

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.



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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.

In proceeding to alter registration certificate of a subsequent purchaser of land over which right of way passed, court was not authorized to alter it further than describing right of way in exact language used in deed conveying it. *Minnetonka State Bank v. M.*, 189M 560, 250NW561. See Dun. Dig. 8361a.

In special proceeding to alter a certificate of registration of title to land, injunction against trespassing on land involved in certificate is improper. *Id.*

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.

City held not liable to damages resulting from registration of title by reason of fact that part of sewer system was maintained under such land. *Op. Atty. Gen.* (37b-11), Sept. 6, 1934.

CHAPTER 65A

Registration of Certain Trade-Names

8330. Record of name, mark, etc.—Duty of secretary of state—Certificate.—Any person engaged in or any corporation or association whose members are engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages, milk, cream, ice cream or butter in any kind of receptacle having the name of such person, corporation or association, or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the secretary of state for record a description of the name, mark or device so used and cause such description to be printed once in each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person, corporation or association is located, or if the principal place of business of such person, corporation or association is located in another state, then in the county wherein the principal office or depot within the state of Minnesota is located. It shall be the duty of the secretary of state to issue to the person, corporation or association so filing for record a description of such name, mark, or device in his office a duly attested certificate of the record of the same for which he shall receive a fee of one dollar. Such certificate in all prosecutions under this act shall be prima facie evidence of the adoption of such name, mark or device, and of the right of the person, corporation or association named therein to adopt and use the same. (As amended Mar. 31, 1939, c. 118.)

Words "Stearns County No. 13" and "Minnesota Thirteen" are not in conflict. *Op. Atty. Gen.*, Mar. 20, 1934.

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

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.

Fines collected for violation of this act should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

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.)

**COMMON LAW
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.

Unfair competition—radio broadcast of dispatches taken from newspapers. 19MinnLawRev322.

Extension of doctrine of unfair competition in broadcasting of sporting events. 23MinnLawRev395.

False and misleading advertising as unfair competition. 22MinnLawRev522.

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., 185M290, 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., 188M290, 246NW744. See Dun. Dig. 4046, 8436.

On sale of good will of a business establishment limitation as to both time and place is unnecessary, if agreement in other respects is reasonable, and not in conflict with public policy or general welfare. Peterson v. J., 204M300, 283NW561. See Dun. Dig. 4046, 8436.

Covenant not to compete in business entered into for mutual business advantages of parties thereto adds to good will of business and may be transferred with it and as a part thereof. Id. See Dun. Dig. 4046, 8436.

Where an established business has been sold with its good will and there is a valid covenant not to compete in certain territory, breach is regarded as controlling factor and injunctive relief follows almost as a matter of course. Id. See Dun. Dig. 4046, 8436.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

Overvoid 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.

A summer cottage, fully furnished for housekeeping and living and having heating and kitchen coal stoves so that it may be lived in during winter, may be claimed and held as a homestead. Gussman v. R., 190M153, 251NW18. See Dun. Dig. 4207.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. Rusch v. L., 194M469, 261NW186. See Dun. Dig. 4196.

That one of cotenants claims a homestead exemption in his undivided interest does not prevent a partition sale of property which cannot be divided without great prejudice to owners. Smith v. W., 195M589, 263NW903. See Dun. Dig. 4201.

"Homestead" in tax classification statute means abode of owner without limit as to acreage or lots. Op. Atty. Gen., Nov. 7, 1933. Opinion of Oct. 18, 1933, is withdrawn.

Personal property tax judgment is not a lien against judgment debtor's statutory homestead. Op. Atty. Gen. (421a-9), Sept. 14, 1934.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. Op. Atty. Gen. (521-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. Op. Atty. Gen. (521g), Apr. 16, 1936.

Homestead of old age assistance recipient is exempt after his death, though he leaves only adult children. Op. Atty. Gen. (521p-3), July 28, 1938.

3. Actual occupancy as home essential.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

5. No limitation on use.

Illegal use and occupancy of a homestead does not render it subject to sale on execution. Ryan v. C., 185M347, 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, 221NW534.

"Any debt incurred to any laborer or servant for labor or service performed," does not include a claim by an automobile salesman for unpaid wages and commissions earned while an employee of the homestead owner. Fletcher v. S., 201M609, 277NW270. See Dun. Dig. 4209.

12. Mortgage foreclosures.

Where former owners of a homestead remain in possession thereof after their title has been divested by the foreclosure of a mortgage thereon, and, while so in possession, the holder of the title conveys to the wife of one of such persons upon the promise of such wife and husband to execute a mortgage for the balance of the purchase price, equity will enforce performance of such promise by decreeing a vendor's lien for such balance superior to any homestead right in the land. Hecht v. A., 204M432, 283NW753. See Dun. Dig. 4205.

13. Selection by bankruptcy court.

Lien of a judgment procured less than four months preceding filing of petition in bankruptcy is annulled thereby, even as to homestead set aside as exempt. Landy v. M., 193M252, 258NW573. See Dun. Dig. 741.

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