

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

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



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claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

8294. Conveyances, etc., filed with registrar—Etc.

Intended for protection of grantees, mortgagees, whose deeds, mortgages, liens or judgments have been properly registered. 181M615, 233NW866. See Dun. Dig. 8362a.

8296. Instruments to have name and address.

Registrar would not be justified in refusing to accept an instrument that contained full name and address endorsed thereon, even though it did not contain such information in body thereof. Op. Atty. Gen., Aug. 4, 1932.

8297. Owner's duplicate must be presented, when.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

8300. Mortgage.

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

8302. Assignment and discharge of mortgage.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

8317. Alterations on register—order of court.—No erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of any memorial thereon, and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time, apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its disso-

lution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns without his or their written consent. Provided, however, that, without order of court in counties in which a rule of the district court so provides, the registrar of titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments; receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to said memorials. Provided, further, that in case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity as hereinbefore described, and upon the surrender of the owner's duplicate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be. Provided, further, when instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the original instrument, if the registrar of titles shall first be satisfied that the signatures to the original are genuine. (R. L. '05, §3439; G. S. '13, §6938; Apr. 5, 1933, c. 160, §1.)

Sec. 2 of Act Apr. 5, 1933, provides that the act shall take effect from its passage.

8322. Damages through erroneous registration.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8362a.

CHAPTER 65A

Registration of Certain Trade-Names

8335-1. Definitions.—The word person or persons as used in this act shall mean persons, firms, corporations, co-partnerships, associations or agents of any of them. (Act Apr. 25, 1931, c. 366, §1.)

8335-2. Brands to be registered.—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production of such on the farm, in a clean and sanitary condition, and shall not

consign for transportation by common carrier empty cans or ice cream containers in an unsanitary condition. That all persons, companies and corporations engaged in the purchase of milk or cream, or in the manufacture of ice cream shall adopt a mark or marks of ownership to be stamped or marked on any can, cask, keg, barrel or other receptacles, used in the handling and transportation of any said products, and shall file in the office of the agriculture, dairy and food commissioner, without charge, upon a suitable blank to be furnished by the commissioner of agriculture, dairy and food, a description of the name or mark so used by them or either of them and the use to be made of any such can, cask, barrel or other receptacle. The brand or mark so selected and adopted as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel

or other receptacle, or any part thereof. It shall be unlawful for any person, company or corporation to adopt or use any brand or mark, which has already been designated, appropriated or obtained under the provisions of this act. It shall be unlawful for any persons other than the rightful owner thereof, or his lawful agent, to use any can, cask, keg, barrel or other receptacle marked or branded as herein provided. Any person other than the owner, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as herein provided shall be deemed guilty of having violated the provisions of this law. Provided: Nothing in the section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle marked or branded as herein provided is being transported to and from the owner or his lawful agent. It shall be unlawful for any other person than the rightful owner, or his lawful agent, to deface or remove any such brand, mark or stamp put upon any such can, cask, keg, barrel or other receptacle as herein provided. (Act Apr. 25, 1931, c. 366, §2.)

The title of the act: "An act providing for the registration of brands on containers for dairy products; providing for the registration thereof; and providing penalties for violation thereof." may not be sufficient to cover the opening sentence of this section with respect to sanitation.

Department may require registration of dairy containers from other states found in milk plants in this state. Op. Atty. Gen., Oct. 2, 1933.

8335-3. Violations—penalties.—Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before a court having jurisdiction in such cases, shall be fined for each and every offense in the sum of not less than fifteen dollars nor

more than one hundred dollars. (Act Apr. 25, 1931, c. 366, §3.)

Where inspector of department of agriculture, dairy and food filed complaint under this act, fine imposed was properly remitted to county treasurer. Op. Atty. Gen., July 9, 1932.

8335-4. Commissioner of agriculture to enforce act.—The agriculture, dairy and food commissioner of the state is charged with the proper enforcement of all of the provisions of this act. (Act Apr. 25, 1931, c. 366, §4.)

8335-5. Effective June 1, 1931.—This act shall take effect and be in force from and after June 1, 1931. (Act Apr. 25, 1931, c. 366, §5.)

