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THE

# GENERAL STATUTES

OF THE

## STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL  
REPORTER SYSTEM

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COMPLETE IN TWO VOLUMES

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### VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,  
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE  
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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Ch. 43]

USES AND TRUSTS.

§§ 4274-4279

CHAPTER 43. Chap. 43 88-M . 323

USES AND TRUSTS.

§ 4274. Uses and trusts abolished, except, etc.

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Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute.

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68-M 262  
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(G. S. 1866, c. 43, § 1; G. S. 1878, c. 43, § 1.)

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.

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§ 4275. Executed uses confirmed.

Every estate which is now held as a use executed under laws, as they formerly existed, is confirmed as a legal estate.

(G. S. 1866, c. 43, § 2; G. S. 1878, c. 43, § 2.)

§ 4276. Who deemed to have legal estate in lands.

Every person who, by virtue of any grant, assignment or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

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(G. S. 1866, c. 43, § 3; G. S. 1878, c. 43, § 3.)

As to "passive" trusts, see *East Norway Lake Church v. Froislie*, 37 Minn. 447, 453, 35 N. W. Rep. 260; *Whiting v. Whiting*, 43 Minn. 543, 550, 44 N. W. Rep. 1030; *Thompson v. Conant*, 52 Minn. 208, 53 N. W. Rep. 1145.

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§ 4277. Limitation of preceding section.

The preceding section shall not divest the estate of any trustees in any existing trust where the title of such trustees is not merely nominal, but is connected with some power of actual disposition, or management, in relation to the lands which are the subject of the trust.

(G. S. 1866, c. 43, § 4; G. S. 1878, c. 43, § 4.)

§ 4278. Trustees take no interest, except, etc.

Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other to the use of or in trust for such person; and if made to one or more persons in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

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(G. S. 1866, c. 43, § 5; G. S. 1878, c. 43, § 5.)

See *Arnold v. Wainwright*, 6 Minn. 358, (Gil. 241); *Farmers' Nat. Bank v. Moran*, 30 Minn. 165, 167, 14 N. W. Rep. 805; *Thompson v. Conant*, 52 Minn. 208, 53 N. W. Rep. 1145.

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§ 4279. Limitation of preceding sections.

The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law; nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

(G. S. 1866, c. 43, § 6; G. S. 1878, c. 43, § 6.)

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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*, 37 Minn. 469, 35 N. W. Rep. 276.

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**§ 4280. Grant to one for money paid by another.**

When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use or trust shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

(G. S. 1866, c. 43, § 7; G. S. 1878, c. 43, § 7.)

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. 286, (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*, 3 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.)

Where land is conveyed to one on a consideration paid by another, no trust can arise in favor of any one not a creditor of the person paying, unless the conveyance is made to the grantee without the consent of the person paying the money. *Petzold v. Petzold*, 53 Minn. 39, 54 N. W. Rep. 933.

Where the consideration is paid by one, and an absolute deed taken in the name of another, a trust cannot be created by parol for the benefit of a third person. The only exceptions to § 4280 are those contained in §§ 4281, 4282. *Connelly v. Sheridan*, 41 Minn. 18, 42 N. W. Rep. 595.

A parol agreement at the time of the conveyance that the grantee shall hold the property for the grantor until sold, and pay the proceeds to him, is void, and the land and proceeds belong to the grantee. *Wolford v. Farnham*, 44 Minn. 159, 46 N. W. Rep. 295.

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; *Frost v. Steele*, 46 Minn. 1, 43 N. W. Rep. 413; *Mercantile Nat. Bank v. Parsons*, 54 Minn. 56, 55 N. W. Rep. 825, 826.

**§ 4281. Such conveyance fraudulent—Trust for creditors.**

Every such conveyance shall be presumed fraudulent as against the creditors, at that time, of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

(G. S. 1866, c. 43, § 8; G. S. 1878, c. 43, § 8.)

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. Berkeley*, 3 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

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77-NW 793  
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75-M - 153  
79-NW1016  
84-NW 112  
4280 91-M . 45

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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 direct. B. sold the real estate, for a valuable consideration, to P., and A. conveyed to the latter. Held, no trust resulted in favor of the creditors of H., under this section. *Durfee v. Pavitt*, 14 Minn. 424, (Gil. 319.)

When a conveyance to a wife, on a consideration paid by the husband, will be upheld as against the latter's creditors, see *Reich v. Reich*, 26 Minn. 97, 1 N. W. Rep. 804. When such a conveyance will not be upheld, see *Rogers v. McCauley*, 22 Minn. 384; *Matthews v. Torinus*, *id.* 132.

A creditor who seeks to subject to his claim real estate paid for by the debtor, but conveyed to another, must have been a creditor at the time of the conveyance. *Stone v. Myers*, 9 Minn. 303, (Gil. 287.)

