

MASON'S MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE
STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF
THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
CITER-DIGEST COMPANY

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Citer-Digest Company
St. Paul
1927

CHAPTER 56

AUCTIONEERS

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7322. Licenses—Persons entitled to—Authority under—Fee for—Records of—Auctioneers for sale of purebred or grade livestock—Non-resident auctioneers—Bonds—The county board or auditor may license any voter in its county as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the state of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars (\$10.00). Provided, that any person may be licensed as an auctioneer for the purpose of making sales of purebred or grade livestock only upon the payment of the fee and the giving of the bond as above provided. Provided, further, that any person resident in an adjoining state which issues auctioneers' licenses to residents of Minnesota on the same basis as to the residents of such adjoining state, may be licensed as an auctioneer upon payment of the fee required therefor in such adjoining state and giving an approval of a bond as provided in the next succeeding section. (R. L. '05, § 2813; amended '09, c. 249; '13, c. 11, § 1; '17, c. 87, § 1; '27, c. 173) [6083]

Sale of land—Return of earnest money. 163-362, 204+26.

These Statutes are not violative of federal and state constitutions. (124-150, 149+9; 133-274, 158+394).

7323. Bond to be given—Every auctioneer, before making sales, shall give bond to the county in a penal sum of not less than one thousand dollars nor more than three thousand dollars, to be fixed, and with sureties approved by the treasurer, conditioned that he will pay all auction dues required by law, and in all things conform to the laws relating to auctioneers. The treasurer shall indorse his approval upon such bond, and file it in his office. (2814) [6084]

7324. Account of sales—Every such auctioneer shall keep an accurate account of all property sold by him, the names of the persons from whom the same was received, and of those to whom it was sold, and the price. (2815) [6085]

7325. Receiving goods from minors or servants—Any licensed auctioneer who shall receive property for sale from any minor or servant, knowing him to be such, shall forfeit to any person injured a sum not exceeding two hundred dollars. (2816) [6086]

7326. Sales in unauthorized places—Any person occupying or having control of any building, who knowingly permits the sale of property at public auction in such building, or in any apartment or yard appertaining thereto, contrary to the provisions of this chapter, shall be guilty of a misdemeanor. (2817) [6087]

7327. Unlicensed sales—If any person shall sell or attempt to sell any property at auction without being licensed as an auctioneer as herein provided, he shall be guilty of a misdemeanor; but the provisions of this chapter shall not extend to sales made by sheriffs, coroners, constables, collectors of taxes, or sales of personal property under chattel mortgage or other lien. (2818) [6088]

CHAPTER 56A

HAWKERS, PEDDLERS AND TRANSIENT MERCHANTS

Hawkers and Peddlers, §§ 7328-7336.

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HAWKERS AND PEDDLERS

7328. Engaging in business without license unlawful—No person shall engage in, or follow the business or occupation of a hawker or peddler within this state without having first obtained a license for that purpose as by this act provided. ('11 c. 121 § 1) [6089]

7329. License, how applied for and issued—Every person desiring to engage in, or follow the business or occupation mentioned in the preceding section shall file an application for a license for that purpose with the auditor of the county in which he desires to do business, which application shall be made in writing to such auditor wherein the applicant shall specify whether he intends to carry on his business by a wagon or other vehicle, or on foot. The applicant shall on or before the time for filing his application for license, pay or cause to be paid to the treasurer of the county in which his application is filed, the amount prescribed as and for such license as is hereinafter

provided, and the treasurer shall issue a receipt for such sum to such person, which receipt he shall present to the auditor of such county, who thereupon shall issue a license as hereinbefore provided. ('11 c. 121 § 2) [6090]

133-274, 158+394.

7330. Fees—When such person shall use in such business or occupation a wagon or other vehicle drawn by two or more horses, or other beasts of burden, the sum of \$35.00; when he shall use in such business or occupation an automobile, or vehicle or conveyance propelled by any mechanical power, the sum of Fifty (\$50.00) dollars; when he shall use in such business or occupation a wagon or other vehicle drawn by one horse or other beast of burden, the sum of Twenty-five dollars (\$25.00); when he shall use in such business or occupation a push or hand cart, or other vehicle not drawn by horses or other beasts of burden or propelled by any mechanical power, Fifteen (\$15.00) dollars, and when he shall conduct such business on foot, by means of a pack, basket or other means for carrying merchandise on foot, the sum of Seven dollars and fifty cents (\$7.50). ('11, c. 121, § 3; amended '25, c. 227) [6091]

