

# MASON'S MINNESOTA STATUTES

1927

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AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES  
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
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## PART II.

### PROPERTY RIGHTS AND DOMESTIC RELATIONS

#### CHAPTER 59

#### ESTATES IN REAL PROPERTY

How divided .....	Sec. 8032
Estates in fee simple .....	8033
Estates tail changed to fee simple .....	8034
Conveyance, etc., by tenants in tail .....	8035
Freeholds—Chattels real—Chattel interests .....	8036
Estate for life of third person .....	8037
Division as to time .....	8038
Estate in expectancy, how divided .....	8039
Future estates defined .....	8040
Remainders defined .....	8041
Reversions defined .....	8042
Future estates vested or contingent .....	8043
Suspension of power of alienation .....	8044
Limit of suspension .....	8045
Contingent remainder in fee, how created .....	8046
Successive estates for life, how limited .....	8047
Remainder on estate for life of another .....	8048
When such remainder takes effect .....	8049
Contingent remainder on terms of years .....	8050
Remainder for life on term .....	8051
"Heirs" and "issue" defined .....	8052
Limitations of chattels real .....	8053
Future estates, etc., how created .....	8054
Two or more future estates in alternative .....	8055
Future estates—Contingency .....	8056
Remainder as conditional limitation .....	8057
Rule in Shelley's Case abolished .....	8058
Construction of certain remainders .....	8059
Posthumous children .....	8060
Birth of child—Future estate .....	8061
Expectant estates protected .....	8062
When may be defeated .....	8063
Premature determination of precedent estate .....	8064
Qualities of expectant estates .....	8065
Disposition of rents and profits .....	8066
Accumulation of rents and profits .....	8067
Directions for accumulation, when paid .....	8068
Application of profits to support of infants .....	8069
Rents and profits not disposed of .....	8070
Expectant estates, when created .....	8071
When abolished .....	8072
Several and joint estate, etc. ....	8073
Estates in common .....	8074
Nominal conditions disregarded .....	8075
Aliens, etc., not to acquire land .....	8076
Corporations having alien stockholders, etc. ....	8077
Other corporations .....	8078
Exceptions .....	8079
Forfeiture .....	8080

**8032. How divided**—Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance. (3191) [6652]

Estate defined (85-473, 89+848). Tenancies from year to year are estates at will (47-1, 49+327). 135-425, 161+163.

A life tenant in possession must make such ordinary repairs as are necessary to preserve the property, but is under no duty to improve the property. If he makes improvements, he cannot compel the remaindermen to reimburse him. 160-502, 200+744, 940.

A life tenant is under no duty to replace buildings accidentally destroyed by fire. He may insure the buildings for his own protection, and collect the amount re-

ceived from the insurance company in settlement of a loss. 160-502, 200+744, 940.

**8033. Estates in fee simple**—Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute or an absolute fee. (3192) [6653]

**8034. Estates tail changed to fee simple**—In all cases where any person, if this chapter had not been passed, would at any time hereafter become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance heretofore made, or hereafter to be made, or by any other means whatsoever, such person, instead of becoming seized thereof in fee tail, shall be deemed and adjudged to be seized thereof as in fee simple. (3193) [6654]

**8035. Conveyance, etc., by tenants in tail**—Where lands, tenements, or hereditaments heretofore have been devised, granted, or otherwise conveyed by a tenant in tail, and the person to whom such devise, grant, or other conveyance has been made, his heirs or assigns, have from the time such devise took effect, or from the time such grant or conveyance was made, to the day of passing this chapter, been in the uninterrupted possession of such lands, tenements, or hereditaments, and claiming and holding the same under or by virtue of such devise, grant, or other conveyance, they shall be deemed as good and legal to all intents and purposes as if such tenant in tail had, at the time of making such devise, grant, or other conveyance, been seized in fee simple of such lands, tenements, or hereditaments, any law to the contrary hereof notwithstanding. (3194) [6655]

**8036. Freeholds—Chattels real—Chattel interests**—Estates of inheritance and for life shall be denominated estates of freehold; estates for years shall be denominated chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on execution. (3195) [6656]

Freeholder defined (85-83, 88+419). The vendee of a contract for conveyance of land has a freehold estate (140-477, 168+553).

**8037. Estate for life of third person**—An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real. (3196) [6657]

**8038. Division as to time**—Estates, as respects the time of their enjoyment, are divided into estates in possession and estates in expectancy. An estate in possession is where the owner has an immediate right to the possession of the land; an estate in expectancy is where the right to the possession is postponed to a future period. (3197) [6658]

85-473, 89+848; 130-320, 153+605.

