

CHAPTER 323

PARTNERSHIPS

323.01 CITATION.

HISTORY. 1921 c. 487 s. 1; G.S. 1923 s. 7384; M.S. 1927 s. 7384.

The uniform act relating to partnerships has been adopted in the following states: Alaska, Arkansas, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, Wyoming.

Prior to the enactment of Laws 1921, Chapter 487, there was no chapter in any of the compilations or revisions dealing solely with partnerships.

The few sections relating to partnerships found in previous compilations deal only incidentally with the subject and, except as repealed by Laws 1921, Chapter 487, will be annotated under appropriate subjects.

Plaintiffs, as individuals, procured title to this land. They contracted for it in the firm name. Such contracts are enforceable against the individuals who constitute the copartnership. In the future questions of this character will be solved in the light of Laws 1921, Chapter 487. *Paynesville Land Co. v Grabow*, 160 M 422, 200 NW 481.

Unless they are limited by something other than the nature of the intended contract, persons negotiating a contract for a partnership deal at arm's length. There is no fiduciary relationship because of the fact that one will result if they become partners. *Walker v Patterson*, 166 M 215, 208 NW 3.

Walker and Akeley engaged in joint enterprise from 1887 to 1892, and in 1892 they organized a partnership under written articles. The defendant, Akeley's daughter and heir, claimed that other lands were included though not named in the written articles. This claim is untenable because the contract in writing integrated all preceding negotiations and contracts, and the carefully prepared lists attached to the contract of partnership must be taken as purposefully exclusive of any lands not included. *Walter v Patterson*, 166 M 215, 208 NW 3.

The rule of law to the effect that capital is a debt of the partnership does not rest alone upon the provisions of the uniform partnership act; it is a rule of the common law. A partner's contribution to capital is to be paid to him in full if the firm's assets are sufficient after paying the firm's liabilities to outsiders; and if insufficient then the ratable proportion is to be repaid to him. *Burnett v Hopwood*, 187 M 7, 244 NW 254.

A receiver appointed on the application of a judgment creditor of a partner and acting under a charging order is entitled to any relief necessary to conserve the partnership assets for partnership purposes and particularly under a decree nullifying unlawful assets of a partner to assign or encumber his interest in specific partnership property. A partner's interest in specific partnership property is non-assignable, and any attempt at such assignment is void. *Windom National v Klein*, 191 M 447, 254 NW 602.

The employer against whom compensation was awarded by the industrial commission was a partnership, and the fact that the decedent's dependent widow was a member of the employer-partnership did not relieve it or its insurer from liability. *Keegan v Keegan*, 194 M 261, 260 NW 318.

Third-party liability has for its basis negligent conduct by one, not the employer of the injured workman, and the amount of recovery is measured by the common-law standard of damages, whereas an employer's liability under the compensation act is determined by the standards fixed thereby. 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

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by another employee of the partnership, both drivers being engaged in due course of partnership business and in furtherance of a common enterprise. Neither defendant in his individual capacity, nor the driver of the defendant's truck, was insured, but both drivers and the partner were insured under the compensation act. In common-law action for damages based on alleged negligence of defendant's driver, plaintiff's motion to strike from defendant's answer certain allegations in respect to plaintiff's election to take the benefits accruing under the compensation was properly granted. *Gleason v Sing*, 210 M 253, 297 NW 720.

Conveyance of partnership property. 7 MLR 453, 537.

Power of partner to mortgage his individual interest in specific firm property. 19 MLR 252.

Right of separate creditor of partner to reach partnership assets. 23 MLR 539.

323.02 DEFINITIONS.

HISTORY. 1921 c. 487 ss. 2, 6; G.S. 1923 ss. 7385, 7389; M.S. 1927 ss. 7385, 7389.

In the instant case the evidence was not sufficient to show that the party entered into a contract of partnership, or for a joint enterprise in farming. *Kahoon v Kahoon*, 165 M 481, 205 NW 702.