7331. Terms of license, etc.—Disposition of fees—Upon the presentation of such receipt from the treasurer of such county showing the payment of a fee as hereinbefore provided, the auditor of such county shall issue to the applicant a license for a period of one year from the date of the issuance of the receipt of such treasurer, the full license fee to be paid in every case. Every such license shall authorize the person receiving the same to use one wagon or other vehicle drawn by two or more horses, or other beasts of burden, and no more, or automobile or other vehicle or conveyance propelled by mechanical power; one wagon or other vehicle drawn by one horse, or other beast of burden, and no more; one push or hand cart or other vehicle not drawn by horse or other beast of burden, and no more; or the baskets, packs, or other means necessary for one peddler (carrying by himself) merchandise on foot as the case may be. Such license shall not be assigned or transferable, and but one person shall be authorized to carry on business under such license, and no person shall conduct business under the same license as co-partners, agents, or otherwise, and shall be good only in the county in which the same was issued. All moneys received from the sale of such licenses shall be placed to the credit of the general revenue fund of the county. ('11 c. 121 § 4) [6092]

7332. Right of municipalities, etc., to regulate—Nothing in this act contained shall be construed as prohibiting or in any way limiting or interfering with the right of any city, village or other municipal corporation, or governmental subdivision of the state, to regulate or license the carrying on within such municipality the business of hawker or peddler in any case where authority has been or shall hereafter be conferred upon it so to do, but the requirements of this act shall be in addition thereto. ('11 c. 121 § 5) [6093]

7333. License to be exhibited—Penalty—It shall be the duty of any person licensed as herein provided, upon the demand of any sheriff, deputy sheriff, constable or police officer, to exhibit his license, and make affidavit that he is the person named therein. Any person failing to exhibit his license when requested by the persons above designated shall be guilty of a misdemeanor. ('11 c. 121 § 6) [6094]

7334. Farm and garden products—The provisions of this act shall not apply to any person who may sell or peddle the products of the farm or garden occupied and cultivated by him. ('11 c. 121 § 7) [6095]

7335. Violation of act a misdemeanor—Every person who shall engage in, or follow the business of a hawker or peddler without having first obtained a license shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifteen (\$15) dollars, nor more than one hundred (\$100) dollars, or in default of the payment of such fine by imprisonment in the county jail of the county, in which he shall have been convicted, for a period of not exceeding sixty days for each offense. ('11 c. 121 § 8) [6096]

7336. Cities of first class—Any person now or hereafter licensed by any city, now or hereafter, having over fifty thousand inhabitants, to engage or follow the business or occupation of hawker or peddler therein, shall have the right and be entitled to engage in and follow said business or occupation within the limits of such city without paying any additional license therefor, and without obtaining any other or additional license therefor, notwithstanding any law of this state to the contrary. ('11 c. 297 § 1) [6097]

TRANSIENT MERCHANTS

7337. Engaging in business without license unlawful—That hereafter it shall be unlawful for any transient merchant to engage in, do or transact any business as such, without first having obtained a license as hereinafter provided. ('11 c. 39 § 1) [6098]

1909 c. 248, "An act to tax the occupation of, and to license, hawkers, peddlers and transient merchants," etc., was declared to be unconstitutional (109-147, 123+400).

See 1911 c. 19.

7338. License, how applied for and issued—Fees—Any transient merchant desiring to engage in, do, or transact business in any county in this state, shall file an application for a license for that purpose with the auditor of the county in which he desires to do business, which application shall state his name, his proposed place of business, the kind of business proposed to be conducted, and the length of time for which he desires to do business. Such transient merchant shall pay to the treasurer of such county a license fee of one hundred and fifty (\$150) dollars, and the treasurer of such county shall issue to such person a receipt therefor, and such transient merchant shall thereupon file the treasury receipt for such payment with the auditor of such county, who shall thereupon issue to such transient merchant a license to do business as such at the place described in his application and the kind of business to be done shall be described therein. No license shall be good for more than one person unless such person shall be the member of a co-partnership, nor for more than one place, and shall not be good outside of the county in which the same was issued, and shall be good for a period of one year from the date of its issuance. The auditor shall keep a record for such licenses in a book provided for that purpose, which shall at all times be open to public inspection. ('11 c. 39 § 2) [6099]

7339. Certain sales, etc., without license unlawful—License, how applied for and issued—False affidavit—Penalty—Provided further, that it shall be unlawful for any transient merchant to advertise, represent, or hold forth as being sold for an insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesale or manufac-

turer, or closing out sale, or as a sale of any goods, wares and merchandise, damaged by smoke, fire, water, or otherwise, or in any similar form; unless such transient merchant shall file with the county auditor of the county in which the application for license is filed and issued for such purpose, an affidavit at the same time that said application is filed, showing all the facts relating to the reasons and character of such sale so to be advertised or represented, and showing that such sale is in fact as is to be advertised and represented, including a statement of the names of the persons from whom the goods, wares and merchandise so to be advertised or represented were obtained, the date of the delivery to the person applying for the license, and the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully itemize all goods, wares and merchandise to be sold. If such affidavit shall fail to show that such sale is of the character as the same is intended to be advertised or represented as shown in such affidavit, and fails to disclose the facts as herein required, then such auditor shall refuse such applicant a license for such sale. Should license be issued to such applicant then such license shall state that such person is authorized and licensed to sell such goods, wares and merchandise, and advertise and represent and hold forth the same as being sold as such insurance, bankrupt, insolvent, assignee, trustee, testator, executor, administrator, receiver, syndicate, wholesale or manufacturer, or closing out sale, or as a sale of any goods, wares and merchandise, damaged by smoke, fire, water, or otherwise, or in any similar manner present other fact as shown in such affidavit. Such affidavit shall be sworn to before a person authorized to administer oaths by such person so applying for such license, or if a partnership, by a member of such partnership, or if a corporation, by one of the officers of such corporation. Every person making a false statement of any fact in such affidavit shall be deemed guilty of perjury, and shall be punished for such offense as is provided by the criminal code of this state. ('11 c. 39 § 3) [6100]

