

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.



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MASON PUBLISHING CO.  
SAINT PAUL, MINNESOTA  
1940

## Part II. Property Rights and Domestic Relations

## CHAPTER 59

## Estates in Real Property

**8032. How divided.**

Life tenant of property subject to mortgage must keep down the interest, and on redemption after foreclosure holds for the joint benefit of himself and the remainderman, the latter being required to contribute his share of amount necessary to redeem. 171M182, 213NW736.

Amount remainderman must contribute on redemption by life tenant after mortgage foreclosure. 171M182, 213NW736.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and an annulment of the foreclosure. 173M128, 216NW798.

Equity will not take jurisdiction at instance of life tenant and sell property merely because reinvested proceeds would produce a larger net income. 175M531, 221NW906.

Life tenant's lien on remainder, to secure contributions chargeable against latter because of life tenant's redemption from an earlier mortgage, passes to mortgagee under life tenant's mortgage of whole estate. Faulkenburg v. W., 194M154, 259NW802. See Dun. Dig. 3167.

As to remaindermen, a life tenant's only duty in respect to a prior mortgage lien upon whole estate is to keep down interest. That lien secures a debt for payment of which life tenant is liable contractually does not impose upon latter, as to remaindermen, duty to pay as principal. *Id.* See Dun. Dig. 3170(51).

Money or other property received by a trustee as proceeds of sale or exchange of capital of trust property is capital, not income, and it was duty of trustee (who was also life tenant) to allocate to corpus, rather than income, all dividends of corporation so far as they consisted of increases in its capital (profits on sale of securities). Clarke's Will, 204M574, 284NW376. See Dun. Dig. 3169.

**8033. Estates in fee simple.**

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

**8036. Freeholds—Chattels real—Chattel interests.**

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

Indians owning tribal allotment lands are not qualified to petition for formation of school district. *Op. Atty. Gen.* (240w), July 7, 1936.

**8041. Remainders defined.**

Liability for improvements made by life tenant. 180M151, 230NW634.

**8042. Reversions defined.**

Papke v. P., 203M130, 280NW183; note under §8043.

**8043. Future estates vested or contingent.**

A will devising and bequeathing all of testator's property to a trustee in trust for his wife for life (subject to an annuity fund for another) and directing trustee upon death of his wife to transfer and deliver residue then remaining in equal shares to his children then living, child or children then living of any deceased child of his, did not vest remainder until time for distribution arrived; and plaintiff, widow of testator's son, who died, without issue, subsequent to testator's death but prior to death of his mother, takes no interest in estate. Levings v. F., 192M143, 255NW828. See Dun. Dig. 10278.

Section does not prohibit a testator from clearly specifying in his will when a remainder after a particular estate shall vest. *Id.*

Evidence held to show that deed of one-half undivided interest was intended as a grant of a contingent future estate in fee simple, grantee to have the property upon contingency that she survived grantor. Papke v. P., 203M130, 280NW183. See Dun. Dig. 2693.

Included in statutory definitions of future estates are all limitations which at common law were denominated remainders, vested or contingent, springing and shifting uses and executory devises. *Id.* See Dun. Dig. 3160.

Classification of estates under statute is without respect to their nature, mode of conveyance, and their relation to estate of grantor, or to other granted estates. *Id.*

**8044. Suspension of power of alienation.**

Power of alienation was not unlawfully suspended by a provision in a contract for sale of land that no assignment should be valid unless approved in writing by vendors. 175M502, 221NW871.

**8045. Limit of suspension.**

There was no unlawful restraint of alienation in a deed of general warranty containing a provision that property could not be sold or mortgaged for at least 10 years after death of grantor, and that property should go to sisters and brothers of grantee, share and share alike, if he should die before the 10 years. Youngers v. S., 196M147, 264NW794. See Dun. Dig. 7480.

**8052. "Heirs" and "Issue" defined. [Repealed Apr. 21, 1939, c. 378, §2.]**

"Failure of issue" defined. Laws 1939, c. 378, §1.

**8052-1. Failure of issue.**—Unless a different intent is effectively manifested, whenever property is limited upon the death of any person without "heirs" or "heirs of the body" or "issue" general or special, or "descendants" or "offspring" or "children" or any such relative described by other terms, the limitation is to take effect only when that person dies not having such relative living at the time of his death, or in gestation and born alive thereafter, and is not a limitation to take effect upon the indefinite failure of such relatives; nor, unless a different intent is effectively manifested, does the limitation mean that death without such relative is restricted in time to the lifetime of the creator of the interest. (Act Apr. 21, 1939, c. 378.)

**8057. Remainder as conditional limitation.**

There was no unlawful restraint of alienation in a deed of general warranty containing a provision that property could not be sold or mortgaged for at least 10 years after death of grantor, and that property should go to sisters and brother of grantee, share and share alike, if he should die before the 10 years. Youngers v. S., 196M147, 264NW794. See Dun. Dig. 7480.

**8058. Rule in Shelley's Case abolished.**—When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs or heirs of the body of such tenant for life shall be entitled to take as purchasers, by virtue of the remainder so limited to them. No conveyance, transfer, devise, or bequest of an interest, legal or equitable, in real or personal property, shall fail to take effect by purchase because limited to a person or persons, howsoever, described, who would take the same interest by descent or distribution. (As amended Mar. 28, 1939, c. 90.)

**8062. Expectant estates protected.**

Where a mortgagee takes the legal title to the mortgaged land a merger will not be held to take place if such was not the intent and would manifestly be against his interest. Hartford A. & I. Co. v. F., (CCAS), 59F(2d) 950. See Dun. Dig. 6273.

