

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.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

the filing of any account, for the settlement and allowance thereof. Upon the filing of such petition the court shall make an order fixing a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of such trust. Notice of such hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least 20 days before the date of such hearing, and by mailing a copy thereof to each party in interest then in being, at his last known address, at least 10 days before the date of such hearing or in such other manner as the court shall order and if such court shall deem further notice necessary it shall be given in such manner as may be specified in such order. Upon such hearing the court shall make such order as it deems appropriate, which order shall be final and conclusive as to all matters thereby determined, and shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from such order within 30 days from the entry thereof, by filing notice of appeal with the clerk of district court, who shall mail a copy of such notice to each adverse party who has appeared of record. (Act Apr. 15, 1933, c. 259, §3.)

While testamentary trustees are under direction of court, they are not officers of court. *McLaughlin v. M.*, 192M203, 255NW839. See Dun. Dig. 9927.

Where discretion is conferred upon testamentary trustee in respect of exercising of a power, exercise thereof is not subject to control by court, except to prevent abuse by trustee of his discretion. *Ordean's Will*, 195M120, 261NW706. See Dun. Dig. 9927a.

Only a trustee whose appointment has been confirmed under §8100-11 can petition under this section, and in absence of such confirmation an order pursuant to petition for allowance of final account and discharge from duties as trustees is not included in provisions of section, and a respondent cannot avail himself of 30 day limitation provided for appeal. *Malcolmson v. G.*, 199M258, 272NW157. See Dun. Dig. 9945.

Court has no power to allow or to instruct corporate trustee to invest in corporate stock, unless will so provides. *First Minneapolis Trust Co.*, 202M187, 277NW899. See Dun. Dig. 9927a.

Courts will instruct corporate trustees to invest in manner prescribed by statute. *Id.*

A corporate trustee may invest in corporate stocks where such investment is authorized by terms of trust. *First National Bank & Trust Co.*, 202M206, 277NW909. See Dun. Dig. 9931.

Trustees are entitled out of trust estate to expenses incurred in legal proceedings relating to administration of trust. *Butler v. B.*, 203M555, 282NW462. See Dun. Dig. 9944.

8100-14. Guardian may be appointed.—If any person upon whom the court has ordered that personal service be made is a minor or otherwise incompetent to act in his own behalf and has no general guardian within the state, or if any party in interest is unascertained or not in being, or unknown to the trustee or outside the State of Minnesota, the court itself shall be deemed to represent such person or persons, but may, upon the application of the trustee or any other person interested therein, appoint a guardian ad litem for any such minor or incompetent person. (Act Apr. 15, 1933, c. 259, §4.)

8100-15. Application.—This Act shall not apply to trusts in the nature of mortgages or to trusts commonly known as voting trusts. The word "person" as used herein shall refer to an artificial as well as to a natural person. (Act Apr. 15, 1933, c. 259, §5.)

In action by holder of trust certificates against trustee for conversion because it foreclosed and bid in trust property without plaintiff's knowledge or consent thereby releasing guarantors, plaintiff is not entitled to recover where guarantors were insolvent at time their obligation matured. *Sneve v. F.*, 195M700, 261NW700. See Dun. Dig. 6145 (10).

8100-16. Not to limit jurisdiction of court.—Nothing in this Act contained shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees. (Act Apr. 15, 1933, c. 259, §6.)

8101. Effect of misconduct of trustees.

Trustee held to have power to exchange property for other properties and cash. *Warner Hardware Co. v. S.*, 186M229, 242NW718. See Dun. Dig. 9936.

8103. Death of trustee—Trust, how executed.

While district court may become temporary repository of title in case of a vacancy arising in a testamentary trusteeship, there can arise no liability of the court or its judges under covenants of a lease which happened to be part of the trust property. *McLaughlin v. M.*, 192M203, 255NW839. See Dun. Dig. 9928.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. *Melgaard's Will*, 200M493, 274NW641. See Dun. Dig. 9893.

8106. Powers of court.

District court may appoint a new trustee in place of a municipality which has no authority to administer testamentary trust. *Op. Atty. Gen.* (59a-40), Aug. 3, 1938.

CHAPTER 61

Powers

8107. Powers abolished, except, etc.

An agent owes the utmost fidelity to his principal. *Nat'l. Pole & Treating Co. v. G.*, 182M21, 233NW810. See Dun. Dig. 152.

Actual authority of sales agent to receive payment for merchandise may be implied from circumstances. *Nat'l. Radiator Corp. v. S.*, 182M342, 234NW648. See Dun. Dig. 161(43).

In action by a salesman to recover a commission, evidence held sufficient to sustain verdict for plaintiff. *Sigvertsen v. M.*, 182M387, 234NW688. See Dun. Dig. 5812.

8112. Special power defined.

Termination and release of powers of appointment. 20MinnLawRev448.

8115. Particular estate with power of disposition.

Will held to give an absolute beneficial power of alienation, and life estate was changed into a fee absolute as respected the right of a mortgagee or purchaser, but subject to the future estate of children. 172M48, 215NW196.

Testator's wife not having power to dispose of property at time judgment creditor made levy and execution upon her interest therein nor at time he commenced pro-

ceedings in probate court, §§8115-8117, 8119, relating to powers, has no application to convert such power into a fee available to creditors. *Stucky v. B.*, 198M445, 270NW141. See Dun. Dig. 10288.

8116. Power of disposition creates fee—when.
Life estate with absolute power of disposal. 18MinnLawRev488.

8119. What powers of disposition absolute.
172M48, 215NW196; note under §8115.

8128. General power, when in trust.
Obligation of holder of general power in trust not to use it for his own benefit. 23MinnLawRev390.

8142. When power is irrevocable.
Power to revoke a trust without express provision therefor. 17MinnLawRev231.

8165. Power of sale in mortgage deemed part of security.

A mortgage of land is no longer a conveyance, but creates only a mere lien or security. *Hatlestad v. M.*, 197M640, 268NW665. See Dun. Dig. 6145.