A partnership is not a legal entity, the members of which may become the individual employees of a person who hires them to perform services for him. An employee who receives compensation for his services in the form of commissions instead of stated wages is within the scope of the compensation act. In the instant case relator's husband was not an individual contractor, but a servant of the corporation. *Angell v White Eagle Oil*, 169 M 183, 210 NW 1004.

The evidence sustains the finding that diamonds converted by defendant Binder were owned by the plaintiff individually; and a purchaser from a converter of personal property does not get title in the absence of laches or waiver or estoppel or an applicable recording act; and though he purchases in good faith, if he refuses to deliver to the true owner upon demand he is liable for conversion. *Hindahl v American Loan*, 180 M 447, 231 NW 408.

Joint ownership of land does not create a partnership, nor make the owners joint adventurers. *Pratt v Martig*, 182 M 250, 234 NW 464.

The evidence is not conclusive that there was a partnership between one of the defendants and a corporation now defunct. *Mahlberg v Jones*, 182 M 578, 235 NW 280.

The written agreement between the three defendants provided that it is not considered a partnership; nevertheless, the evidence as to their business relations was sufficient to justify the jury in finding that the three defendants were partners. *Randall v Briggs*, 189 M 175, 248 NW 752.

The business relations between plaintiff, a prize fighter, and defendant, the manager, evidenced a contract of joint enterprise or adventure, and not of employment. *Safro v Lasky*, 191 M 532, 255 NW 94; *Safro v Lakofsky*, 184 M 336, 238 NW 641.

In an action relating to the transactions wherein money was borrowed from a bank and stock pledged as security, it is held that the Bowmans were not partners of Jenkins, the borrower, and plaintiffs, the owners of the stock, could by no action of the Bowmans claim that they were the borrowers or held on the note other than as cosureties of other sureties. *Stewart v Bowman*, 195 M 543, 263 NW 618.

The agreement between two individuals who are stockholders and directors in a bank, relating to the disposition of farm land obtained as a result of the foreclosure of a mortgage in which both were interested, created a joint adventure of such nature that plaintiff is entitled, as against defendants, to contribution for losses. *Minars v Browerville Bank*, 197 M 595, 268 NW 197.

The renting of two adjoining farms to one tenant was not a joint adventure. *Patterson v Roth*, 199 M 157, 271 NW 336.

Mere division of profits does not constitute a partnership; and "investment contract" is a profit-sharing scheme proposed by a broker to his customers and does not in this case create a partnership. *S.E.C. v Wickhom*, 12 F. Supp. 245.

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A partnership is based upon a contract and the interest of each member cannot be altered by a single partner, but must be agreed upon by all partners in order to modify or alter the terms of the partnership. *Keough v St. Paul Milk Co.* 205 M 96, 295 NW 89.

By statute, controlling considerations in impressing liability are (1) ownership, (2) consent, (3) operation within the scope of consent. Presence of these elements in the ordinary situation spells liability for the owner of a negligently driven vehicle. The defendant as coowner in this particular case had the right to refuse consent to the use made of the truck but, failing to do so, liability must follow under the financial responsibility statute. *Kangas v Winquist*, 207 M 315, 291 NW 292.

An agreement between two brokerage firms based upon service in consolidation of free wire service held not to be one of partnership. *Korns v Thomson & McKinnon*, 22 F Supp. 442.

Massachusetts business trust; when are shareholders liable as partners. 8 MLR 244.

A corporate partner. 14 MLR 769.

The law of joint adventure. 15 MLR 644.

323.03 INTERPRETATIONS.

HISTORY. 1921 c. 487 s. 3; G.S. 1923 s. 7386; M.S. 1927 s. 7386.

323.04 RULES OF CONSTRUCTION.

HISTORY. 1921 c. 487 s. 4; G.S. 1923 s. 7387; M.S. 1927 s. 7387.

