

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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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 en masse, 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.

Doubt as to whether a homestead exemption exists has been held to make a title unmarketable when there is a judgment on record against vendor, and a vendee is entitled to recover amount of such outstanding judgment following execution of contract. *Service & Security v. St. Paul Federal Sav. & Loan Ass'n*, 211M199, 300NW 811. See Dun. Dig. 10024.

United States held not a person within state exemption law. *Troutman v. E.*, 28NE(2d)(Ohio)953.

Homesteads—application of Minnesota statutes. 25 MinnLawRev66.

7. Liens of mechanics and materialmen.

A judgment by default for recovery of money for a debt for work done and material furnished in construction, repair, or improvement of debtor's homestead may be established by a provision in judgment incorporating a finding made under an amendment of allegations in complaint that work was done and material was furnished in deepening a well on premises constituting her "home" to effect that work was done and material was furnished in deepening a well on premises constituting her "homestead", describing it by its full legal description, or by extrinsic evidence showing that judgment was for such a debt, or by both. *Keys v. Schultz*, 212M 109, 2NW(2d)549. See Dun. Dig. 4209, 4210, 5068.

A duly docketed judgment for a debt for work done or materials furnished in construction, repair, or improvement thereof is a lien upon a homestead. *Id.* See Dun. Dig. 4209, 4210.

13. Bankruptcy.

Lien of a judgment upon a homestead may be enforced by execution unaffected by debtor's discharge in bankruptcy. *Keys v. Schultz*, 212M109, 2NW(2d)549. See Dun. Dig. 749, 4209, 4210, 5068.

14. Alienation.

Old-age assistance lien is enforceable as against an estate in land for life of recipient after recipient va-

cates property, and upon sale of land by such life tenant and remainderman, interest acquired by purchaser is subject to lien for old-age assistance, and proceeds of such sale are not exempt. *Op. Atty. Gen.* (521p-4), Apr. 18, 1942.

8340. No alienation without consent of spouse—Exemptions.

Lien against recipient of old age assistance is valid even without the consent of spouse. *Dimke v. F.*, 209M 29, 295NW75. See Dun. Dig. 4211.

Where parents enter into oral contract with son to devise or convey homestead if son provides for parents throughout their lives, and the son fully performs, and benefits are accepted by both parents with full knowledge of the agreement, this statute cannot be invoked to prevent enforcement of the contract. *Seitz v. Sitze*, 215M452, 10NW(2d)426. See Dun. Dig. 4211, 4254.

If a deceased person were estopped by conduct from invoking homestead statute after performance of an oral contract to convey or devise real property, the heirs are likewise estopped. *Id.* See Dun. Dig. 4219a.

8342. Sale or removal permitted.

1. Sale and removal.

Old-age assistance lien is enforceable as against an estate in land for life of recipient after recipient vacates property, and upon sale of land by such life tenant and remainderman, interest acquired by purchaser is subject to lien for old-age assistance, and proceeds of such sale are not exempt. *Op. Atty. Gen.* (521p-4), Apr. 18, 1942.

2. Notice of claim—Abandonment.

Filing notice under this section has no effect upon homestead rights for taxation purposes. *Op. Atty. Gen.* (232d), May 13, 1940.

CHAPTER 67

Chattel Mortgages, Pledges and Conditional Sales

CHATTEL MORTGAGES

8345. Mortgages, when void.

½. In general.

Mason City Production C. Ass'n v. S., 205M537, 286NW 713. *Cert. den.* 60SCR130, *Reh. den.* 60SCR178.

Future advance provision in chattel mortgage held to cover additional loans by the mortgagee to the mortgagor even though they be secured by additional collateral. *State Finance Co. v. L.* (CCA9), 113F(2d)59.

Mortgage filed in Minnesota would not be invalid for usury under Minnesota law, if it was valid in state where executed and where it is to be performed. *State v. Rivers*, 206M85, 287NW790. See Dun. Dig. 1537.

Description in a chattel mortgage of mortgaged property is sufficient if it will enable a third person, aided by inquiries which instrument itself suggests, to identify the property. *Subra v. Harmer*, 212M190, 3NW(2d)101. See Dun. Dig. 1432.

