

1938 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 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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CHAPTER 56C

Newspapers

7352-11. Newspapers to register statement of ownership—exceptions.—Every newspaper printed or published within the State of Minnesota excepting legally qualified newspapers shall register in the office of the register of deeds, a statement of the owners, printers and publishers of said paper, and the residence of each, and if the same shall be published by a corporation, the names and residences of the president, secretary and editors thereof. (Act Apr. 21, 1931, c. 293, §1.)

School publications must file their statement of ownership, etc. Op. Atty. Gen., Feb. 8, 1934.

7352-12. Register of deeds to provide book.—The register shall provide a suitable book in which to register the names as herein provided and shall charge therefor a fee of fifty cents. (Act Apr. 21, 1931, c. 293, §2.)

7352-13. Shall not publish paper unless registered.—No newspaper excepting a legally qualified newspaper shall be printed or published within the State of Minnesota without the names of the owners, publishers and editors thereof stated and set forth in said newspaper. (Act Apr. 21, 1931, c. 293, §3.)

Fact that owner of newspaper merely described himself as "publisher and editor" was a technical rather than material violation of statute. Fryberger v. A., 194M443, 260NW625.

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 57A

Partnership

PART I

PRELIMINARY PROVISIONS

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, 248NW 752. See Dun. Dig. 7346.

Contract between manager and prize fighter held one of joint enterprise or adventure and not one of employment. Saftro 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.

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.

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.

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.

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, 254NW 602. 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.

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, 251NW 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 incur 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.

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.

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.

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.*, 273 NW816. 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*, 198M65, 268NW858. See Dun. Dig. 1998.

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