**8039. Estates in expectancy, how divided**—Estates in expectancy are divided into, (1) estates commencing at a future day, denominated future estates, and (2) reversions. (3198) [6659]

**8040. Future estates defined**—A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time. (3199) [6660]

50-475, 52+920; 85-473, 89+848.  
159-423, 200+801, note under § 8043.

**8041. Remainders defined**—When a future estate is dependent upon a precedent estate, it may be termed a remainder, and may be created and transferred by that name. (3200) [6661]

50-475, 52+920.

**8042. Reversions defined**—A reversion is the residue of an estate left in the grantor, or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. (3201) [6662]

36-15, 33, 29+352; 45-341, 48+187.  
159-523, 200+801, note under § 8043.

**8043. Future estates vested or contingent**—Future estates are either vested or contingent. They are vested when there is a person in being who would have an immediate right to the possession of the lands upon the ceasing of the intermediate or precedent estate. They are contingent while the person to whom, or the event upon which, they are limited to take effect remains uncertain. (3202) [6663]

34-173, 177, 24+924; 42-548, 44+1030; 54-248, 55+971; 85-473, 89+848.

A vested remainder is effective upon the testator's death (126-249, 148+113). Members of a class entitled to take are determined as of the time when the gift to the class vests in enjoyment (138-96, 163+1030). Determined as to whether estate vested in right, without a contingency or limitation, except the postponement of enjoyment, as of testator's death, or of distribution (151-449, 187+412).

A deed conveying the landowner's reversionary estate does not defeat the possibility of the vesting of his contingent future estate in the timber. 159-523, 200+801.

**8044. Suspension of power of alienation**—Every future estate is void in its creation, which suspends the absolute power of alienation for a longer period than is prescribed in this chapter; such power of alienation is suspended when there are no persons in being by whom an absolute fee in possession can be conveyed. (3203) [6664]

24-180; 49-371, 52+27; 139+805.  
Laws 1897 p. 87 c. 80 and this section held to make void trust at least as to real estate, as period of suspension of power of alienation was not determined by reference to lives in being but by years (109-191, 123+471). Common law as to perpetuities held superseded by §§ 8044, 8045 (115-239, 132+205). Option did not suspend the absolute power of alienation and did not violate the rule against perpetuities (134-416, 159+967; 136-128, 161+392).

**8045. Limit of suspension**—The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of two lives in being at the creation of

the estate, except in the single case mentioned in § 8046. (3204) [6665]

24-180; 49-371, 52+27.  
134-416, 159+967.  
Restriction did not suspend the power of alienation (136-128, 161+392).  
160-343, 200+76, notes under § 8090.

**8046. Contingent remainder in fee, how created**—A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age. (3205) [6666]

160-343, 200+76, notes under § 8090.

**8047. Successive estates for life, how limited**—Successive estates for life shall not be limited unless to persons in being at the creation thereof; and, when a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void; and upon the death of those persons the remainder shall take effect in the same manner as if no other life estate had been created. (3206) [6667]

**8048. Remainder on estate for life of another**—No remainder shall be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee; nor shall any remainder be created upon such estate in a term for years, unless it is for the whole residue of the term. (3207) [6668]

**8049. When such remainder takes effect**—When a remainder is created upon any such life estate, and more than two persons are named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced. (3208) [6669]

**8050. Contingent remainder on term of years**—A contingent remainder shall not be created on a term of years, unless the nature of the contingency upon which it is limited is such that the remainder must vest in interest during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof. (3209) [6670]

**8051. Remainder for life on term**—No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate. (3210) [6671]

**8052. "Heirs" and "issue" defined**—When a remainder is limited to take effect on the death of any person without heirs or heirs of his body, or without issue, the word "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor. (3211) [6672]

**8053. Limitations of chattels real**—All the provisions in this chapter contained relative to future estates shall be construed to apply to limitations of chattels real as well as freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. (3212) [6673]

**8054. Future estates, etc., how created**—Subject to the rules established in §§ 8032-8053, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon. (3213) [6674]

42-548, 44+1030; 50-475, 52+920.

**8055. Two or more future estates in alternative—**Two or more future estates may also be created, to take effect in the alternative, so that if the first in order fails to vest the next in succession shall be substituted for it, and take effect accordingly. (3214) [6675]

**8056. Future estates—Contingency—**No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect. (3215) [6676]

**8057. Remainder as conditional limitation—**A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such limitation would have by law. (3216) [6677]

**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. (3217) [6678]  
42-548, 44+1030.

**8059. Construction of certain remainders—**When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect only on the death of the first taker, or at the expiration, by lapse of time, of such term of years. (3218) [6679]

**8060. Posthumous children—**When a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parent. (3219) [6680]

**8061. Birth of child—Future estate—**A future estate, depending on the contingency of the death of any person without heirs or issue or children, shall be defeated by the birth of a posthumous child of such person capable of taking by descent. (3220) [6681]

**8062. Expectant estates protected—**No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise. (3221) [6682]

**8063. When may be defeated—**Section 8062 shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means, which the party creating such estate has, in the creation thereof, provided or authorized; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (3222) [6683]  
34-173, 24+924; 36-15, 33, 29+352; 45-341, 48+187.