**8065. Qualities of expectant estates.**—Expectant estates are descendible, devisable and alienable in the same manner as estates in possession; and hereafter contingent rights of re-entry for breach of conditions subsequent, and rights to possession for breach of conditions subsequent after breach but before entry made, and possibilities of reverter, shall be descendible, devisable and alienable in the same manner as estates in possession. (As amended Apr. 26, 1937, c. 487, §2.)

See §8075-1 limiting operation of this section.

Sale of contingent remainder upon execution. 15Minn LawRev835.

**8067. Accumulation of rents and profits.**

Trust agreement between bank and depositors does not offend the rule against perpetuities or restraint upon alienation. Holm v. M., 197M384, 267NW201. See Dun. Dig. 7480.

**8068. Directions for accumulation, when void.**

Where income of trust fund was to go to testator's daughter for life and after her death, corpus to go to offspring when they attained various ages, no intention that accumulation of income should take place after death of daughter will be implied. *Jacobson v. M.*, 191M 143, 253NW365. See Dun. Dig. 7480.

**8073. Several and joint estates, etc.**

An intention to convey a contingent future estate in fee simple and not a joint tenancy is shown by evidence that parties intended to convey grantee title in fee and possession in event grantee survived grantor. *Papke v. P.*, 203M130, 280NW183. See Dun. Dig. 2688.

A joint tenancy does not result merely because of right of survivorship, as estates may be held by tenants in common with benefit of survivorship. *Id.* See Dun. Dig. 4950.

Where intention of parties is to create an estate by survivorship at all events, a joint tenancy does not effectuate that intention when evidenced by a deed conveying a one-half undivided interest, since any one of tenants could destroy other's right of survivorship by conveyance to a third person. *Id.*

**8074. Estates in common.**

Most important element of a joint tenancy, in personal property at least, is intent of creators that right of survivorship shall exist. *Irvine v. Helvering*, (CCA8), 99F (2d) 265, rev'g 36BTA653.

Survivorship is a characteristic of both a tenancy by the entirety and a joint tenancy, and a surviving tenant of either becomes the absolute owner of the estate free from the claims of the heirs or creditors of the deceased cotenant. *Id.*

Joint tenancies may under the law of Minnesota be created in personal property. *Id.*

Deed to two persons "or the survivor of either," held to create joint tenancy, and survivor became sole owner in fee. 181M8, 231NW401.

Purchase of bonds by husband and wife, held to create an estate in joint tenancy. 181M128, 231NW794.

In action between tenants in common to recover half of rental value of property occupied by defendant, it was error to receive evidence of defendant's gross annual business for purpose of determining rental value on a percentage basis. *Pagan v. S.*, 199M260, 271NW458. See Dun. Dig. 9600.

In action between tenants in common to recover half of rental value of property occupied by defendant, it was error to receive evidence of defendant's gross annual business for purpose of determining rental value on a percentage basis. *Id.*

A tenant in common who is primarily liable for the payment which he makes is not entitled to contribution on account thereof from his cotenants. *Parten v. F.*, 204 M200, 283NW408. See Dun. Dig. 9604.

Grant to two or more persons "and to the survivor." 18MinnLawRev79.

**8075. Nominal conditions disregarded.**—(a) Whenever any conditions annexed to a grant, devise or conveyance of land are, or shall become, merely nominal, and of no actual and substantial benefit to the party or parties to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a basis of forfeiture of the lands subject thereto.

(b) All covenants, conditions, or restrictions hereafter created by any other means, by which the title or use of real property is affected, shall cease to be valid and operative thirty years after the date of the deed, or other instrument, or the date of the probate of the will, creating them; and after such period of time they may be wholly disregarded.

(c) Hereafter any right to re-enter or to repossess land on account of breach made in a condition subsequent shall be barred unless such right is asserted by entry or action within six years after the happening of the breach upon which such right is predicated. (As amended Apr. 26, 1937, c. 487, §1.)

**8075-1. Application of act.**—The provisions of this act shall not apply to so called ground leases providing for the construction by the lessee of buildings or other structures upon the lands of the lessor. (Apr. 26, 1937, c. 487, §3.)

## CHAPTER 59A

## Property of Absentees

**8080-1. Possession, management and disposition of certain property.**—If a person entitled to or having an interest in property within the jurisdiction of the state has disappeared or absconded from the place within or without the state where he was last known to be, and has no agent in the state, and it is not known where he is, or if such persons, having a spouse or minor child or children, dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse or minors' behalf, may file a petition under oath in the district court for the county where any such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residence of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States and if not, of what country he is a citizen or native and con-

taining a schedule of the property, real and personal, so far as known, and its location within the state, and praying that such property may be taken possession of and a receiver thereof appointed under this chapter. Provided that no proceedings shall be commenced under the provisions of this act, until at least 3 months after the date on which it is alleged in such petition that such person so disappeared or absconded. (As amended Feb. 13, 1937, c. 27, §1.)

Sec. 3 of Act Feb. 13, 1937, cited, provides that the Act shall take effect from its passage.

This act provides a cumulative proceeding and is not a bar to administration by probate court upon the estate of one absent for seven years. 175M493, 221NW876.

**8080-10. Same—Use of proceeds.**—The court may order said property or its proceeds acquired by mortgages, lease or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and minor child or children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. (As amended, Feb. 13, 1937, c. 27, §2.)

Sec. 3 of Act Feb. 13, 1937, cited, provides that the Act shall take effect from its passage.

**8080-13. Same—Distribution of balance.**

175M493, 221NW876; note under §8080-1.