

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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erating under the 1885 law. Op. Atty. Gen. (396g-16), Apr. 1, 1942.

Decision upon a petition for vacation of a street involves the exercise of discretion. Op. Atty. Gen. (396g-16), Apr. 7, 1942.

In vacation of street in the city of Brainerd, the city charter provides the methods rather than this section. Op. Atty. Gen. (396c-18), June 17, 1943.

Brainerd City Charter §84, permitting city council to vacate a street by two-thirds vote of the council, is valid. Op. Atty. Gen. (396c-18), June 23, 1943.

8246. To what plats applicable.

A plat of irregularly shaped land made under direction of county auditor by county surveyor for taxation purposes does not have to be approved by city council of West St. Paul or by the city planning committee. Op. Atty. Gen. (18d), Jan. 18, 1943.

8246-14. Cities may plat land.—The governing body of any city of the first class now or hereafter having over 450,000 inhabitants may subdivide and plat any land owned by it within said city. (Act Apr. 9, 1943, c. 351, §1.)

8246-15. Lands to be surveyed and platted.—When such governing body decides to subdivide any

such land it may cause the same to be surveyed and platted. All plats shall be made in triplicate and, before filing, approved by the governing body, which approval shall be certified by the city clerk, and the mayor and the city clerk shall execute the dedication on one thereof, which shall be filed in the office of the register of deeds. The city clerk shall certify the other two copies thereof. One certified copy thereof shall be filed in the office of the register of deeds and the other certified copy in the office of the city engineer. (Act Apr. 9, 1943, c. 351, §2.)

8246-16. Present statutes to apply.—The statutes relating to plats, including the provisions for dedication, surveyor's certification, and filing, shall be followed so far as applicable; and, where any such city is governed by a charter the provisions of such charter prescribing the procedure with request to the preparation and approval of plats shall be followed; and the duty of the city, as to the dedicated portions of the property platted, is limited by its charter. (Act Apr. 9, 1943, c. 351, §3.)

CHAPTER 65

Registration of Title

REGISTRATION

8248. Registered land—Adverse possession.

A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 209M373, 296NW405. See Dun. Dig. 6062.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

8249. Application—Who may make.—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title.

Eighth—The State of Minnesota, by the county auditor and chairman of the county board of the county in which the land is located, at the direction of the county board of such county, in the case of lands forfeited to the State for taxes, and held by it in trust for its taxing districts, or otherwise.

This provision is in addition to all other laws by which the State may register the title to land. (As amended Act Apr. 22, 1941, c. 378, §1.)

8250. Titles which may be registered.

Statutes requiring that any person asserting a claim to land adversely to the state, or its successor in interest, deposit taxes in court is mandatory and is applicable

in proceeding to register title to land. *Bonley v. R.*, 213M 214, 6NW(2d)245. See Dun. Dig. 8355b.

8251. Application, how signed and verified.

Act of notary in stamping his name and title and sealing instrument, but failing to sign his name to verification, was a mere irregularity not affecting jurisdiction of court. *Dean v. R.*, 208M38, 292NW765. See Dun. Dig. 8356.

8254. May include several pieces.—Any number of adjoining tracts of land in the same county and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application. When approved by the Examiner of Titles and ordered by the District Court on petition of the applicant or applicants, non-adjoining tracts of land owned by the same person or persons in the same right having different chains of title may be included in one application. (As amended Act Apr. 22, 1941, c. 378, §2.)

8259. References to examiners—Powers—Reports. Deed given after applying for registration but before entry of decree would not convey a marketable title. Op. Atty. Gen. (374j), Nov. 13, 1942.

8261. Order for summons—Parties defendant.

A grantee in an unrecorded deed allowing land to be assessed in name of grantor and delinquent taxes thereon to go to judgment and sale, and who leased land to a party who was made a party to registration proceedings, lease not being recorded, cannot complain that applicant for registration and his attorney failed to use diligence in discovering that he held a deed to the property. *Application of Rees*, 211M103, 300NW396. See Dun. Dig. 8360.

8262. Form of summons—Service.

Judgment roll held to show that all known persons and persons in possession were duly served and that proper notice of publication was duly given. *Dean v. R.*, 208M38, 292NW765. See Dun. Dig. 8361a.