A partner's interest in specific partnership property is nonassignable and any attempt at such assignment is void. A receiver is entitled to any relief necessary to conserve the partnership assets for partnership purposes, and particularly to a decree nullifying unlawful efforts of a partner to assign or encumber his interest in specific partnership property. *Windom National v Klein*, 191 M 447, 254 NW 603.

This rule of construction should not be extended to include or affect existing law in other branches of jurisprudence. *State Street Trust v Hall*, 311 Mass 299, 41 NE (2d) 30.

323.05 RULES FOR CASES NOT PROVIDED FOR.

HISTORY. 1921 c. 487 s. 5; G.S. 1923 s. 7388; M.S. 1927 s. 7388.

The partnership act provided that partners are coowners of specific partnership property as tenants in partnerships. Incidents of the tenancy are (a) equal right of all partners to possess partnership property for partnership purposes, but no right to possess it for non-partnership use without consent of the other partners; (b) nonassignability; and (c) nonattachability of individual partner's interest in partnership property; (d) survivorship in remaining partners upon death of one; (e) individual partner's interest not subject to dower and the like. *Kangas v Winquist*, 207 M 321, 291 NW 292.

323.06 DETERMINATION OF WHETHER PARTNERSHIP EXISTS.

HISTORY. 1921 c. 487 s. 7; G.S. 1923 s. 7390; M.S. 1927 s. 7390.

There can be no partnership of joint venture without contract expressed or implied; and where one cotenant farms a tract of land without excluding the others the crops raised belong to him and he is not liable to his cotenants for rents and profits. *Arnold v DeBooy*, 161 M 255, 201 NW 437.

The evidence sustains the finding of the jury that Hindahl and Hattelstad were not copartners and the purchase by Binder of certain diamonds belonging to Hindahl but purchased from Hattelstad did not pass good title to Binder. *Hindahl v American Loan*, 180 M 447, 231 NW 208.

The record justified the finding of the jury that the defendants and appellants were partners and liable for the printing bill. *Randall v Briggs*, 189 M 175, 248 NW 752.

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Under the facts disclosed by the record, two persons operating an apartment building and dividing the income were partners, and compensation was properly awarded plaintiff by the industrial commission. *Keegan v Keegan*, 194 M 261, 260 NW 318.

Coownership of real estate does not create a partnership. *Campbell v State Bank*, 194 M 502, 261 NW 1.

Proof that plaintiff has received dividends from a partnership in which she claimed to be a partner is prima facie evidence of membership in the partnership. *Hanson v Nonestad*, 212 M 325, 3 NW(2d) 498.

Joint adventurers; secret advantage secured by one through fraudulent collusion with vendor. 4 MLR 301.

Massachusetts business trust; when are shareholders liable as partners. 8 MLR 244.

Profit-sharing as a test of existence of partnership. 16 MLR 115.

Are limited partnerships necessary. 17 MLR 356.

323.07 PARTNERSHIP PROPERTY.

HISTORY. 1921 c. 487 s. 8; G.S. 1923 s. 7391; M.S. 1927 s. 7391.

A partnership is not a legal entity. The members thereof may become individual employees of a person who hires them to perform services for him, and this applies to the term "employer" as used in the workmen's compensation act. *Angell v White Eagle Oil*, 169 M 183, 210 NW 1004.

A partner's interest in specific partnership property is non-assignable. *Windom National v Klein*, 191 M 449, 254 NW 602.

Prior to the enactment of uniform partnership act, a partnership could not take title to realty, but title had to be taken in the names of individual partners or in the name of one of them. Where two brothers as partners farmed many acres for years and the farm was conveyed to one brother who later died, and the other brother did all the improving, and with partnership funds paid taxes and materials, the farm constituted part of the partnership assets. *Shanahan v Olmsted County Bank*, 217 M 454, 14 NW(2d) 433.

