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1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 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, Editor-in-Chief
W. H. MASON, JR.
R. O. MASON
J. S. O'BRIEN
H. STANLEY HANSON
R. O. MASON, JR. } Assistant Editors

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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).

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.

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, 256NW828. 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.*

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.

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.

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.*, (CCA8), 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.*, 191M143, 253NW365. See Dun. Dig. 7480.

8074. Estates in common.

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.*

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.)