8266. Trial—Reference.

In proceeding to register title to real estate, claimed by applicant and her mother, evidence held to sustain finding that following alleged delivery of deed from mother to daughter taxes were paid with funds belonging to applicant. *Cloutier v. C.*, 208M453, 294NW457. See Dun. Dig. 8356.

Where referee filed a report of facts recommending a 10-day stay for applicant to file objections to entry of any order based on report, and caused a copy to be served upon applicant's counsel, and no objections were filed, court could enter a decree dismissing the application without further notice to applicant. *Ferch v. H.*, 209M124, 295NW504. See Dun. Dig. 8361a.

8267. Dismissal.

Application for registration having been predicated upon effective exercise of option to purchase land, and referee having found as a fact that there was no exercise

of option, conclusion of law by the court dismissing application was warranted. Ferch v. H., 209M124, 295NW 504. See Dun. Dig. 8361a.

Report of examiner of titles in registration proceedings showing an interest in vendee in contract for deed was not res judicata in favor of that vendee where proceeding was dismissed upon application of applicant for registration. Ferch v. Hiller, 210M3, 297NW102. See Dun. Dig. 5179.

8268. Decree of registration—Effect.

Where in neither registration proceedings themselves nor by the record, existence of an unclaimed claimant is shown, want of jurisdiction does not appear from judgment roll itself, judgment of registration is not subject to collateral attack in a suit to quiet title. Dean v. R., 208M38, 292NW765. See Dun. Dig. 8361.

Deed given after applying for registration but before entry of decree would not convey a marketable title. Op. Atty. Gen. (374j), Nov. 13, 1942.

8271. Rights of person holding certificate of title.

A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. Armstrong v. L., 209M373, 296NW405. See Dun. Dig. 6062.

Purchasers of Torrens titles are not bound by record of lien statements for old age assistance filed with register of deeds. Op. Atty. Gen., (521p-4), Dec. 11, 1939.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

8272. Opening decree.

Application to intervene in title registration proceeding made more than a year after judgment was rendered was correctly denied. Application of Rees, 211M103, 300 NW396. See Dun. Dig. 8360.

Deed given after applying for registration but before entry of decree would not convey a marketable title. Op. Atty. Gen. (374j), Nov. 13, 1942.

8274. Limitation of actions.

Application to intervene in title registration proceeding made more than a year after judgment was rendered was correctly denied. Application of Rees, 211M103, 300 NW396. See Dun. Dig. 8363.

8281. Certificate of title—Form—Contents.—The certificate of title shall contain the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description of all encumbrances, liens and interests in which the estate of the owner is subject. It shall state his age, and if under disability the nature thereof. It shall also state whether or not the owner is married, and, if married, the name of the husband or wife. In case the land is held in trust or subject to any condition or limitation, it shall state the nature and character thereof. It shall be substantially in the following form:

CERTIFICATE OF TITLE

No.

First certificate of title, pursuant to the order of the district court, judicial district, county of and state of Minnesota, dated 19.....

REGISTRATION

State of Minnesota,
County of—ss:

This is to certify that....., of the..... of..... county of....., and state of..... is now the owner of an estate, to-wit, of and in the following described land situated in the county of..... and state of Minnesota, to-wit,

Subject to the encumbrances, liens and interest noted by the memorial underwritten or endorsed hereon; and subject to the following rights or encumbrances subsisting, as provided in Laws 1905, Chapter 305, Section 24, namely:

(1) Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;

(2) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title;

(3) Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;

(4) All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded;

(5) Such right of appeal or right to appear and contest the application as is allowed by law;

(6) The rights of any person in possession under deed or contract for deed from the owner of the certificate of title.

That the said..... is of the age of..... years, is..... married....., and is under..... disability.

In witness whereof, I have hereunto subscribed my name and affixed the seal of my office, this..... day of....., 19.....

Registrar of Titles, in and for the County of..... and State of Minnesota.

All certificates issued subsequent to the first certificate of title shall be in like form except that they shall be entitled "Transfer from number (here give the number of the next previous certificate relating to the same land)," and shall also contain the words "Originally registered (date, volume and page of registration)." (As amended Act Feb. 27, 1941, c. 33, §1.)