Where a lease, executed by one partner in his name only, is executed in fact for the firm and for its benefit and it actually receives the benefit, the lessor, after discovery of the true situation, may, in an action to recover unpaid rent under the lease, recover against all the partners, including an undisclosed partner. *Kavalaris v Cardalis*, 219 M 442, 18 NW(2d) 137.

323.08 PARTNERS ARE AGENTS OF PARTNERSHIP.

HISTORY. 1921 c. 487 s. 9; G.S. 1923 s. 7392; M.S. 1927 s. 7392.

Where a contract is made by a partner in his name only, but in fact for the firm, and the firm receives the benefit, and the other contracting party subsequently discovers that the copartnership is the real party in interest, he may abandon his action against the partner personally and resort to the partnership for payment. Each partner is the agent of the copartnership for the purposes of partnership business. *Bowman v Farmers State Bank*, 168 M 221, 207 NW 863.

Two non-assenting parties released from liability on note made by a third party. *Gladson v Heagale*, 170 M 166, 212 NW 175.

Where a partnership is a party to a contract the actions of one member thereof bind the partnership. *Peterson v Parviainen*, 174 M 297, 219 NW 180.

A partnership is not liable on a note given, without authority or consent of the partners, by one member of a firm for funds for his individual purposes, where the payee plaintiff knew that he was borrowing the money for such purposes. *Security State Bank v Remington*, 201 M 472, 276 NW 743; *First State Bank v Renz*, 202 M 350, 278 NW 523.

323.09 CONVEYANCE OF REAL PROPERTY OF THE PARTNERSHIP.

HISTORY. 1921 c. 487 s. 10; G.S. 1923 s. 7393; M.S. 1927 s. 7393.

See annotations under section 323.07.

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323.10 PARTNERSHIP BOUND BY ADMISSION OF PARTNER.

HISTORY. 1921 c. 487 s. 11; G.S. 1923 s. 7394; M.S. 1927 s. 7394.

323.11 NOTICE TO OR KNOWLEDGE OF PARTNER CHARGES PARTNERSHIP.

HISTORY. 1921 c. 497 s. 12; G.S. 1923 s. 7395; M.S. 1927 s. 7395.

323.12 PARTNERSHIP LIABLE FOR PARTNER'S WRONGFUL ACT.

HISTORY. 1921 c. 487 s. 13; G.S. 1923 s. 7396; M.S. 1927 s. 7396.

One partner not guilty of any negligence is not liable for the negligence of his copartner in the carrying on of the partnership business, except to the extent that the copartner is liable. *Belleson v Skildeck*, 185 M 537, 242 NW 1; *Karalis v Karalis*, 213 M 31, 4 NW(2d) 632.

The immunity of the husband for suit in tort on the part of his wife does not inure to the benefit of the owner of the automobile. *Miller v Tyrholm*, 196 M 438, 265 NW 334.

The surviving partner is liable to passengers in a truck owned by the partnership and negligently driven by one of the partners on a personal mission, since the surviving partner consented to personal use of the vehicle. *Kangas v Winquist*, 207 M 315, 291 NW 292.

Neither the common-law rule that a husband is not liable to his wife for personal tort, nor section 323.12 of the partnership law, was modified by the safety responsibility act, and therefore, neither the partners individually nor the partnership is liable for the injuries of the wife of a partner caused by that partner's negligent driving of a partnership car. *Karalis v Karalis*, 213 M 31, 4 NW(2d) 622.

Effect of non-suability of one partner for tort upon liability of other partner. 16 MLR 873; 20 MLR 566; 27 MLR 580.

323.13 PARTNERSHIP LIABLE FOR PARTNER'S BREACH OF TRUST.

HISTORY. 1921 c. 487 s. 14; G.S. 1923 s. 7397; M.S. 1927 s. 7397.