Creditors cannot, till they recover judgment, maintain an action to avoid a conveyance by their debtor of real estate fraudulent as to creditors. *Massey v. Gorton*, 12 Minn. 145, (Gil. 83.)

To entitle the creditor to enforce such trust, where a grant, for a valuable consideration, is made to one person, and the consideration therefor is paid by the judgment debtor, he must first have exhausted his remedies at law. *Moffatt v. Tuttle*, 35 Minn. 301, 28 N. W. Rep. 509.

An action to enforce a resulting trust for creditors may be brought by an assignee or receiver in insolvency, though none of the claims are in judgment. *Chamberlain v. O'Brien*, 46 Minn. 80, 43 N. W. Rep. 447.

See *Sawyer v. Harrison*, 43 Minn. 297, 45 N. W. Rep. 434.

As to the right of a foreign receiver to sue. *Comstock v. Frederickson*, 51 Minn. 350, 53 N. W. Rep. 713.

A trustee for creditors under this section who, being cognizant of the fraud, conveys the property to an innocent purchaser, may be sued by the assignee or receiver for the value thereof. *Chamberlain v. O'Brien*, *supra*.

A creditor may enforce a resulting trust against land purchased by a nonresident debtor, who has fraudulently procured it to be conveyed to another, and who has no other property within the state, without first procuring and seeking to enforce a personal judgment. *Overmire v. Haworth*, 48 Minn. 372, 51 N. W. Rep. 121.

See *Scanlan v. Murphy*, 51 Minn. 536, 53 N. W. Rep. 799.

In an action to enforce a resulting trust in favor of creditors, arising under this section, the judgment debtor is a proper but not a necessary party defendant; and where a wife, in such case, is sought to be charged as trustee, her husband need not be made a party because of his contingent interest in her real property, growing out of the marital relation. *Leonard v. Green*, 34 Minn. 137, 24 N. W. Rep. 915. The case of the plaintiff in such suit is not prejudiced by the fact that it is alleged and shown that the transfer of the real property in question was made with the intent to defraud creditors. *Id.*

On the issue of fraudulent intent, it is competent to show that the party paying the consideration believed the money to be that of the grantee. *Wolford v. Farnham*, 44 Minn. 159, 46 N. W. Rep. 295.

The burden of disproving a fraudulent intent is on the grantee. *Id.*

The insolvency of the person making the payment is a mere item of evidence on the question of fraudulent intent. *Wolford v. Farnham*, 47 Minn. 95, 49 N. W. Rep. 523.

See, also, *Walkov v. Kingsley*, 45 Minn. 283, 47 N. W. Rep. 807.

The burden of showing that the consideration was paid by the debtor is on the plaintiff. *Frost v. Steele*, 46 Minn. 1, 48 N. W. Rep. 413.

This section does not apply to the case of a debtor spending his means in permanent improvements on the land of another. *Id.*

The purchase of a homestead in his wife's name by a debtor does not justify a finding of a fraudulent intent in disposing of his property, so as to enable creditors in insolvency proceedings to receive dividends without filing releases. *In re Welch*, 43 Minn. 7, 44 N. W. Rep. 667.

A trust does not arise where the consideration is paid solely with intent to discharge an existing moral obligation. *Wolford v. Farnham*, 47 Minn. 95, 49 N. W. Rep. 523.

Where the debtor exchanged land, part of which was exempt, and which was subject to incumbrances in excess of the value of the nonexempt part, and the purchaser conveyed to the debtor's wife, and assumed the incumbrances, held, that the presumption of fraudulent intent was disproved. *Blake v. Boisjoll*, 51 Minn. 296, 53 N. W. Rep. 637.

Section cited, *Clark v. Stanton*, 24 Minn. 244; *Gill v. Newell*, 13 Minn. 469, (Gil. 434.); *North v. Bradway*, 9 Minn. 189, (Gil. 175.) See *Hersey v. Bennett*, 28 Minn. 86, 9 N. W. Rep. 590.

## § 4282. Limitation of section seven.

The preceding seventh section shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance, in his own name, without the knowledge, or consent, of the person paying the

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consideration; or when such alienee, in violation of some trust, has purchased the lands so conveyed, with moneys belonging to another person.

(G. S. 1866, c. 43, § 9; G. S. 1878, c. 43, § 9.)

A resulting trust arises in favor of an infant whose guardian has bought land in his own name, using the ward's funds in part payment. *Bitzer v. Bobo*, 39 Minn. 13, 33 N. W. Rep. 609.