**8064. Premature determination of precedent estate—**No remainder, valid in its creation, shall be defeated by the determination of the precedent estate before the happening of the contingency on which the remainder is limited to take effect; but, should such contingency afterward happen, the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period. (3223) [6684]

**8065. Qualities of expectant estates—**Expectant estates are descendible, devisable, and alienable in the same manner as estates in possession. (3224) [6685]

**8066. Dispositions of rents and profits—**Disposi-

tions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this chapter in relation to future estates in lands. (3225) [6686]

**8067. Accumulation of rents and profits—**An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

1. If such accumulation is directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority.

2. If such accumulation is directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority. (3226) [6687]

Unaccrued rents are not personalty (132-232, 156+128). The trust not one to be sustained for a limited time (135-413, 161+159; 144-248, 175+541).

Has no application to trusts in personal property. 160-343, 200+76.

**8068. Directions for accumulation, when void—**If, in either of the cases mentioned in § 8067, the direction for such accumulation is for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority; and all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void. (3227) [6688]

**8069. Application of profits to support of infants—**When such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants are destitute of other sufficient means of support and education, the district court, upon the application of their guardian, may direct a suitable sum, out of such rents and profits, to be applied to their maintenance and education. (3228) [6689]

**8070. Rents and profits not disposed of—**When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the person presumptively entitled to the next eventual estate. (3229) [6690]

**8071. Expectant estates, when created—**The delivery of the grant, where an expectant estate is created by grant, and, where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate. (3230) [6691]

**8072. When abolished—**All expectant estates, except such as are enumerated and defined in this chapter, are abolished. (3231) [6692]

**8073. Several and joint estates, etc.—**Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy, and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter. (3232) [6693]  
43-398, 45+710.

**8074. Estates in common—**All grants and devises of lands, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint ten-

ancy. This section shall not apply to mortgages, nor to devises or grants made in trust, or to executors. (3233) [6694]

No estates by entirety (43-398, 45+710; 93-76, 100+662). The plaintiff and the defendant owned a tract of land as tenants in common. They gave a mortgage. Afterwards, defendant gave a mortgage upon his undivided one half to the same bank. The plaintiff paid one half of the mortgage first mentioned. Afterwards it was foreclosed. Within the year of redemption the plaintiff redeemed as part owner. By his redemption he obtained an equitable mortgage upon the undivided one-half interest of defendant for the amount which he paid in redemption and such mortgage is prior to the mortgage by defendant of his undivided one-half. It is held that in this action for partition he is entitled to contribution for taxes and interest and money paid for necessary improvements, but must apply profits made, and for the balance he may have contribution of an undivided half. 160-269, 199+881

No act of one cotenant can impair the rights of the others. 166-153, 207+311.

8075. Nominal conditions disregarded—When any conditions annexed to a grant or conveyance of lands are merely nominal, and evince no intention of actual and substantial benefit to the party 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 forfeiture of the lands conveyed subject thereto. (3234) [6695]

49-301, 51+905; 68-442, 71+682.

8076. Aliens, etc., not to acquire land—Except as hereinafter provided, no person, unless he be a citizen of the United States or has declared his intention to become a citizen, and no corporation, unless created by or under the laws of the United States or of some state thereof, shall hereafter acquire lands, or any interest therein, exceeding ninety thousand square feet, except such as may be acquired by devise or inheritance, and such as may be held as security for indebtedness. But the provisions of this section shall not apply to actual settlers upon farms of not more than one hundred and sixty acres, or to citizens or subjects of a foreign country whose rights to hold lands are secured by treaty. (3235) [6696]

8077. Corporations having alien stockholders, etc.—Except as hereinafter provided, no corporation or association, more than twenty per cent of whose stock is owned by persons not citizens of the United States, or by corporations or associations not created under the laws of the United States or some state thereof, shall acquire lands in this state. (3236) [6697]

76-334, 79+315.

