130278

1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

Minnesota State Law Library
St. Paul, Minn.

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1941

Part II. Property Rights and Domestic Relations

CHAPTER 59

Estates in Real Property

8032. How divided.

A profit a prendre is more substantial than a license, and gives a right enforceable against others, and if in gross, a profit which is held by one independently of his ownership of other land, it is generally transferable and inheritable. Minnesota Valley Gun Club v. N., 290NW222. See Dun. Dig. 2851, 5571.

A license is not an estate but a permission giving licensee a personal legal privilege enjoyable on land of another, and it is destroyed by an attempted transfer if licensor so elects, and is revocable at licensor's will, and normally payment of consideration does not render it irrevocable. Id. See Dun. Dig. 5576.

Right to hunt and take wild game appertains to the land and is a profit a prendre flowing from the ownership. Id. See Dun. Dig. 5571.

An instrument giving right to construct a club house and the exclusive right to hunt on the land in consideration of a lump sum annual rental held to grant a profit a prendre and not a mere license, and the right was assignable to a club and survived the death of the grantor. Id. See Dun. Dig 5571.

One occuping premises under a revocable license with unconditional right to remove house if license were revoked, was not entitled to any part of an award in a highway condemnation proceeding, and owner of land can claim no greater sum than value of the land without house. State v. Riley, 293NW95. See Dun. Dig. 5576.

Appropriate language to create a life estate is by limitation to life tenant for life or during his lifetime with a provision that at death of life tenant remainder shall go to his heirs, or equivalent expressions. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 3165.

8033. Estates in fee simple.

A limitation to a named person and an unusual class of heirs such as would not at common law create a fee simple conditional, a fee tail or some similar form of fee, creates a fee simple. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 3157.

8041. Remainders defined.

As between life tenant and remaindermen, it is duty of former to pay taxes, and acquisition of a tax title by a life tenant is treated as a payment or a redemption thereof for benefit of both life tenant and remaindermen. Turner v. E., 292NW257. See Dun. Dig. 3170.

Parent-child relationship as between a life tenant and a purchaser of tax title is a factor to be given serious consideration in deciding if breach of duty on part of life tenant and purchase by child were fruit of a collusive agreement between them to defeat interests of remaindermen. Id. See Dun. Dig. 3170.

Respective duties of life tenant and remaindermen with respect to payment of taxes upon land due at time of death of common ancestor. Id. See Dun. Dig. 3170.

Evidence sustains finding that life tenant and plaintiff entered into a collusive agreement whereby latter, upon failure of former to pay taxes on premises in accordance with her duty, became nominal purchaser thereof at a delinquent tax sale. Id. See Dun. Dig. 3167.

One who enters into a collusive agreement with a life tenant for purpose of defeating interests of remaindermen cannot enforce a lien on property for amount paid to acquire title thereto at a tax sale. Id. See Dun. Dig. 3167.

8043. Future estates vested or contingent.

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. Murray's Will, 290NW312. See Dun. Dig. 10257.

An interim gift of part of corpus in addition to income is strong evidence of intention that beneficiary is to take a vested interest. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 9888a.

A future gift is vested when right to receive it is not subject to a condition precedent. First & American Nat. Bank v. H., 293NW585. See Dun. Dig. 3172.

A dividend was paid to a trustee in form of additional stock, which should be apportioned to the life tenant under a provision of a testamentary trust that all dividends on stock comprising corpus of trust, whether paid in form of cash or additional stock, should be paid to life tenant, where trustee exchanged original stock for new stock issued by corporation under arrangement whereby corporation increased its capital by a transfer of earned surplus capital, increased par value of its shares of stock so that existing number of shares represented entire capital as increased and exchanged new stock at increased par value for old stock share for share. Whitacre's Will, 293NW784. See Dun. Dig. 3169.

8058. Rule in Shelley's Case abolished.

Where devise is in trust with remainder over to the heirs of the taker of life estate, lawful "issue" includes an adopted child, word "issue" being one of purchase. Holden's Trust, 291NW104. See Dun. Dig. 2722a.

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the State of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in trusts to named beneficiaries in virtue of rule that words of inheritance are not necessary to pass such interests, words of inheritance being consistent with an intention to pass a fee or absolute interest and superadded words being insufficient to cut it down to a lesser one. First & American Nat. Bank of Duluth v. H., 293NW585. See Dun. Dig. 3162.

8065. Qualities of expectant estates.

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. Murray's Will, 290NW312. See Dun. Dig. 10257.

8074. Estates in common.

Where plaintiff purchased land, paying consideration therefor, and had title taken in name of himself and defendant, making them tenants in common, title vested in defendant as to an undivided interest, rights of creditors not being involved, subject to any claims they may have against each other as tenants in common. Drees v. G., 294NW374. See Dun. Dig. 9895.

Uniform Interparty Agreement Act has no application in determination of whether husband's deed to wife created an estate by the entireties. Walker's Estate, 16 Atl(2d)(Pa)28.

8075. Nominal conditions disregarded.

(a).

Where land was conveyed to a town wherein grantee "agreed that the above described property shall be improved and kept improved, and that said grounds shall be used for a public park and picnic grounds only and for no other purpose whatsoever," property went to county upon dissolution of town by operation of law, including appurtenant rights, privileges and duties, and whether county could use property for uses other than as a public park or picnic grounds would depend upon whether there was a condition subsequent or language was intended to be merely directory, a question of fact to be determined from all circumstances. Op. Atty. Gen. (441B), Jan. 4, 1941.

A conveyance to a town "this town to maintain car tracks and wall gate, said land to revert to the party of the first part when ceased to be used by said town," constituted a condition subsequent, upon breach of which, ccupled with re-entry, estate of town will be defeated, unless condition has become merely nominal, but such condition is directed toward a particular public use and not against succession of property to county upon dissolution of town, and there is no reverter resulting from failure to use the property unless there is a re-entry or an equivalent act before performance of condition as resumed. Id.

8076. Aliens, etc., not to acquire land.

Mere purchase of 160 acres of land at present time is not sufficient to bring alien within class of an "actual settler", but an alien who is actually occupying up to 160 of land at the present time with intention of continuing possession for exclusive occupancy and use as his residence comes within exception. Op. Atty. Gen. (3G), Feb. 15, 1940.

COMMON LAW DECISIONS RELATING TO ADJOINING LAND OWNERS

2. Lateral support.

An excavating land owner cannot recover from the owner of adjoining burdened land sums expended by the former to brace and shore the latter's property when the expenditures were made voluntarily even though excavation could not be safely carried on without such precautions and the owner of the burdened land refused to provide necessary protection. Braun v. H., 289NW553, 129 ALR618. See Dun. Dig. 96.

Right of excavating landowner to recover expense of shoring up adjacent building. 24MinnLawRev852.