8293. Transfer of registered land.

Although an instrument in the form of a mortgage does not create a lien until registered, it does give rise to certain equitable duties. Finnegan v. G., 207M480, 292NW 22. See Dun. Dig. 8270.

A devisee who acquired property by will at a time when no mortgage was registered and who did not have notice of the instrument executed by the deviser acquired a title subject to having the instrument registered as a paramount lien on order of the district court. Id. See Dun. Dig. 8302.

An instrument in the form of a mortgage in which the owner's spouse does not join can be registered under certain conditions when ordered by district court. Id. See Dun. Dig. 8280.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

8295. New certificate—Interest less than fee.

Registrar need not memorialize old age lien certificates upon owner's duplicate. Op. Atty. Gen. (521p-4), Jan. 8, 1940.

8298. Conveyance—Cancellation of certificate—New certificate.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

8300. Mortgage.

Finnegan v. G., 207M480, 292NW22; note under §8293.

8301. Registration of mortgage.

Finnegan v. G., 207M480, 292NW22; note under §8293.

8309. Judgments a lien, when; etc.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. Armstrong v. L., 209M373, 296NW405. See Dun. Dig. 6062.

8315. Jurisdiction of probate court not impaired.

A district court order is necessary before a new certificate of title upon probate decree may be issued by registrar, and proper practice is for party entitled to new certificate to make a written application to court therefor, accompanied by certified copies of necessary probate papers, which should be submitted to examiner of titles for his approval, and should then be submitted to district judge, with an order for his signature. Op. Atty. Gen., (374), May 26, 1941.

8317. Alterations on register—Order of court.

Where part of registered land was sold but retention certificate issued to original owner omitted portion of unsold land, petition to the court is necessary to correct the record. Op. Atty. Gen. (374j), Sept. 3, 1942.

8328. Registrar's fees.

(4).

In view of §3199-26(6) register of deeds paid only on a fee basis is entitled to a fee of only 25 cents in filing a certificate of lien in respect of old age assistance payments, though such certificate necessitates entry of a memorial on register or a cancellation in connection with registered lands. Op. Atty. Gen. (521p-4), Jan. 31, 1940.

CHAPTER 65A

Registration of Certain Trade-Names

8331. Use of receptacles without consent, etc.

If owner of a case of carbonated beverages sells trade-marked bottles as well as contents, it would not be unlawful for second hand dealers to traffic in such bottles, and it is a question of fact whether traffic in particular bottles is unlawful. Op. Atty. Gen. (135b-9), Aug. 20, 1942.

COMMON LAW DECISIONS
RELATING TO

TRADE-MARKS AND TRADE NAMES IN GENERAL

1. In general.

Registration of trade-names, see c. 56B. *Idem sonans*, c. 56B, end, note 2.

Where generic words are used in a trade-name, as against a later user, the first is entitled only to have the manner of use so reasonably restricted as to avoid deception and confusion. *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

A trade-name is a word or phrase by which a business or specific merchandise is made known to public. *Id.*

"Food Centre", as the name of retail grocery stores, held generic, generally descriptive only, and so not susceptible of monopolization as a trade-name. *Id.*

When used as a trade-name, artificial or made-up words are sole property of him who makes them up and first uses them. *Id.*

Secondary meaning is association, nothing more, and when acquired by descriptive words, competitors must use them so as to avoid deception and confusion. *Id.*

A trade-name can be acquired only by appropriation and use, and right to a trade-name, being for protection of business of owner, has no other existence, and right to it is not one in gross or at large, and owner cannot, like owner of a patent, make a purely negative and merely prohibitive use of it as a monopoly. *Direct Service Oil Co. v. Honzay*, 211M361, 2NW(2d)434. See Dun. Dig. 9670.

A trade-name is a word or phrase by which a business or specific articles of merchandise from a specific source are known to the public. *Id.*

Absent statute, a trade-name like a trade-mark cannot project right of protection in advance of extension of the trade, or operate as a claim of territorial rights over areas into which it thereafter may be deemed desirable to extend the trade. *Id.*

In action to enjoin use of trade-name, fact that words involved are part of plaintiff's corporate name does not entitle it to relief simply because of that fact. *Id.*

Territorial extent of right to use trade name. 5 Det. Law Jnl. 206.