7340. Transient merchant defined—The words "transient merchant" as herein used, shall include all persons, individuals, co-partners and corporations both as principal and agent, who engage in, do or transact any temporary and transient business in this state, either in one locality, or in traveling from place to place in this state, selling goods, wares and merchandise, and who for the purpose of carrying on such business, hire, lease, occupy or use a building, struc-

ture, vacant lot or railroad car for the exhibition and sale of such goods, wares and merchandise. ('11 c. 39 § 4, amended '13 c. 504 § 1) [6101]

7341. Evidence—Provided further, that whenever it appears that any such stock of goods, wares and merchandise has been brought into any county in this state by a person not a resident therein, and that it is claimed that such stock is to be closed out at reduced prices, such facts shall be prima facie evidence that the person, co-partnership or corporation so offering such goods for sale, is a transient merchant as defined in this act. ('11 c. 39 § 5) [6102]

7342. Not applicable to certain sales—The provisions of this act shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares and merchandise, by sample, for future delivery, or to hawkers on the street, or to peddlers from vehicles, baskets or packs carried on their backs, or to sheriffs, constables or other public officers selling goods, wares and merchandise according to law; nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors, nor to any person who may sell or peddle the products of the farm or garden occupied and cultivated by him. ('11 c. 39 § 6) [6103]

7343. Right of municipalities, etc., to regulate—Nothing in this act contained shall be construed as prohibiting or in any way limiting or interfering with the right of any city, village or other municipal corporation or governmental subdivision of the state, to regulate or license the carrying on within such municipality the business of a transient merchant as in this act defined, in any case where authority has been or shall hereafter be conferred upon it so to do, but the requirements of this act shall be in addition thereto. ('11 c. 39 § 7) [6104]

7344. Disposition of fees—All license fees collected under this act shall be paid into the general revenue fund of the county. ('11 c. 39 § 8) [6105]

7345. Violation a gross misdemeanor—Every person, either as principal or agent, who shall in any manner engage in, do, or transact any business as a transient merchant, without having first obtained a license as before provided, or who shall conduct any sale, or who shall sell or expose for sale any goods, wares and merchandise contrary to the provisions of this act, or who shall advertise, represent, or hold forth any sale of goods, wares and merchandise, to be conducted contrary to the provisions of this act, shall be guilty of a gross misdemeanor. ('11 c. 39 § 9) [6106]

CHAPTER 56B

TRADE NAMES

Commercial business—Trade and individual names	
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7346. Commercial business—Trade and individual names—Certificate—No person or persons shall hereafter carry on or conduct or transact a commercial

business in this state under any designation, name or style, which does not set forth the full individual name or names of every person interested in such business unless such person or persons shall file in the office of the clerk of the district court of the county or counties, in which said person, or persons, conduct or transact, or intend to conduct or transact such business, a certificate, setting forth the name under which said business is conducted or transacted, or is to be conducted or transacted and the true or real full name,

or names, of the person or persons conducting or transacting the same, with the postoffice address or addresses of such person or persons. Said certificate shall be executed and duly acknowledged by one of the persons conducting, or intending to conduct said business. ('11 c. 271 § 1) [6107]

129-472, 152+885.
Trade name involved in interstate commerce is not subject to these statutes (133-240, 153+239).

7347. Certificate to be filed—Persons now conducting any such business under any such designation, name or style, as referred to in sub-division one, shall file such certificate as hereintofore prescribed within ninety (90) days after this act shall take effect, and persons hereafter conducting or transacting business as aforesaid shall, before commencing such business, file such certificate in the manner hereinbefore prescribed. ('11 c. 271 § 2) [6108]

7348. New certificate on change of ownership—Continuing liability—On every change in ownership of every such business as is described in sub-division one hereof, a new certificate must be filed with the clerk of said district court, either by one of the retiring or incoming owners of said business, setting forth the full individual name or names, together with the post-office address or addresses of the new owners thereof. Until the filing of such new certificate, the person or persons whose names appear as owners upon the certificate heretofore filed, shall continue liable to all persons who extend credit to said business, except only in the case of creditors who have actual notice or knowledge of such change of ownership. ('11 c. 271 § 3) [6109]

