Op. Atty. Gen. (92b-1), July 15, 1937.

7441. Financial corporations.

Neither a foreign corporation duly organized 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,