

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.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

7392. Partner agent of partnership; etc.

Negligence of one member of the joint enterprise or his contributory negligence is imputable to all other members. *Ruth v. H.*, 209M248, 296NW136. See Dun. Dig. 4949.

As to third persons, each member of a joint enterprise is agent of others, and act of one within scope of enterprise are acts of all. *Id.*

Where copartnership conveyed all of assets to a non-functioning corporation acquired by copartners, and later under name of another corporation of the copartners executed a lease of oil station and contract containing an agreement to pay indebtedness of copartners to lessee, any formal declarations of policy which corporation may have made in its attempt to disclaim liability cannot prevail in face of contractual admission. *Range Ice & Fuel Co. v. B.*, 209M260, 296NW407. See Dun. Dig. 2016.

A surety for a partner is relieved from liability if a change is made in the membership of the partnership. *Trovatten v. Minea*, 213M544, 7NW(2d)390, 144ALR263. See Dun. Dig. 7372.

Rule that bank receiving partnership funds and permitting them to be deposited in individual name of partner is liable to the partnership if there is any misappropriation does not apply to deposits by corporate officers having authority to receive money, endorse checks and deposit funds. *Columbia Land Co. v. Empson*, 305 Mich220, 9NW(2d)452. See Dun. Dig. 7358.

Guaranty and warrant to confess judgment is not in the ordinary course of a partnership business, and where but two of three partners sign, the third is not bound except on a showing of authority from him to sign for the firm, or laches and acquiescence amounting to authority. *Jamestown Banking Co. v. C.*, 14Atl(2d)(Pa)325.

7396. Partnership bound by partner's wrongful act.

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, 291 NW292. See Dun. Dig. 5834a.

Where plaintiff, an employee of a partnership of which defendant was a member, was injured in a collision between a truck owned and operated by him and defendant's truck operated by another employee of partnership, both drivers being engaged in due course of partnership business and in furtherance of a common enterprise, and where neither defendant in his individual capacity nor driver of his truck was insured or self-insured as required by *Mason Minn. St.* 1940 Supp. §4272-5, but both drivers and partnership were insured under compensation act, plaintiff's motion to strike from defendant's answer allegations in respect of plaintiff's election to take benefits accruing under compensation act was properly granted in common-law action for damages based on negligence of defendant's driver. *Gleason v. Sing*, 210M253, 297NW720. See Dun. Dig. 7370.

Cases holding a corporation liable for negligence of its agent even though injured party is agent's wife are clearly distinguishable from cases holding that a partnership is not liable for negligence of a partner who injured his wife. *Karalis v. Karalis*, 213M31, 4NW(2d) 632. See Dun. Dig. 7370.

Neither partners individually nor partnership are liable for injuries to wife of a partner caused by that partner's negligent driving of a partnership car. *Id.*

A person damaged by trover and conversion of his property by one acting as a member of a partnership could sue either the partnership or the individual partner. *Klam v. Koppel*, 118Pac(2d)(Idaho)729. See Dun. Dig. 7370.

7398. Nature of partner's liability.

Estate of a deceased partner was liable for money which partnership collected as gasoline tax but failed to pay over to the state. *Morrison's Estate*, 22Atl(2d)(Pa) 729. See Dun. Dig. 7394.

7399. Partner by estoppel.

One having reasonable cause to believe that no change had occurred in the personnel of the firm, and deals accordingly, may sue one who claims previous separation from the partnership. *Tallent v. F.*, 141SW(2d)(Tenn) 485.

7400. Liability of incoming partner.

Provision does not preclude reaching partner's personal assets to satisfy his liability on a partnership lease upon which he has received benefit of years of occupancy. *Ellingson v. W.*, 104Pac(2d)(Cal)507.

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

7401. Rules determining rights and duties of partners.

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. 7348.

7405. Right to an account.

Where under decree of probate court children of intestate were decreed two-thirds of a half interest in a newspaper business, and later agreed that widow should have the entire half interest in the newspaper during her lifetime, a subsequent action between children for accounting was not an action for a partnership accounting, and the partner of decedent was not a necessary party. *Lewis v. Lewis*, 211M587, 2NW(2d)134. See Dun. Dig. 7404a.

PART V

PROPERTY RIGHTS OF A PARTNER

7407. Extent of property rights of a partner.

The Uniform Partnership Act, which is law in Massachusetts, (*Mass. G. L.* (1932 Ed.) c. 108A, Sections 24-26, 30, 33, 37, 38(1), 40, 43), conveys of the part as a co-owner with his partners of specific partnership property, holding as a tenant in partnership, but provides that on the death of a partner his right in specific partnership property vests in the surviving partner or partners. *McGlennen et al. v. Comm. of Int. Rev.* (CCA1), 131F(2d)165. See Dun. Dig. 7381.

Where partnership acquires land solely for purpose of speculation and it is not contemplated that there shall be any conveyances between the parties, equity regards it as personal property among partners and agreement of one partner to release his interest is not a contract for such an interest in lands as comes within statute of frauds. *Smith v. G.*, 144SW(2d)(TennApp)702.

7408. Nature of a partner's right in specific partnership property.

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, 291 NW292. See Dun. Dig. 7370.

CHAPTER 58

Corporations

GENERAL PROVISIONS

7429. Existing corporations continued.

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. *Op. Atty. Gen.* (92a-9), Jan. 18, 1940.

7432. Public service corporations—Purposes of.

A franchise granted by a village to a corporation operating water and sewer facilities was supported by a consideration where under the provisions of the franchise the village would acquire title to the entire system, including improvements made from funds obtained by a loan, in case service corporation failed or neglected to operate the same. *Country Club District Service Co.*

v. Village of Edina, 214M26, 8NW(2d)321. See Dun. Dig. 6670.

7434. Municipality may purchase.

Acquisition by city of New Ulm of natural gas distribution system operated under a franchise providing for acquisition by the city at the end of 5-year period. *Op. Atty. Gen.* (624-10), June 25, 1943.

7444. Filing and record of certificate.

Clearing house association is not a "financial corporation". *Op. Atty. Gen.* (29a-6), Dec. 17, 1941.

7445. Publication of certificate.

Publication of certificate on the same date as filing with Secretary of State was legal and valid, though it antedated by one day the filing with the register of deeds of certificate of incorporation of a bank. *Op. Atty. Gen.* (29a-24), Oct. 5, 1943.