7349. Duty of clerks of court—Fees—Evidence—The several clerks of the district courts of this state shall keep an alphabetical list of all persons filing cer-

tificates provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five (25) cents. A copy of such certificate, duly certified to by the clerk of the district court in whose office the same shall be filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained. ('11 c. 271 § 4) [6110]

7350. Not applicable to corporations or certain partnerships—This act shall not apply to corporations, domestic or foreign, nor to co-partnerships in which one of the individual names of all of the members thereof appear in the co-partnership name of designation. ('11 c. 271 § 5) [6111]

7351. Violation a misdemeanor—Any person or persons carrying on or conducting or transacting a business as aforesaid, who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor. ('11 c. 271 § 6) [6112]

7352. Pleading failure to file certificate—Costs—If any person or persons conducting a business contrary to the terms of this act shall, prior to the filing of the certificate herein prescribed, commence a civil action in any court of this state on account of any contract made by or transaction had on behalf of said business, the defendant may plead such failure in abatement of the action; on all proceedings had in said action shall thereupon be stayed until the certificate provided for by this act is duly filed, and the defendant in case he prevails in said action, shall also be entitled to tax five dollars (\$5.00) costs in addition to such other statutory costs as are now allowed by law, and in case he does not prevail in said action, shall be entitled to deduct said five dollars (\$5.00) from the judgment otherwise recoverable therein. ('11 c. 271 § 7) [6113]

133-240, 153+239.

CHAPTER 57

LIMITED PARTNERSHIP

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7353. Limited partnership defined—A limited partnership is a partnership formed by two or more persons under the provisions of section 2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. ('19 c. 498 § 1)

7354. Formation—1. Two or more persons desiring to form a limited partnership shall:

- (a) Sign and swear to a certificate, which shall state—
 - I. The name of the partnership.
 - II. The character of the business.
 - III. The location of the principal place of business.
 - IV. The name and place of residence of each member; general and limited partners being respectively designated.
 - V. The term for which the partnership is to exist.
 - VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner.
 - VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made.

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special 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 digest
of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1940

CHAPTER 54
Unclaimed Property

7306. Unclaimed money in court, how disposed of—Etc.

Where during bank holiday as a condition to continuing in business a bank reorganized and questionable securities were removed from assets and transferred to a trustee who made distribution but had on hand a substantial sum in unclaimed dividends, commissioner of banks had no official duty to perform in regard thereto, unclaimed dividends being in hands of a trustee appointed under a trust agreement and subject to supervision of district court under §8100, and not being subject to §7614, and not dormant or abandoned within meaning of §7658-21, the pertinent statute being §7306, requiring payment of unclaimed dividends into court for benefit of persons entitled thereto. Op. Atty. Gen. (29B-14), August 21, 1939.

COMMON LAW
DECISIONS RELATING TO CHAPTER
IN GENERAL

1. Lost property in general.

Automobiles abandoned on city street, owners being unknown, may be removed by city officials to a local garage for storage or safe keeping, and later be sold for storage charges under unclaimed property statute or motor vehicle storage lien statute. Op. Atty. Gen. (632a), Dec. 2, 1937.

Rights of finder and owner of locus in quo in lost personal property. 21MinnLawRev191.

CHAPTER 55

Hotels and Public Resorts

7312. Hotel and innkeepers to have safes.

Where a hotel accepted ring for delivery to a guest, a manufacturing jeweler who had long been one of its regular patrons, well known to the management, resulting bailment was for benefit of both bailor and bailee. Peet v. R., 191M151, 253NW546. See Dun. Dig. 732, 4511.

Guest having delivered a valuable ring to hotel, claim that no contract of bailment resulted because of hotel's ignorance of value of article was untenable. Id. See Dun. Dig. 728, 4511.

Section held not applicable to an action for loss of property by fire in a hotel room due to failure of defendant to exercise ordinary care in rescuing plaintiff and his property after fire started. Knutson v. F., 202M642, 279NW714. See Dun. Dig. 4511.

7313. Loss or injury to baggage.

Section held not applicable to an action for loss of property by fire in a hotel room due to failure of defendant to exercise ordinary care in rescuing plaintiff and his property after fire started. Knutson v. F., 202M642, 279NW714. See Dun. Dig. 4511.

7314. Liability of hotel and innkeeper.

Evidence held to sustain finding that innkeeper was guilty of negligence with respect to property of guest destroyed by fire. Knutson v. F., 202M642, 279NW714. See Dun. Dig. 4511.

Section held not applicable to an action for loss of property by fire in a hotel room due to failure of defendant to exercise ordinary care in rescuing plaintiff and his property after fire started. Id. See Dun. Dig. 4511.

In action by guest against innkeeper for loss of property in a fire, burden was upon defendant to show his freedom from negligence in causing loss and injury. Id. See Dun. Dig. 4511, 4513.