323.14 NATURE OF PARTNER'S LIABILITY.

HISTORY. 1921 c. 487 s. 15; G.S. 1923 s. 7398; M.S. 1927 s. 7398.

323.15 PARTNER BY ESTOPPEL.

HISTORY. 1921 c. 487 s. 16; G.S. 1923 s. 7399; M.S. 1927 s. 7399.

323.16 LIABILITY OF INCOMING PARTNER.

HISTORY. 1921 c. 487 s. 17; G.S. 1923 s. 7400; M.S. 1927 s. 7400.

323.17 RIGHTS AND DUTIES OF PARTNERS.

HISTORY. 1921 c. 487 s. 18; G.S. 1923 s. 7401; M.S. 1927 s. 7401.

In a project relating to ownership and operation of a farm, one of the partners made a contract and mortgage, but the other two partners refused to join, and the mortgagee was so informed at the time contract was made. The two non-assenting partners were not bound and were released from liability. *Gladson v Heagale*, 170 M 166, 212 NW 175.

Rule illustrated by the finding that the interest of each of the three partners was on the basis of contract rather than the basis of contribution. Plaintiff's ratable proportion of the unimpaired contribution to capital was "debt due to him upon the books" of the firm. *Burnett v Hopwood*, 187 M 7, 224 NW 254.

The circumstance that decedent's dependent widow was a member of the employer-partnership did not relieve it or its insurers from liability. *Keegan v Keegan*, 194 M 261, 260 NW 318.

In common law the partnership was not an entity, and one partner cannot maintain an action at law on a matter rising out of partnership transactions against a copartner or partnership, without dissolution and accounting. *Keegan v Keegan*, 194 M 261, 260 NW 318.

A partner is not entitled to payment for services performed in the course of the partnership business, in the absence of an agreement either expressed or implied. *Stark v Stark*, 210 M 491, 276 NW 820.

Taxation of intangibles. 15 MLR 753.

323.18 PARTNERSHIP BOOKS.

HISTORY. 1921 c. 487 s. 19; G.S. 1923 s. 7402; M.S. 1927 s. 7402.

323.19 PARTNERS MUST RENDER INFORMATION.

HISTORY. 1921 c. 487 s. 20; G.S. 1923 s. 7403; M.S. 1927 s. 7403.

323.20 PARTNER ACCOUNTABLE AS A FIDUCIARY.

HISTORY. 1921 c. 487 s. 21; G.S. 1923 s. 7404; M.S. 1927 s. 7404.

Persons negotiating a contract for a partnership deal at arm's length, and there is nothing in the preliminary negotiations to constitute fiduciary relations because of the fact that the contract may result in a partnership. This modifies *Bloom v Lofgren*, 64 M 1, 65 NW 560. *Walker v Patterson*, 166 M 215, 208 NW 3.

The rule established in *Walker v Patterson*, 166 M 215, cannot be extended so as to permit a secret share in the profits to be made by a broker in the transaction. *Crawford v Lugoff*, 175 M 226, 220 NW 822.

The defendant upon the death of his copartner was the sole surviving partner, and was bound to account to the personal representative appointed by the probate court. *Alsworth v Packard*, 181 M 156, 231 NW 916.

Indictments for forgery in the third degree against a partner for making false entries in the partnership books for the purpose of defrauding a partner by concealing a misappropriation of partnership funds state public offenses under section 620.13. *State v MacGregor*, 202 M 579, 279 NW 372.

A partnership or a joint enterprise having been entered into, each partner occupies a position of trust, and must exercise good faith toward each other. *Kitzman v Postier*, 204 M 343, 283 NW 542.

323.21 RIGHT TO AN ACCOUNT.

HISTORY. 1921 c. 487 s. 22; G.S. 1923 s. 7405; M.S. 1927 s. 7405.

In the operation of a farm, fodder corn and hay furnished by one of the partners was not an item that should be furnished free, but may be considered as an expense for which he was entitled to credit. *Stark v Stark*, 201 M 491, 476 NW 820.