Cited, *First Nat. Bank v. Kidd*, 20 Minn. 241, (Gil. 216.) See, also, *Evans v. Folsom*, 5 Minn. 434, (Gil. 355.) See *Kraemer v. Deustermann*, 37 Minn. 469, 35 N. W. Rep. 276; *Randall v. Constans*, 33 Minn. 329, 336, 23 N. W. Rep. 530; *Connelly v. Sheridan*, 41 Minn. 18, 42 N. W. Rep. 595.

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§ 4283. **Bona fide purchasers protected.**

No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

(G. S. 1866, c. 43, § 10; G. S. 1878, c. 43, § 10.)

A lien creditor, redeeming from a mortgage sale, is a purchaser for a valuable consideration, so as to be protected from a resulting trust, of which he had no notice. *Martin v. Baldwin*, 30 Minn. 537, 16 N. W. Rep. 449.

Where conveyances of land to a firm make no reference to the land being partnership stock, but vest the title in the several members as tenants in common, the trust which arises between the partners cannot be enforced against a *bona fide* purchaser or mortgagee without notice, but will be enforced against a purchaser or mortgagee from one partner, or his representative, who has notice, actual or constructive, that the land is partnership property. *Arnold v. Wainwright*, 6 Minn. 374, (Gil. 259.)

The vendor's equitable lien for the purchase price of real estate will not follow the land after it is sold to a *bona fide* purchaser without notice. *Selby v. Stanley*, 4 Minn. 65, (Gil. 34.)

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§ 4284. **Purposes for which express trusts may be created**  
—Duration.

Express trusts may be created for any, or either, of the following purposes:

First. To sell lands for the benefit of creditors.

Second. To sell, mortgage or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.

Third. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in chapter forty-five.

Fourth. To receive the rents and profits of lands, and to accumulate the same, for either of the purposes, and within the limits, prescribed in chapter forty-five.

Fifth. To receive and take charge of any money, stocks, bonds, or valuable chattels of any kind, and to invest and loan the same for the benefit of the beneficiaries of such express trust; and the district courts of the state shall, on petition and hearing, have power to appoint a trustee for the purpose herein set forth, requiring such trustee to give such bond for the faithful execution of such express trust as to the court may seem right and proper; and express trusts, created under the provisions of this clause, shall be administered under the direction of the court.

Sixth. Any incorporated city or village in the state of Minnesota now or hereafter organized is authorized to receive by gift, grant, devise or bequest and take charge of any money, stocks, bonds, personal, real or mixed estates, choses in action and property of any kind whatever, and to invest, reinvest and loan the same for the benefit of any public library association in such city or village and any public cemetery association located within ten miles of the corporate limits of any such city or village free from taxation, and administer the same in accordance with the will of the testator or the grant of the grantor of the estate. The district court of the state of Minnesota shall have the power in respect to such trust, estate and trustees as are conferred on the said court by this chapter in respect to other trusts.

Provided, however, that nothing in this chapter or in any law of this state contained shall be construed as preventing the creation of any trust in writing, to endure for a period not longer than the life or lives of specified persons in being at the time of its creation, and for twenty-one years after the death of the survivor of such persons; such writing to fully set forth the

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nature and terms of the trust; but all such trusts are hereby authorized and allowed; provided further, that any and all trusts which do not permit the free alienation of the legal estate by the trustee, so that, when so alienated, it shall be discharged from all trusts, shall be deemed and construed as heretofore and shall not be authorized by the provisions of this act.

(G. S. 1866, c. 43, § 11, as amended 1875, c. 53, § 1; G. S. 1878, c. 43, § 11; 1893, c. 84, § 1; Id. c. 83, § 1.)

By § 2, c. 83, Laws 1893, all inconsistent acts are repealed.

A mortgage of real property to trustees to pay debts from or assumed by the mortgagor, upon sufficient consideration, is a valid trust. *Moulton v. Haskell*, 50 Minn. 367, 52 N. W. Rep. 960.

Where the words of a trust are to permit and suffer another to take the rents, or to occupy lands, the use is executed in the party, the purposes of the trust not requiring that the legal estate should be in the trustees; otherwise, where the trustees are directed to collect and receive rents and apply them to the use of another. *Farmers' Nat. Bank v. Moran*, 30 Minn. 167, 14 N. W. Rep. 805.

Section cited, *Langdon v. Thompson*, 25 Minn. 511; *Greenleaf v. Edes*, 2 Minn. 274 (Gil. 235); *Atwater v. Russell*, 49 Minn. 57, 51 N. W. Rep. 629, 630, and 52 N. W. Rep. 26; *Carson v. Cochran*, 52 Minn. 67, 53 N. W. Rep. 1130, 1131.

#### § 4285. Devise of lands creates a mere power, when.

A devise of lands to executors or other trustees, to be sold or mortgaged, when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

(G. S. 1866, c. 43, § 12; G. S. 1878, c. 43, § 12.)

