

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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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. *Fagan 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.