Courts are not at liberty to revise while professing to construe. When the language is plain and unambiguous, there is no room for construction. The claim of the plaintiff for 65 per cent of the fees in a law copartnership is upheld. *Grimes v Toensing*, 201 M 541, 277 NW 236.

In an action to recover against the surviving partner for personal injuries suffered by plaintiffs, who were passengers in truck owned by partnership and negligently driven by one of the partners on a personal mission, the surviving partner, having consented to personal use of the vehicle, is liable. *Kangas v Winquist*, 207 M 315, 291 NW 292.

323.22 AFTER FIXED TERM PARTNERSHIP CONTINUES AS PARTNERSHIP AT WILL.

HISTORY. 1921 c. 487 s. 23; G.S. 1923 s. 7406; M.S. 1927 s. 7406.

323.23 PROPERTY RIGHTS OF A PARTNER.

HISTORY. 1921 c. 487 s. 24; G.S. 1923 s. 7407; M.S. 1927 s. 7407.

By the uniform partnership act, the court may by decree nullify the unlawful efforts of a partner to assign or encumber his interest in specific partnership property. *Windom National v Klein*, 191 M 447, 254 NW 602. *Kangas v Winquist*, 207 M 315, 291 NW 292.

A partnership is based on a contract and the respective interests of each partner cannot be modified, nor nullified, or altered by a single member, but all must consent. *Keough v St. Paul Milk*, 205 M 96, 285 NW 809.

323.24 NATURE OF A PARTNER'S RIGHT IN SPECIFIC PARTNERSHIP PROPERTY.

HISTORY. 1921 c. 487 s. 25; G.S. 1923 s. 7408; M.S. 1927 s. 7408.

There must be an accounting or division of property by agreement, in order that one partner may bring an action against his copartner in conversion of partnership property. *Ruschoff v Wachsmuch*, 185 M 579, 242 NW 296.

Furniture was personal property and did not pass by a transfer by the defendant to the plaintiff, of his one-half of the land on which the hotel was built; and the evidence does not sustain a finding that plaintiff alone paid the purchase price of furniture used in hotel operated by defendant and plaintiff as a copartner-ship. *Stolp v Reiter*, 190 M 380, 251 NW 903.

A partner's interest in specific partnership property is non-assignable. *Windom National v Klein*, 191 M 447, 254 NW 602.

A creditor of a partnership, and one of the partners individually, cannot apply payments made by the partnership out of partnership funds, upon the indebtedness of the individual partner. *Mastley v Moe*, 193 M 411, 258 NW 591.

While title to property passes to the surviving partner for the purpose of winding up of partnership business, if after the death of one partner, property of the firm is garnished in a suit against surviving partner for the recovery of money, the representatives of the estate of the deceased partner are subject to the suit and garnishment. *Fulton v Okes*, 195 M 247, 262 NW 570.

There is no presumption that by putting partnership funds into the form of certificates of deposit payable to either, as the case may be, or to the survivor of either, it was intended to change partnership to individual property. *Shanahan v Olmsted County Bank*, 217 M 454, 14 NW(2d) 433.

The law of joint adventures. 15 MLR 660.

Right of separate creditor of a partner to reach partnership assets by execution. 23 MLR 539.

323.25 PARTNER'S INTEREST IN THE PARTNERSHIP.

HISTORY. 1921 c. 487 s. 26; G.S. 1923 s. 7409; M.S. 1927 s. 7409.

The modern conception of a partnership as a joint enterprise, with a view of gain, leaves the question of losses and the sharing thereof to be determined from the evidence in the particular case. *Kitzman v Postier*, 204 M 343, 283 NW 542.

Power of a partner to mortgage his individual interest in specific firm property. 19 MLR 252.

323.26 ASSIGNMENT OF PARTNER'S INTEREST.

HISTORY. 1921 c. 487 s. 27; G.S. 1923 s. 7410; M.S. 1927 s. 7410.