7316. Lien of inn keeper.

Proprietor of an apartment hotel, who prevented tenant from entering rooms, let by the week, for purpose of removing personal property, was not an innkeeper having a lien against property but was a landlord, and was guilty of coercion. State v. Bowman, 202M642, 279NW214. See Dun. Dig. 2648, 4514, 5361, 5382.

Right to lien upon baggage is not predicated on license. Op. Atty. Gen., Mar. 19, 1934.

Distinction between guests, lodgers, and tenants as affecting offense of coercion. 22MinnLawRev1055.

7318. Violation a misdemeanor.

There is no law making registration at a hotel under assumed name a crime. Op. Atty. Gen. (494a), Aug. 3, 1934.

7321. Equal rights in hotels, etc.

A complaint, charging that the plaintiff, on entering a cafeteria for the purpose of being served food, was told that he was too dirty to be served and would have to get out, and was refused service, when in fact his clothing and person were clean, does not state a cause of action either for slander or for deprivation of any civil rights. Larson v. W., 183M28, 235NW393. See Dun. Dig. 4509.

CHAPTER 56

Auctioneers

7322. Licenses—Persons entitled to.—The county board or auditor may license any voter in its county, or any person from another state, as an auctioneer. Such license shall be issued by the auditor and shall authorize the licensee to conduct the business of an auctioneer in the state of Minnesota for the period of one year. It shall be recorded by the auditor in a book kept for that purpose. Before such license is issued the licensee shall pay into the county treasury a fee of ten dollars (\$10.00), provided, however, that for a nonresident the license fee shall be \$25.00. Provided, that any person may be licensed as an auctioneer for the purpose of making sales of purebred or grade livestock only upon the payment of the fee and the giving of the bond as above provided. Provided, further, that any person resident in an adjoining state which issues auctioneers' licenses to residents of Minnesota on the same basis as to the residents of such adjoining state, may be licensed as an auctioneer upon payment of the fee required there-

for in such adjoining state and giving an approval of a bond as provided in the next succeeding section. (As amended Apr. 21, 1937, c. 313, §1.)

An ordinance for regulating of auctions and auctioneers, imposing a minimum license fee of \$250, is so unreasonable as to be invalid. Orr v. C., 193M371, 258NW569. See Dun. Dig. 716, 6794.

Specific delegation to a municipal corporation of power, by ordinance, to license and regulate auctions and auctioneers does not include, by implication, power to prohibit an established retail jeweler from selling his own merchandise at auction. Id.

Any person may be licensed as an auctioneer to make sales of livestock without regard to his residence. Op. Atty. Gen., Dec. 10, 1929.

Minnesota cannot license a resident of Iowa. Op. Atty. Gen., Feb. 27, 1931.

Non-residents from an adjoining state which does not issue auctioneers' licenses to residents of this state on the same basis as to residents of such adjoining state cannot be licensed to conduct auction sales of goods other than live stock. Op. Atty. Gen., Feb. 3, 1932.

The holder of a void auctioneer's license could not rely upon such license as a defense to a criminal action. Op. Atty. Gen., Feb. 3, 1932.

Resident of Iowa is not entitled to a license in this state. Op. Atty. Gen. (16c), Dec. 31, 1935.

License held by Iowa resident in this state being void, it would constitute defense to criminal prosecution. Id.

Resident of another state may be licensed in any county to conduct sales of pure bred and grade livestock upon paying fee and putting up bonds. Op. Atty. Gen. (16c), Mar. 8, 1937.

A nonresident auctioneer cannot legally be teamed up

with Minnesota licensed auctioneer and conduct sales as agent of Minnesota licensee under his license. Id.

License may cover both pure bred and grade livestock. Id.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

7327. Unlicensed sales.

Owner of goods may not sell them at auction without license. Op. Atty. Gen., Oct. 5, 1929.

CHAPTER 56A

Hawkers, Peddlers, and Transient Merchants

HAWKERS AND PEDDLERS

7328. Engaging in business without license, etc.

Op. Atty. Gen., June 5, 1933; note under §4367.

A salesman representing a wholesaler dealing exclusively with retail merchants and not consumers is not a "peddler." Op. Atty. Gen., July 2, 1930.

One holding a wholesale produce dealer's license is not thereby relieved from the necessity of taking out a peddler's license. Op. Atty. Gen., Mar. 12, 1931.

Persons who sell to dealers only are not peddlers. Op. Atty. Gen., July 8, 1933.

Game wardens are authorized to participate in and supervise sale of rough fish and are not subject to municipal ordinances regulating transient merchants. Op. Atty. Gen. (208i), Dec. 2, 1937.

Where a veteran conducting a general merchandise business employs another veteran to peddle from house to house, veteran operating store need not obtain a peddler's license, but his employee, though a veteran, must purchase license. Op. Atty. Gen. (290j), Dec. 7, 1937.