A chattel mortgage describing so much of hay and feed raised on farm as might be necessary to feed mortgaged stock sufficiently described hay and feed stored in barn. *Id.* See Dun. Dig. 1434.

A long list of specified implements and machines on a farm covered items of hay, rope, wheel barrows, forks and fly sprayer under the ejusdem generis rule. *Id.* See Dun. Dig. 1434.

Description in chattel mortgage of livestock and farm equipment "together with all increase and the increase from the increase of the above described livestock, and all additions, betterments and repairs made to or upon the personal property" did not include personal property subsequently acquired by the mortgagor. *American State Bank v. Boyle*, 212M293, 4NW(2d)108. See Dun. Dig. 1432.

Chattel mortgages may cover, in addition to the property specifically enumerated, other chattels subsequently acquired by the mortgagor. *Id.* See Dun. Dig. 1427.

Question whether title passed under a chattel mortgage so that there was nothing left upon which a state's lien could attach except mortgagor's equity of redemption, district court did not determine. *State v. Heskin*, 213M368, 7NW(2d)1. See Dun. Dig. 1424.

Where tenant of farm disappeared and left farm in care of his hired man, and in the meantime landlord died leaving the land to children of the tenant, fact that owners were minors and tenant their father did not terminate the tenancy so long as hired man cared for the property, as affecting question whether mortgagee of crops could enter and take possession of them. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 1455.

Where tenant on farm disappeared leaving hired man to care for crops, there was no abandonment of the tenancy or a termination of it until the premises were later abandoned by the hired man, as affecting title to crops and right of mortgagee thereof to take possession. *Id.*

A chattel mortgagor in possession and having unconditional authority to sell can transfer good title, as against mortgagee, to subsequent purchaser for value, even though the mortgage was recorded. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1456(99).

Secret liens against personal property in the hands of a dealer have never been favored in the law and were formerly regarded as fraudulent per se as to creditors and subsequent purchasers. *Id.* See Dun. Dig. 3204, 5577a.

Where there is no writing there is no "trust receipt transactions" and the case is governed by pre-existing law. *Associates Discount Corp. v. C.*, 30NE(2d)(Mass)876.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24MinnLawRev832.

3. Effect of filing.

By complying with the statute, a mortgagee may relinquish possession of the chattel to the mortgagor, and the proper filing or recording of his lien operates as constructive notice of his rights in it. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1445.

The mere device of recording cannot be applied to abrogate all the rules of actual and apparent authority and ostensible ownership. *Id.*

3½. Priority in general.

Lien for gasoline taxes, inspection fees, and penalties, created by Laws 1937, c. 476, §2, on personal property of distributor of gasoline, does not arise until date of inspection of gasoline and is not superior to a chattel mortgage on distributor's personal property executed and recorded prior thereto. *State v. Heskin*, 213M368, 7NW(2d)1. See Dun. Dig. 1449, 9161, 9165, 9576e.

10. What is good faith—Evidence of.

Rule that mortgagor of chattel with power of sale may transfer title to a purchaser applies regardless of whether the purchaser had notice of the mortgage. *Pioneer Nat. Bank v. Johnson*, 215M331, 9NW(2d)760. See Dun. Dig. 1450.

Whether the evidence shows that a mortgagee consented to mortgagor's selling of chattel is ordinarily for the jury, but where it is conclusively established that there was such consent, court will so hold as a matter of law. *Id.* See Dun. Dig. 1456(99).

A finance corporation which loans money to an automobile dealer in exchange for trust receipts delivered to it before dealer received title to automobile was not a bona fide purchaser within meaning of Uniform Trust Receipts Act. *Metropolitan Finance Corp. v. M.*, 109Pac (2d)(Cal)969.

13. Crops.

A description of real estate in a crop mortgage is sufficient if it is such that a prudent, disinterested person, aided and directed by such inquiries as the mortgage suggests, is able to identify the real estate. *State Bank of Loretto v. Dixon*, 214M39, 7NW(2d)351. See Dun. Dig. 1432.

Provision in a mortgage "together with sufficient feed and roughage to care for the livestock during the life