323.27 PARTNER'S INTEREST CHARGEABLE AS SUCH.

HISTORY. 1921 c. 487 s. 28; G.S. 1923 s. 7411; M.S. 1927 s. 7411.

A receiver is entitled to any relief, under the language of the statute "which the circumstances of the case may require" to act justly under the laws, and particularly to a decree nullifying unlawful efforts of a partner to encumber his interest in specific partnership property. *Windom Bank v Klein*, 191 M 447, 254 NW 602.

Right of separate creditor of partner to reach partnership assets. 23 MLR 539.

323.28 DISSOLUTION.

HISTORY. 1921 c. 487 s. 29; G.S. 1923 s. 7412; M.S. 1927 s. 7412.

Plaintiff loaned money to a partnership. The money was used for partnership purposes. Thereafter, defendant sold his interest in the partnership to another member thereof. The plaintiff received no notice. Thereafter, the note was renewed and a new loan was made by plaintiff to partnership. A verdict in favor of plaintiff was properly directed. Security State Bank v Nelson, 171 M 332, 214 NW 51.

On dissolution of a partnership, the unimpaired contribution to capital was a debt due to partner on the books of the partnership. Burnett v Hopwood, 187 M 7, 244 NW 254.

323.29 PARTNERSHIP NOT TERMINATED BY DISSOLUTION.

HISTORY. 1921 c. 487 s. 30; G. S. 1923 s. 7413; M.S. 1927 s. 7413.

323.30 CAUSES OF DISSOLUTION.

HISTORY. 1921 c. 487 s. 31; G.S. 1923 s. 7414; M.S. 1927 s. 7414.

323.31 DISSOLUTION BY DECREE OF COURT.

HISTORY. 1921 c. 487 s. 32; G.S. 1923 s. 7415; M.S. 1927 s. 7415.

Where plaintiff brought an equitable action in accounting and for dissolution of the partnership, and asked that his claim for wages based upon a specific agreement be adjudicated, he may be enjoined from bringing a subsequent action at law upon a quantum meruit basis. Ritchell v Remington, 159 M 305, 198 NW 813.

In an equitable action for an accounting, the finding of a balance due necessarily negatives all items litigated and not allowed in arriving at the balance. Walker v Patterson, 166 M 215, 208 NW 7.

Method of accounting between partners defined. Bagg v Osborn, 169 M 126, 210 NW 862.

323.32 DISSOLUTION TERMINATES AGENCY OF PARTNER.

HISTORY. 1921 c. 487 s. 33; G.S. 1923 s. 7416; M.S. 1927 s. 7416.

323.33 RIGHT OF PARTNER TO CONTRIBUTION FROM COPARTNERS AFTER DISSOLUTION.

HISTORY. 1921 c. 487 s. 34; G.S. 1923 s. 7417; M.S. 1927 s. 7417.

323.34 PARTNER'S AGENCY AFTER DISSOLUTION.

HISTORY. 1921 c. 487 s. 35; G.S. 1923 s. 7418; M.S. 1927 s. 7418.

Where money was loaned by plaintiff to a partnership, and the defendant, one of the partners, sold his interest to another partner without notice to plaintiff, the defendant was liable on a renewal of the loan note, made after he had sold his interest. Security State Bank v Nelson, 171 M 332, 215 NW 51.

323.35 DISCHARGE OF EXISTING LIABILITIES ON DISSOLUTION.

HISTORY. 1921 c. 487 s. 36; G.S. 1923 s. 7419; M.S. 1927 s. 7419.

323.36 RIGHT TO WIND UP.

HISTORY. 1921 c. 487 s. 37; G.S. 1923 s. 7420; M.S. 1927 s. 7420.