One taking an agency for purpose of selling merchandise manufactured by particular company and making deliveries when he receives orders must obtain a license. Op. Atty. Gen. (290j), March 14, 1938.

Many tank wagon operators, also remedy salesmen and tea and grocery truck operators, should have a license, and a tank wagon may call to deliver a telephone order of gasoline, and become a peddler when driver tries to sell and deliver other items carried with him. Op. Atty. Gen. (290j-8), July 27, 1939.

7332. Right of municipalities, etc., to regulate.

Ordinances regulating hawkers and peddlers and solicitors must be reasonable and not prohibitory. Op. Atty. Gen. (477b-21), Sept. 30, 1935.

A municipality may ordain that practice of peddlers and solicitors in going upon private premises and homes and soliciting orders without an invitation by occupants thereof is a nuisance. Op. Atty. Gen. (477b-21), Oct. 16, 1935.

A municipality may prescribe reasonable conditions as to time when, places where, and manner in which right of farmer to sell product may be exercised, so long as no license is required, and conditions are reasonable. Id.

A village may regulate hawkers, peddlers, transient merchants and solicitors, but may not prohibit doing business by them within village, though it is probable that proper ordinances could be passed making it a nuisance to solicit orders upon private premises without invitation or consent of occupants. Op. Atty. Gen. (477b-21), Oct. 15, 1937.

Act of going upon private premises for purpose of establishing a sales route for butter and bakery products and obtaining permission of owner or occupants to come upon their premises in future for purpose of soliciting order for such commodities, is not "soliciting orders" or "disposing of or peddling or hawking" such commodities within meaning of so called "Green River Ordinance". Op. Atty. Gen. (59a-32), July 6, 1938.

Validity of municipal legislation imposing a tax on solicitation of orders for future delivery. 18MinnLaw Rev476.

Validity of ordinance making soliciting of orders at private residence a nuisance. 23MinnLawRev88.

7334. Farm and garden products.

An ordinance which requires "transient merchants" selling or displaying for sale "natural products" of the farm, including such commodities as cattle, hogs, sheep, veal, poultry, eggs, butter and fresh or frozen fish, to be licensed and to file a bond and exempts from its provisions persons selling produce raised on farms occupied and cultivated by them, and persons selling milk, cream, fruit, vegetables, grain or straw, is violative of state and federal constitutional prohibitions against class legislation. State v. Pehrson, 287NW313. See Dun. Dig. 1673.

TRANSIENT MERCHANTS

7337. Engaging in business without license.

175M374, 221NW428.

7338. License, how applied for and issued—Fees.

A transient merchant who has obtained a license in compliance with city ordinance is also compelled to obtain a license from county auditor under this section. Op. Atty. Gen., Oct. 6, 1932.

7340. Transient merchant defined.

A farmer who buys products from other farmers in the vicinity and sells them must take out a peddlers' license. Op. Atty. Gen., Oct. 14, 1931.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. Op. Atty. Gen., Oct. 23, 1931.

City of Pipestone has authority to regulate "transient merchants" but not "transient dealers." Op. Atty. Gen., Oct. 9, 1933.

A dry cleaner and dyer having a place of business in some other city and soliciting in neighboring towns is not a hawker, peddler or a transient merchant. Op. Atty. Gen. (477b-8), Apr. 25, 1935.

One who shipped furniture in car load lots to a local merchant for purpose of sale by the merchant at public auction is a transient merchant required to have a license if he does not part with title to the merchandise and no bona fide contract is made that would in any way bind local merchant to take goods. Op. Atty. Gen. (477b-21), May 16, 1935.

Vendors who go from house to house with truck selling tea, coffee and spices are not "transient merchants" and are not subject to be licensed and regulated under general law. Op. Atty. Gen. (477b-21), Oct. 15, 1937.

Selling bread from truck at houses is "peddling" and may be licensed or regulated. Id.

Soliciting for dry cleaning is not "peddling." Id.

Game wardens are authorized to participate in and supervise sale of rough fish and are not subject to municipal ordinances regulating transient merchants. Op. Atty. Gen. (208i), Dec. 2, 1937.

Section 1186(12) gives village authority to license and regulate transient dealers in accordance with §7340. Op. Atty. Gen. (290p), April 21, 1939.

7342. Not applicable to certain sales.

A farmer who occupies a stand on a public highway and sells the products of his garden and also products which he does not raise is a transient merchant who must have a license. Op. Atty. Gen., Oct. 23, 1931.

A person selling goods by sample for future delivery is neither a peddler nor a transient merchant and his business is not subject to a regulation by a village. Op. Atty. Gen. (59a-32), May 9, 1934.

7343. Right of municipalities, etc., to regulate.

Transient merchant obtaining license under city ordinance must also obtain one from county auditor. Op. Atty. Gen., Oct. 6, 1932.

A village may not, under guise of licensing, adopt an ordinance which is prohibitive. Op. Atty. Gen., May 18, 1933.

