

GENERAL STATUTES ³⁶
OF THE
STATE OF MINNESOTA

IN FORCE

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COMPLETE IN TWO VOLUMES.

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 43.

USES AND TRUSTS.

See *Randall v. Constans*, 33 Minn. 329, 23 N. W. Rep. 530; *Moffatt v. Tuttle*, 35 Minn. 301, 28 N. W. Rep. 509. As to word "trustee" see 100 U. S. 55.

§ 5. Unauthorized trusts—Trustee takes no interest.

See *Arnold v. Wainwright*, 6 Minn. 358, (Gil. 241;); *Farmers' Nat. Bank v. Moran*, 30 Minn. 165, 167, 14 N. W. Rep. 805.

§ 6. Limitation of preceding sections.

Cited *Sherwood v. St. Paul, etc., Ry. Co.*, 21 Minn. 127, 130.

As to a resulting trust in land bought by an agent with the principal's money, title being taken in the name of the agent, see *Kraemer v. Deustermann*, 35 N. W. Rep. 276.

§ 7. Resulting trusts.

The resulting trust, which, where the statute does not apply, arises upon the purchase by one of land, with the money of another, in favor of the one whose money pays for the land, may be rebutted. *Irvine v. Marshall*, 7 Minn. 236, (Gil. 216.)

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 Minn. 309, (Gil. 272.) In such a case, the fact that the party paying the consideration occupied the premises as a homestead for himself and family does not rebut the presumption of fraud which the statute raises in favor of his creditors. *Id.*

Plaintiff settled upon and improved government lands, and agreed, by parol with defendant, that the latter might enter it in his own name, at the land-office, and pay for it, and convey it to plaintiff, when he should repay the purchase price. Held, that no trust arose upon this transaction in favor of plaintiff, whether the land was paid for with his money or defendant's. *Wentworth v. Wentworth*, 2 Minn. 277, (Gil. 238.) Explained, *Evans v. Folsom*, 5 Minn. 435, (Gil. 355.)

F. conveyed real estate to the wife of M. M., paid part of the consideration, and gave his note for the remainder. The note was transferred to plaintiff. Held, plaintiff has not vendor's lien. *Massey v. Gorton*, 12 Minn. 145, (Gil. 83.)

Section cited, *Hersey v. Bennett*, 28 Minn. 86, 9 N. W. Rep. 590; *First Nat. Bank v. Kidd*, 20 Minn. 241, (Gil. 216;); *Gill v. Newell*, 13 Minn. 462, (Gil. 430;); *Evans v. Folsom*, 5 Minn. 434, (Gil. 354.) Applied, *Johnson v. Johnson*, 16 Minn. 512, (Gil. 462;); *Holmes v. Campbell*, 10 Minn. 401, (Gil. 320;); *Reich v. Reich*, 26 Minn. 97, 1 N. W. Rep. 804; *Moffatt v. Tuttle*, 35 Minn. 301, 302, 28 N. W. Rep. 509; *King v. Remington*, 36 Minn. 15, 35, 29 N. W. Rep. 352.

See *Orwig v. Merrill*, (Iowa.) 27 N. W. Rep. 796; *Donovan v. Dwyer*, (Mich.) 24 N. W. Rep. 857, 28 N. W. Rep. 843; *Harris v. McIntyre*, (Ill.) 8 N. E. Rep. 182; *McGivney v. McGivney*, (Mass.) 7 N. E. Rep. 721; *Conlan v. Grace*, 36 Minn. 276, 30 N. W. Rep. 880.

§ 8. Conveyances fraudulent as to creditors.

This chapter applies to real property only; hence, where one party purchases personal property with the funds of another, taking the title in his own name, a trust will result in favor of the party furnishing the consideration for such purchase. *Baker v. Terrell*, 8 Minn. 195, (Gil. 165.)

Where the consideration is paid by A., and the land conveyed to B., the court can declare the transaction fraudulent as to the creditors of A. only, if there is no evidence from which the jury can find the fraudulent intent disproved. *Foster v. Berkey*, 8 Minn. 351, (Gil. 310.)

Where a person purchased and paid for lands under a verbal agreement for their conveyance, and subsequently and before conveyance was made, for a valuable consideration, sold his interest to a third person, to whom, by his direction, a conveyance was made, held, that such conveyance was not presumptively fraudulent, nor did a trust result in favor of the creditors of the original purchaser, under this section. *Durfee v. Pavitt*, 14 Minn. 424, (Gil. 319.) A resulting trust under this section, in favor of the creditors of one paying the consideration for land, the title to which is taken in the name of a third person, can only arise upon some deed or conveyance. *Id.*

A. verbally agreed with H. to convey to him certain real estate, and H. paid the consideration. Subsequently H., in writing, directed A. to convey to whomsoever B. should

§ 26. Removal of trustee.

Any person interested in the execution of an express trust to sell property and pay debts may bring an action on behalf of himself and the others interested as he is, to enforce execution of the trust, or remove the trustee. *Goncellier v. Foret*, 4 Minn. 13, (Gil. 1.) A simple contract creditor may bring such an action. *Id.* Where, in such a case, the debts were \$3,500, and the property sufficient to pay them, a creditor, whose claim is less than \$100, may bring the action in behalf of himself and the others in the district court. *Id.*

And see *Clark v. Stanton*, 24 Minn. 244.

§ 27. District court—Powers.

This power of removal and new appointment may be exercised whenever it becomes necessary, in order "to insure a faithful performance of the trust and a speedy close of the same by final decree of settlement and distribution." *Clark v. Stanton*, 24 Minn. 244.

CHAPTER 45.

ESTATES IN REAL PROPERTY.***§ 12. Reversions defined.**

See *King v. Remington*, 36 Minn. 15, 33, 29 N. W. Rep. 352.

§ 13. Future estates—Vested or contingent.

Cited, *In re Oertle*, 34 Minn. 177, 24 N. W. Rep. 924.

§ 14. Suspension of power of alienation.

See *Simpson v. Cook*, 24 Minn. 180, 183.

§ 15. Power of alienation—Suspension.

The absolute power of alienation of real estate may be suspended during the minority of the grantee, indicated in the instrument creating the suspension, and in such case the suspension will cease with his death before coming to majority. *Simpson v. Cook*, 24 Minn. 180.

§ 33. Expectant estates—Defeat.

Cited, *In re Oertle*, 34 Minn. 177, 24 N. W. Rep. 924.

CHAPTER 46.

TITLE TO REAL PROPERTY BY DESCENT.**§ 2. Homestead.**

The surviving husband or wife shall also be entitled to hold for the term of his or her natural life, free from any testamentary or other disposition thereof, to which such survivor shall not have assented in writing, and free from all claims on account of the debts of the deceased, the homestead of such de-

* For restrictions upon the power of aliens and corporations to own real property, see *post*, c. 75, § 41a, etc.