2. Unfair competition.

Manufacturer of "Parchesi" held entitled to preliminary injunction restraining use of name "Parchesi" and "Parchisi" pending determination of suit for trade-mark infringement and unfair competition. *Selchow & Righter Co. v. W.*, (CCA7, 112F(2d)430, aff'g (DC-Wis), 29FSupp 569.

Use of name "Berde's Food Center" was not a "misrepresentation" calculated to mislead public because Berde owned only meat and dairy departments and sublet to others who owned and operated grocery, fruit, and bakery departments, complaint being made by operator of "Food Centre Stores". *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

Use of trade-name "Berde's Food Center" was not unfair competition with chain store owner operating under

name "Food Centre Stores", name appearing in one horizontal sign, all in same large letters. *Id.*

An operator of gasoline and oil filling stations at which automobile accessories and other merchandise are sold who by appropriation and use has acquired a trade-name is not entitled to protection of trade-name against operator of a similar station in a market where it has no station and where it does not compete for business. *Direct Service Oil Co. v. Honzay*, 211M361, 2NW(2d)434. See Dun. Dig. 9670.

Protection of a trade-name is afforded upon ground of unfair competition, and relief is granted to protect owner of trade-name against diversion of his trade to a later user or simulator by latter's fraud and deception in misleading buying public to believe that his goods are those of owner of trade-name. *Id.*

Where goods of first user of a trade-name are sold in markets of a second user at time of commencement of such use by latter, first user's right to trade-name will be protected regardless of distance between places at which parties conduct their business. *Id.*

If there is no competition, it makes no difference that first user of a trade-name operates his business through multiple units located in different parts of the state, and right of a chain store operator is no different than that of others. *Id.*

3. Sale and transfer.

Peterson v. Johnson Nut Co., 204M300, 283NW561; 209M470, 297NW178.

Mutual covenants not to compete in certain territory in connection with sale of a branch business followed assignment of contract by purchaser of branch to a corporation formed, and involuntary bankruptcy of assignee did not end or affect covenant, insolvency and adjudication was not anticipatory breach, and right to enforce covenant passed by sale of trustee in bankruptcy of assets and good will. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178, construing 204M300, 283NW561. See Dun. Dig. 4046, 8436.

4. Damages.

In an action at law for wrongful interference with a business measure of damages is loss shown to business, but in an action in equity to enjoin violation of a covenant not to compete in a given territory, there may be an accounting for profits gained by violator of covenant, and such illegal profits may properly measure the damages. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178. See Dun. Dig. 2561.

In action to enjoin corporation from competing with plaintiff in a certain district in violation of contract, wherein president of defendant admitted that territory protected by covenant had been invaded and goods sold in a certain amount and that six per cent thereof could fairly be taken as profit defendant made, a finding that plaintiff offered no competent evidence of damages cannot be sustained. *Id.* See Dun. Dig. 8436.

5. Actions.

That a certain corporation is interested in having a defendant excluded from territory wherein it operates does not make it in law or fact a real party in interest in an action by another corporation to enjoin defendant from competing with plaintiff in certain areas in violation of a covenant contained in sale of branch of business. *Peterson v. Johnson Nut Co.*, 209M470, 297NW178. See Dun. Dig. 7315, 8436.

There being no evidence of confusion and nothing to show that manner of defendant's use of descriptive words in trade-name tends to confusion beyond that which necessarily arises from legitimate use thereof, there should be no injunction. *Houston v. Berde*, 211M528, 2NW(2d)9. See Dun. Dig. 9670.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.**1. Nature.**

Homestead exemption is a creature of statute. *Dimke v. F.*, 209M29, 295NW75. See Dun. Dig. 4195.

In partition, where separate owners each had a home building on one tract of land and that tract and another

some distance away were sold enmasse, sale was valid as against alleged homestead rights where there was a relatively large single mortgage covering both tracts and court retained jurisdiction to pass upon any homestead claims and enforce them against proceeds of sale. *Burke v. Burke*, 209M386, 297NW340. See Dun. Dig. 7343.