A village may regulate hawkers, peddlers, transient merchants and solicitors, but may not prohibit doing business by them within village, though it is probable that proper ordinances could be passed making it a nuisance to solicit orders upon private premises without invitation or consent of occupants. Op. Atty. Gen. (477b-21), Oct. 15, 1937.

Section contemplates that municipality adopting an ordinance regulating transient merchants must have power to do so under charter or laws under which it is operating. Id.

CHAPTER 56B

Trade and Other Names

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

Generally there can be no exclusive appropriation of a family surname so as to constitute it a valid technical trade-mark, and a person is entitled to honestly use his own name in connection with any business open to him but not in such a way as to deceive public and pass off his goods as those of owner of established trade name. *Brown Sheet Iron & Steel Co. v. B.*, 198M276, 269NW633. See *Dun*, Dig. 9670.

Although courts will protect use of a name that is so identified with a product that it has become well known and respected in trade, protection need not be any greater than is reasonably necessary to accomplish desired purpose. *Id.*

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev824.

7352-1. Lodge and society emblems may be registered.—That any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the Constitution and Laws of the United States or this State, may register, in the office of the Secretary of State, a facsimile, duplicate, or description of its name, badge, motto, button, decoration, charm, emblem, rosette or other insignia, and may, by re-registration alter or cancel the same. (Act Apr. 17, 1933, c. 295, §1.)

7352-2. Application for registration.—Application for such registration, alteration or cancellation, shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, upon blanks to be provided by the Secretary of State; and such registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members and those hereafter to become members thereof, throughout this state. (Act Apr. 17, 1933, c. 295, §2.)

7352-3. Secretary of State to keep record and index.—The Secretary of State shall keep a properly indexed record of the registration provided for by this Act, which record shall also show any altered or cancelled registration. (Act Apr. 17, 1933, c. 295, §3.)

7352-4. Not to register duplicates.—No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of this Act. (Act Apr. 17, 1933, c. 295, §4.)

7352-5. Secretary of State to issue certificates.—Upon granting registration as aforesaid, the Secretary of State shall issue his certificate to the petitioners, setting forth the fact of such registration. (Act Apr. 17, 1933, c. 295, §5.)

7352-6. Penalty for unlawful use of registered insignia.—Any person who shall wilfully wear, exhibit, display, print, or use, for any purpose, the badge, motto, button, decoration, charm, emblem, rosette, or other insignia of any such association or organization herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and by-laws, rules and regulations of such association and organization, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding \$100.00, and in default of payment, committed to jail for a period of not to exceed 60 days. (Act Apr. 17, 1933, c. 295, §6.)

7352-7. Fees.—The fees of the Secretary of State for registration, alteration, cancellation, searches made by him, and certificates issued by him, pursuant to this Act, shall be the same as provided by law for similar services. The fees collected under this Act shall be paid by the Secretary of State into the state treasury. (Act Apr. 17, 1933 c. 295, §7.)

7352-8. Inconsistent acts repealed.—All Acts or parts of Acts inconsistent herewith are hereby repealed. (Act Apr. 17, 1933, c. 295, §8.)

CHAPTER 56C

Newspapers

7352-11. Newspapers to register statement of ownership—exceptions.—Every newspaper printed or published within the State of Minnesota excepting legally qualified newspapers shall register in the office of the register of deeds, a statement of the owners, printers and publishers of said paper, and the residence of each, and if the same shall be published by a corporation, the names and residences of the president, secretary and editors thereof. (Act Apr. 21, 1931, c. 293, §1.)

*School publications must file their statement of ownership, etc. *Op. Atty. Gen.*, Feb. 8, 1934.

7352-12. Register of deeds to provide book.—The register shall provide a suitable book in which to regis-

ter the names as herein provided and shall charge therefor a fee of fifty cents. (Act Apr. 21, 1931, c. 293, §2.)

7352-13. Shall not publish paper unless registered.—No newspaper excepting a legally qualified newspaper shall be printed or published within the State of Minnesota without the names of the owners, publishers and editors thereof stated and set forth in said newspaper. (Act Apr. 21, 1931, c. 293, §3.)

Fact that owner of newspaper merely described himself as "publisher and editor" was a technical rather than material violation of statute. *Fryberger v. A.*, 194M443, 260NW625.

7352-14. Violation a gross misdemeanor.—In the event of any newspaper failing to file and register as provided for in Section 1 of this act, the party printing or publishing the same shall be guilty of a gross misdemeanor. (Act Apr. 21, 1931, c. 293, §4.)

7352-15. Court to determine ownership.—In the event of the publication of any newspaper within the State of Minnesota without the names of the owners and publishers thereof fully set forth in said newspaper, circular or publication, the court or the jury may determine such ownership and publisher on evidence of the general or local reputation of that fact and opinion evidence may be offered and considered by the court or jury in any case arising in connection

with the ownership, printing or publishing of any such publication or of any article published therein either in a criminal action for libel by reason of such publication or in any civil action based thereon. (Act Apr. 21, 1931, c. 293, §5.)

