

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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CHAPTER 56B

Trade and Other Names

7346. Commercial business—Trade and individual names; etc.

Use by others of name and mark "Aquatenial" of Minneapolis aquatennial association, forbidden. Laws 1941, c. 202.

In action by personal loan company against Personal Finance Company to protect a trade name, it was an abuse of discretion to deny plaintiff's motion for a temporary injunction pending suit, where it was shown clearly that because of defendant's name, window and neon signs, and advertising of its business, mail and telephone messages intended for plaintiff went to defendant and messages intended for defendant came to plaintiff. *Personal Loan Co. v. Personal Finance Co.*, 212M600, 5NW(2d)61. See Dun. Dig. 4490, 9670.

A parent foreign corporation having no license to conduct a small loan business, but owning all stock of a defendant subsidiary corporation licensed under state law, has no right to intervene in action by another loan company to protect its trade name and right to do business in a certain city. *Personal Loan Co. v. Personal Finance Co.*, 212M600, 5NW(2d)61. See Dun. Dig. 9670.

Evidence held insufficient to sustain conviction of member of partnership operating a collection agency to de-

fraud a debtor by false representations as to amounts due. *State v. Burns*, 215M182, 9NW(2d)518. See Dun. Dig. 1566b.

7352-1. Lodge and society emblems may be registered.

Act Apr. 10, 1941, c. 202, makes it a misdemeanor for anyone to use the name and mark "Aquatenial" of the Minneapolis Aquatennial Association without its permission, and provides for enjoining such use, except where the act would interfere with an established right.

DECISIONS RELATING TO NAMES IN GENERAL

1. In general.

Trade-marks and trade-names and unfair competition in general, see ch. 65A, end.

2. Idem sonans.

Doctrine of idem sonans has application to names appearing upon public records. *Fidelity Accept. Corp. v. House*, 210M220, 297NW705. See Dun. Dig. 6919.

CHAPTER 57

Limited Partnership

LIMITED PARTNERSHIP ACT

7353. Limited partnership defined.

Adopted by North Carolina, 1941.

There can be no "limited" partner, unless there actually exists a partnership, and no partnership can exist unless there be at least one "general" partner. *Tatum v. A.*, (DC-La), 35FSupp40.

CHAPTER 57A

Partnership

The Uniform Partnership Act was adopted by North Carolina, 1941.

PART II

NATURE OF A PARTNERSHIP

7389. Partnership defined.

A partnership with only general partners, or a limited partnership with one or more general partners may be adjudged bankrupt, independently of the partners—be they general or limited, and, conversely, a general partner, as such, may be adjudged bankrupt aside and apart from the partnership, but a limited partner unless he be individually liable for any of the partnership debts, may not, as partner, be adjudged bankrupt. *Tatum v. A.*, (DC-La) 35FSupp40.

The partnership is a distinct legal entity, separate and apart from the individuals who compose it. *Id.*

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. *Kangas v. W.*, 207M315, 291NW292. See Dun. Dig. 7372.

While a copartnership at common law was not considered a distinct entity from partners composing it, modern tendency is other way. *Gleason v. Sing*, 210M253, 297NW720. See Dun. Dig. 7347.

Mere sharing of profits is not conclusive of the existence of a partnership, and participation in profits received as wages does not warrant an inference of partnership, and gist of partnership relation is mutual agency and joint liability, and the intention of the parties is of prime importance, and a partnership is a distinct legal entity separate from the individuals. *Lobato v. Paulino*, 304Mich668, 8NW(2d)873. See Dun. Dig. 7346.

A partnership is an association of two or more persons, which may include husband and wife, to carry on as co-owners a business for profit. *Id.*

The fact that a mortgagor and mortgagee maintained a joint bank account in which rent money collected by the mortgagor was deposited, that both parties signed and countersigned checks drawn on this account, and that to maintain the equity which he had in the prop-

erty the mortgagor took care of the actual management, repairs, maintenance etc., of the property, did not constitute a partnership between the mortgagor and mortgagee. *Schanerman v. L.*, 16Atl(2d)(NJ)551.

Pennsylvania Uniform Partnership Act. *Nolan v. D.*, 13Atl(2d)(Pa)59.

The uniform Partnership Act is founded upon the aggregate, and not on the entity theory so far as all substantive rights, liabilities and duties are concerned, and husband and wife operating a partnership cannot be dependents of a minor son within meaning of Workmen's Compensation Act. *Thomas v. Ind. Com.*, 243Wis231, 10NW(2d)206, 147ALR103. See Dun. Dig. 7347, 10411.

7390. Rules for determining the existence of a partnership.

Mere fact that farm used in pig business was owned by husband and wife as tenants by entireties did not establish wife as a partner in the pig business carried on under an arrangement between husband and a third person, nor can one be held as a member of a partnership as between the partners without the consent of all the partners, and stricter proof is required to establish a partnership between members of the same family. *Lobato v. Paulino*, 304Mich668, 8NW(2d)873. See Dun. Dig. 7349, 7349a.

Reputation and the opinion of others does not prove a partnership, as between the partners. *Id.* See Dun. Dig. 7349.

(4). Proof that plaintiff had received dividend from partnership in which she claimed to be a partner, being prima facie evidence of membership therein, made erroneous dismissal of cause at conclusion of plaintiff's testimony. *Hanson v. Nannestad*, 212M325, 3NW(2d)498. See Dun. Dig. 7346.

7391. Partnership property.

Earnings of a partnership invested in joint tenancy do not constitute partnership property, no rights of creditors being involved. *Block v. Schmidt*, 296Mich610, 296NW698.