DECISIONS RELATING TO TRADE-MARKS AND TRADE-NAMES IN GENERAL

1. In general.

Evidence held to sustain holding that name "De Guile" was a trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

A trade-name is not strictly a trade-mark, but is generally governed as to its use and transfer by the same rules as a trade-mark. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

2. Unfair competition.

Evidence held not to show any unfair competition in use of trade-name. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

3. Sale and transfer.

The sale or transfer of the property and good will of an established and going business includes trade-names and trade-marks used in that business, unless the contrary is shown. Jarvaise Academy of Beauty Culture v. S., 183M507, 237NW183. See Dun. Dig. 9670.

In the absence of restrictive covenants, the vendor of an interest in a partnership business and good will may engage in a rival business and solicit trade by lawful and fair means, but may not privately solicit the customers of the former partnership. Gibbons v. H., 185M 290, 240NW901. See Dun. Dig. 4046.

Provision in partnership agreement between medical men not to engage in practice in limited territory for 5 years after withdrawal from partnership is valid. Shaleen v. S., 246NW744. See Dun. Dig. 4046, 8436.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

Overvold v. N., 186M359, 243NW439; notes under §8719.

1. Nature.

Judgment for an amount loaned for the purchase of a homestead upon husband's fraudulent promise to give a mortgage on the homestead after acquired, cannot be declared a lien on the homestead. 171M431, 214NW467.

There was a violation of a promise of future action rather than of an existing duty and so is not one for the imposition of a lien to enforce a trust ex maleficio. 171M431, 214NW467.

Use by brothers, joint tenants, of a farm for partnership farming did not destroy their homestead rights therein. 172M200, 214NW793.

The Fraudulent Conveyance Act (Chapter 415, Laws 1921) did not modify or repeal any part of the homestead law. 173M576, 218NW108.

5. No limitation on use.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185 M347, 241NW388. See Dun. Dig. 4207.

8. Debts due laborers or servants.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Constitutional provision does not create liability against the homestead of one who is not the master or employer of the laborer or servant although he has by some collateral contract with the employer made himself liable for the payment of the debt. 175M389, 221 NW534.

14. Alienation.

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. Kingery v. K., 185M467, 241NW583. See Dun. Dig. 4211(7).

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. Kingery v. K., 185M467, 241NW583. See Dun. Dig. 9037(12).

8339. Title may be in husband or wife—Equitable title exempt.

Kingery v. K., 185M467, 241NW583; note under §8340.

8340. No alienation without consent of spouse—Exceptions.

Use by joint tenants of a farm for partnership farming did not destroy homestead rights therein, where the wife of one of them refused to join in a conveyance of the farm to the partnership. 172M200, 214NW793.

On foreclosure mortgage covering a homestead, and land conveyed to a purchaser by the mortgagor's trustee in bankruptcy subject to existing liens, the judgment correctly directed the land sold by the trustee to be first subjected, and the homestead last. 172M529, 215 NW850.

Where the wife does not sign a contract to convey the homestead the contract is a nullity, but a broker may recover a commission from the husband, there being a presumption that he can perform his contracts. 179M 42, 228NW339.

Son advancing money to mother to pay in part mortgages on family homestead upon which mother and father resided was not entitled to subrogation to rights of mortgagees or to any lien upon the homestead, though mother orally promised to give mortgage. Kingery v. K., 185M467, 241NW583. See Dun. Dig. 9037(12).

An oral agreement made by one spouse, while both are living, to give a mortgage on the family homestead, is not merely voidable, but is wholly void under our homestead laws. Kingery v. K., 185M467, 241NW583. See Dun. Dig. 4211(7).

8342. Sale or removal permitted.

1. Sale and removal.

Finding against abandonment of homestead held sustained by the evidence. 172M200, 214NW793.

2. Notice of claim—Abandonment.

No "abandonment" of wife's homestead results from fact that husband makes a lease thereof to third party, not joined in or authorized by wife. 173M576, 218NW108.

There is no "abandonment" of a homestead until the owner removes therefrom and ceases to occupy the same as his home, intention to remove therefrom at some future time not being sufficient. 173M576, 218NW 108.