#### § 4286. Profits of lands held in trust, liable to creditors, when.

When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that is necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

(G. S. 1866, c. 43, § 13; G. S. 1878, c. 43, § 13.)

#### § 4287. Express trust to be power in trust, when.

When an express trust is created for any purpose not enumerated in the preceding sections of this chapter, no estate shall vest in the trustee; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

(G. S. 1866, c. 43, § 14; G. S. 1878, c. 43, § 14.)

Where an absolute deed is made to a grantee, with the intention of establishing a trust, and, as a part of the transaction, an agreement or declaration of trust is duly executed by the parties in interest, such deed and agreement may be construed together as establishing the trust; and where the trust is one not enumerated in this chapter, and the performance of some act is authorized which may be lawfully performed under a power, it may, under this section, be upheld as a power in trust. *Randall v. Coustans*, 33 Minn. 329, 23 N. W. Rep. 530.

See *Carson v. Cochran*, 52 Minn. 67, 53 N. W. Rep. 1130.

#### § 4288. Title to such land shall descend, how.

In every case where the trust is valid as a power, the land to which the trust relates shall remain in, or descend to, the persons otherwise entitled, subject to the execution of the trust as a power.

(G. S. 1866, c. 43, § 15; G. S. 1878, c. 43, § 15.)

#### § 4289. Trustees of express trust to possess whole estate.

Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit

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the trust was created shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

(G. S. 1866, c. 43, § 16; G. S. 1878, c. 43, § 16.)

See *Langdon v. Thompson*, 25 Minn. 509, 511.

§ 4290. **Limitation of preceding section.**

The preceding section shall not prevent any person creating a trust from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust; nor shall it prevent him from granting or devising such lands, subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons, except the trustees and those lawfully claiming under them.

(G. S. 1866, c. 43, § 17; G. S. 1878, c. 43, § 17.)

§ 4291. **Interest not disposed of.**

When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, as a legal estate.

(G. S. 1866, c. 43, § 18; G. S. 1878, c. 43, § 18.)

§ 4292. **Trust interests, when assignable.**

No person beneficially interested in a trust for the receipt of rents and profits of the lands can assign, or in any manner dispose of, such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created are assignable.

(G. S. 1866, c. 43, § 19; G. S. 1878, c. 43, § 19.)

See *In re Tower's Estate*, 49 Minn. 371, 52 N. W. Rep. 27, 30.

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71-NW 622

§ 4293. **Effect of omitting trust in conveyance.**

When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

(G. S. 1866, c. 43, § 20; G. S. 1878, c. 43, § 20.)

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§ 4294. **Sales by trustees void, when.**

When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees, in contravention of the trust, shall be absolutely void.

(G. S. 1866, c. 43, § 21; G. S. 1878, c. 43, § 21.)

§ 4295. **Misconduct of trustees not to affect other persons.**

No person who actually and in good faith makes any payment to a trustee, which the trustee as such is authorized to receive, shall be responsible for the proper application thereof, according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

(G. S. 1866, c. 43, § 22; G. S. 1878, c. 43, § 22.)

§ 4296. **When estate of trustee ceases.**

When the purposes for which an express trust is created cease, the estate of the trustee shall also cease.

(G. S. 1866, c. 43, § 23; G. S. 1878, c. 43, § 23.)

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74-NW 153

§ 4297. **Death of trustee—Trust, how executed.**

Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the district court, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

(G. S. 1866, c. 43, § 24; G. S. 1878, c. 43, § 24.)

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**§ 4298. Resignation of trustee.**

Upon the petition of any trustee of an express trust, the district court may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the person interested in the execution of the trust require.

(G. S. 1866, c. 43, § 25; G. S. 1878, c. 43, § 25.)

**§ 4299. Removal of trustee.**

Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the district court may remove any trustee who has violated or threatened to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who, for any other cause, is deemed an unsuitable person to execute the trust.

(G. S. 1866, c. 43, § 26; G. S. 1878, c. 43, § 26.)

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. *Goncelier 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 to the district court. *Id.*

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

**§ 4300. Powers of district court.**

The district court has full powers to appoint a new trustee in the place of a trustee deceased, released or removed; and when, in consequence of death, resignation or removal, there is no acting trustee, the court in its discretion may appoint new trustees or cause the trust to be executed by one of its officers under its direction, and it may also, where a trust has in good faith been assumed to be executed by a person other than the trustee originally named, or appointed by a court of this state, ratify, adopt and confirm any or all the acts of such person so acting as trustee in the execution of such trust.

(G. S. 1866, c. 43, § 27; G. S. 1878, c. 43, § 27; as amended 1889, c. 82, § 1.)

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.