

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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8065. Qualities of expectant estates.

Notwithstanding provisions of §§8043, 8065, 8091 and 8092, intent of a testator trustor prevails. *Murray's Will*, 207M7, 290NW312. See Dun. Dig. 10257.

8073. Several and joint estates, etc.

Joint tenants by their mutual agreement may sever their joint tenancies and create a tenancy in common. *Greiger v. Pye*, 210M71, 297NW173. See Dun. Dig. 4950.

Where intention of the parties is to create an estate by survivorship at all events, a joint tenancy does not effectuate that intention. *Id.* See Dun. Dig. 4951.

A joint tenant may, at his pleasure, dispose of his share and convey it to a stranger, resulting in a severance or termination of joint tenancy. *Id.* See Dun. Dig. 4952.

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.*, 208M399, 294NW374. See Dun. Dig. 9895.

To constitute a joint tenancy, four unities are required, unity of interest, title, time, and possession, and if any of these elements is lacking estate is not one in joint tenancy. *Greiger v. Pye*, 210M71, 297NW173. See Dun. Dig. 4950.

In case of a joint tenancy with right of survivorship, one tenant could create a severance by conveying all of his interest directly to the other joint tenant, since if this were not so there would be a time during which complete alienation could not take place, thereby resulting in violation of statute against suspension of power of alienation. *Id.* See Dun. Dig. 4952.

Where cotenant demanding interest has been in possession of land asserting title in himself and receiving rents and profits, and a tender by his cotenants of amount due him for expenditures made by him on account of common property would be futile, he is entitled to interest on expenditures only from entry of judgment. *Larkin v. McCabe*, 211M11, 299NW649. See Dun. Dig. 9604.

In case of cotenancy a tenant making payments in protecting estate is entitled to interest only from time he demands contribution. *Id.*

Absent an agreement for compensation, a cotenant is not entitled to compensation for services rendered in managing, operating, or taking care of common property. *Id.*

Uniform Interparty Agreement Act has no application in determination of whether husband's deed to wife created an estate by the entirety. *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, coupled 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

1. In general.

Adjoining owner is entitled to a mandatory injunction to compel the removal of a retaining wall encroaching on his land. *Sime v. Jensen*, 213M476, 7NW(2d)325. See Dun. Dig. 95a.

Owner who by filling raises level of his land above that of his neighbor's is bound to build a retaining wall or other structure if necessary to keep such soil within his own line. *Id.* See Dun. Dig. 95c.

An adjoining owner who raised his land above that of his neighbor and built a terrace half on land of neighbor, and when neighbor removed half of terrace had his servants enter upon such land to cut sod in process of making a new grade for the terrace, he was guilty of both nuisance and trespass. *Id.* See Dun. Dig. 95d.

There are cases to effect that when pursuant to a verbal contract owners of adjoining land co-operate in construction of a ditch or drain equitable doctrine of estoppel will prevent one of them from interfering with it to detriment of other. *Herrmann v. Larson*, 214M46, 7NW(2d)330. See Dun. Dig. 95a, 2823, 3209, 10157a.

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.*, 206M572, 289 NW553, 129ALR618. See Dun. Dig. 96.

Where a landowner by filling raises his land above adjoining land, he is not entitled to lateral support for the raised land from adjoining land, but, on the contrary, he is bound to keep soil used for filling from falling on adjoining land, and where he erects a retaining wall for that purpose, he must erect it entirely upon his own land, and adjoining landowner cannot be compelled to pay any part of the cost thereof. *Sime v. Jensen*, 213M 476, 7NW(2d)325. See Dun. Dig. 96.

Supported land has a right of lateral support from that which naturally affords its support, and supporting land is burdened with affording such support to land which it naturally supports. *Id.*

Right of lateral support does not include support needed because of artificial alterations in supported land. *Id.*

Right of lateral support from adjoining land consists in having soil in its natural condition remain in its natural position without being caused to fall away by reason of excavations or improvements made on adjacent land. *Id.*

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

Removal of lateral support—substitution of artificial support by predecessor in title—duty of successor in title. 27MinnLawRev201.

CHAPTER 59A

Property of Absentees

8080-1. Possession, management and disposition of certain property.

Dispositions of stolen property and in hands of sheriff when he is unable to find the owner." *Op. Atty. Gen.* (605b-40), May 20, 1943.