7352-16. Definition.—By the term "newspaper" as expressed herein, shall be included any newspaper, circular or any other publication whether issued regularly or intermittently by the same parties or by parties, one of whom has been associated with one or more publication of such newspaper or circular, whether the name of the publication be the same or different. (Act Apr. 21, 1931, c. 293, §6.)

CHAPTER 57

Limited Partnership

LIMITED PARTNERSHIP ACT

7353 to 7383.

The Uniform Limited Partnership Act has been adopted by: Alaska, California, Colorado, Idaho, Illinois, Iowa,

Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wisconsin.

CHAPTER 57A

Partnership

The Uniform Partnership Act has been adopted by: Alaska, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, Wyoming.

PART I

PRELIMINARY PROVISIONS

7385. Definition of terms.

The corporate partner. 14MinnLawRev769.

7387. Rules of construction.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

PART II.

NATURE OF A PARTNERSHIP

7389. Partnership defined.

"Investment contract" embracing profit sharing scheme, offered by broker to customers, held not to create partnership. Securities & Exchange Com. v. W., (USDC-Minn), 12FSupp245.

Joint ownership of land does not create a partnership or make the owners joint adventurers. Pratt v. M., 182 M250, 234NW464. See Dun. Dig. 4948b, 7346, 7350.

The evidence is not conclusive that there was a partnership between one of the defendants and a corporation now defunct. Mahlberg v. J., 182M578, 235NW280. See Dun. Dig. 2092, 7346.

A partnership may be legal result of an agreement notwithstanding an expressed intention not to create such a relationship. Randall Co. v. B., 189M175, 248NW752. See Dun. Dig. 7346.

Contract between manager and prize fighter held one of joint enterprise or adventure and not one of employment. Safro v. L., 191M532, 255NW94. See Dun. Dig. 4948b, 5801.

As between owner of stock pledged by borrower without knowledge of owner and person signing as surety before delivery of note, such surety held not partner of borrower as affecting primary liability on note, and right to exoneration of stock pledged. Stewart v. B., 195 M543, 263NW618. See Dun. Dig. 7346.

Pledgor of stock and endorsers held co-sureties and each entitled to contribution. Id. See Dun. Dig. 1925.

Written contract with respect to mortgages transferred by bank to plaintiff's decedent held to have created a joint adventure of such nature that plaintiff is entitled to contribution for losses from certain directors and stockholders of bank. Minars v. B., 197M595, 268NW197. See Dun. Dig. 4948b.

Evidence held to sustain finding that renting of two adjoining farms to one tenant was not a joint adventure, as affecting division of expenses of maintenance. Patterson v. R., 199M157, 271NW336. See Dun. Dig. 4948b.

Relationship between two brokerage firms based upon agreement for use by one or the other as its exclusive correspondent for execution of orders of itself and its customers in consideration for which it was to be furnished free wire service held not one of partnership. Korns v. T., (DC-Minn), 22FSupp442, 36AmB(NS)854, app. dism'd, (CCA8), 102F(2d)993, —AmB(NS)—.

When persons associate together and do business as a corporation, and latter is defectively organized, their rights, duties, and liabilities, as between themselves, should be determined and governed by express or implied terms, conditions, and limitations contemplated by their agreement, and they are not partners unless they have agreed to be such. Thompson v. M., 202M318, 278NW153. See Dun. Dig. 2092.

A partnership has as its basis a contract, and respective interests of each member can only be altered by a modification of it, and a single member by himself alone cannot accomplish such an alteration. Keough v. S., 285NW809. See Dun. Dig. 7350.

The law of joint adventures. 15MinnLawRev644.

7390. Rules for determining the existence of a partnership.

One selling diamonds, held not shown to have been the partner of the owner. 180M447, 231NW408.

In action to recover on a printing bill, evidence held to justify finding that defendants were partners. Randall Co. v. B., 189M175, 248NW752. See Dun. Dig. 7349a(37).

In workmen's compensation case evidence held to show that two persons operating an apartment building and dividing the income were partners rather than tenants in common. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7349a.

Co-ownership of real estate does not create a partnership. Campbell v. S., 194M502, 261NW1. See Dun. Dig. 7346(8).

Bank suing co-owners of a farm as partners on a note purporting to be signed by them as a partnership was not thereafter stopped in a suit by a third party to claim that there was no partnership and that certain co-owner was alone liable on theory of having signed under an assumed name, first action being settled and there being no findings or judgment. Id. See Dun. Dig. 7348.

Profit sharing as a test of existence of partnership. 16MinnLawRev115.

7391. Partnership property.

Windom Nat. Bank v. K., 191M447, 254NW602; note under §7408.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

7392. Partner agent of partnership.

Where a partnership is a party to a contract, the acts of one member thereof bind the partnership. 174M297, 219NW180.