323.37 ALLOCATION OF PARTNERSHIP PROPERTY ON DISSOLUTION.

HISTORY. 1921 c. 487 s. 38; G.S. 1923 s. 7421; M.S. 1927 s. 7421.

Plaintiff's ratable proportion of the unimpaired contribution was a "debt due him upon the books" of the firm. Burnett v Hopwood 187 M 13, 244 NW 254.

A creditor of both a partnership and of one of the partners has no right to apply payments made by the partnership out of partnership funds upon the indebtedness of the individual partner. *Mastley v Moe*, 193 M 411, 258 NW 591.

An action upon a promissory note, executed by a partnership and by two of the surviving partners individually "payable out of funds to be received from Selover & Mansfield matters" did not give the holder of the note a preference over other creditors of the partnership, and as neither of these individual defendants held funds of the partnership, there could be no recovery. *Selover v Selover*, 201 M 562, 377 NW 205.

323.38 ADJUSTMENT OF RIGHTS ON DISSOLUTION FOR FRAUD.

HISTORY. 1921 c. 487 s. 39; G.S. 1923 s. 7422; M.S. 1927 s. 7422.

323.39 DISTRIBUTION ON DISSOLUTION.

HISTORY. 1921 c. 487 s. 40; G.S. 1923 s. 7423; M.S. 1927 s. 7423.

Where persons entered into an agreement to purchase land, those persons who refuse to deposit the moneys agreed upon and who abandon their interest in the joint adventure, are not entitled to an accounting from the individual who went through with the adventure and performed his part. *Bringold v Stucky*, 162 M 343, 202 NW 739.

Where a partner contributes more than his share of the partnership funds, in the absence of an agreement to that effect he is not entitled to interest on the excess. *Riebel v Mueller*, 177 M 602, 225 NW 924.

Plaintiff and defendant contributed property of unequal value. The contract was made as though vendees were equally interested. Reformation specified their respective interests. Defendant was entitled to an interest based upon the value to which all the parties agreed and not the actual value. *Kallusch v Kavli*, 185 M 3, 240 NW 108.

Decedent was an employee of a partnership, and the fact that decedent's dependent widow was a member of the employer-partnership did not relieve the partnership or its insurer from liability. *Keegan v Keegan*, 194 M 261, 260 NW 318.

A promissory note executed by a partnership, and by two of the surviving partners payable out of designated funds did not give the plaintiff a preference over other creditors, unless the individual defendants held funds of the partnership. *Selover v Selover*, 201 M 562, 270 NW 205.

Where a joint-adventure contract for the selling at retail and liquidation of a business begins as of May 31, fixed salaries, taxes, and payroll expense must be paid out of the proceeds. Certain claims for salaries, commissions, shortages and gratuities must be disallowed. *Standard v Wolf*, 219 M 128, 17 NW(2d) 329.

323.40 LIABILITY OF PERSONS CONTINUING THE BUSINESS IN CERTAIN CASES.

HISTORY. 1921 c. 487 s. 41; G.S. 1923 s. 7424; M.S. 1927 s. 7424.

323.41 RIGHTS OF RETIRING OR ESTATE OF DECEASED PARTNER WHEN THE BUSINESS IS CONTINUED.

HISTORY. 1921 c. 487 s. 42; G.S. 1923 s. 7425; M.S. 1927 s. 7425.

323.42 RIGHT TO ACCOUNTING ACCRUES ON DISSOLUTION.

HISTORY. 1921 c. 487 s. 43; G.S. 1923 s. 7426; M.S. 1927 s. 7426.

An action in conversion arising out of a partnership between two attorneys was property dismissed on the pleadings, since the rights of the parties must be determined by an equitable action for an accounting. Conversion will not lie until the partnership has been terminated. *Grimes v Toensing*, 200 M 321, 273 NW 816.

323.43 REPEAL; EXCEPTIONS.

HISTORY. 1921 c. 487 s. 45; G.S. 1923 s. 7428; M.S. 1927 s. 7428.