8078. Other corporations—Except as hereinafter provided, no corporation, unless organized for the construction or operation of a railway, canal, or turnpike, shall acquire more than five thousand acres of land; and no railway, canal, or turnpike corporation shall acquire lands, except so much as may be necessary for the proper operation of its railroad, canal, or turnpike, and lands granted to it by the United States or by the state. (3237) [6698]

8079. Exceptions—The prohibitions of §§ 8076-8078 shall not apply to lands acquired by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, nor to any corporation actually engaged in manufacturing in the state of Minnesota, but such corporation may hold such lands as may be reasonably necessary in the carrying on of its business, nor to any person or corporation engaged in the business of selling lands to actual settlers; provided, that all lands hereafter acquired by such person or corporation not engaged in the business of selling land to actual settlers, or not actually engaged in manufacturing in the state of Minnesota, be disposed of within ten (10) years after acquiring title thereto and that all lands now owned by such person or corporation not engaged in the business of selling land to actual settlers, or not actually engaged in manufacturing in the state of Minnesota, be disposed of within ten (10) years after the approval of this act, and that all lands so held by a corporation actually engaged in manufacturing in the state of Minnesota shall be disposed of within ten (10) years after it shall cease to use the same for the purposes of its business. (R. L. § 3238, amended '07 c. 439; '11 c. 130 § 1) [6699]

8080. Forfeiture—All lands acquired or held in violation of §§ 8076-8079 shall be forfeited to the state, and the attorney general shall enforce such forfeiture; but no such forfeiture shall be adjudged unless the action to enforce the same be brought within three years after such property has been so acquired or so held by such alien or corporation; and no title to land shall be invalid or liable to forfeiture by reason of the alienage of any former owner or person interested therein. (3239) [6700]

CHAPTER 59 A

PROPERTY OF ABSENTEES

	Sec.
Management and disposition of property of persons disappearing or absconding .....	8080-1
Same—Warrant by court to sheriff to take possession of property—Fees and costs .....	8080-2
Same—Notice of seizure of property .....	8080-3
Same—Publication of notice .....	8080-4
Same—Hearing by court—Appointment and bond of receiver .....	8080-5
Same—Possession of property by receiver .....	8080-6
Same—Additional property—Receiver to take possession of .....	8080-7
Same—Procedure where absentee leaves no corporeal property—Bond .....	8080-8
Same—Care, lease or sale of property .....	8080-9
Same—Use of proceeds of sale to support family and pay debts .....	8080-10
Same—Claims—Adjustment by receiver .....	8080-11

	Sec.
Same—Compensation of receiver—Title of absentee lost after ten years .....	8080-12
Same—Distribution of balance of property .....	8080-13

8080-1. Management and disposition of property of persons disappearing or absconding and persons disappearing or absconding leaving wife or minor child without support—Petition to district court—Contents—Schedule of property—Time for filing petition—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 wife or minor child, 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 wife, or some one in her or such minor's 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 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 containing 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. ('25, c. 262, § 1)

**8080-2. Same—Warrant by court to sheriff to take possession of property—Fees and costs—**The court may thereupon issue a warrant directed to the sheriff or his deputy, which may run throughout the state, commanding him to take possession of the property named in said schedule and hold it subject to the order of the court and make return of said warrant as soon as may be with his doings thereon with a schedule of the property so taken. The officer shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded in the office of the register of deeds for the county where the land is located. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, said fees and the cost of publishing and serving the notice hereinafter provided shall be paid by the petitioner if a receiver is appointed, they shall be paid by the receiver and allowed in his account. ('25, c. 262, § 2)

**8080-3. Same—Notice of seizure of property, and appointment of receiver and disposition of property—**Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant and officer's return, which shall be addressed to such absentee and to all persons who claim an interest in said property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the officer's schedule should not be appointed and said property held and disposed of under this chapter. ('25, c. 262, § 3)

**8080-4. Same—Publication of notice—**The return day of said notice shall be not less than thirty nor more than sixty days after its date. The court shall order said notice to be published once in each of three successive weeks in one or more newspapers within the state, and to be posted in two or more conspicuous places in the county within the state where the absentee last resided or was known to have been either

temporarily or permanently and upon each parcel of land named in the officer's schedule, and a copy to be mailed to the last known address of such absentee. In all cases where such absentee is not a citizen of the United States, then a copy of such notice shall be ordered by the court to be served within said time by mail on the consular representative of the foreign country of which such absentee is a citizen, if there be one in this state, otherwise on the Secretary of State, who shall forward the same to the chief diplomatic representatives of such country at Washington. The court may order other and further notice to be given within or without the state. ('25, c. 262, § 4)

**8080-5. Same—Hearing by court—Dismissal of proceeding—Appointment and bond of receiver—**The absentee or any person who claims an interest in any of the property may appear and show cause why the prayer of the petition should not be granted. The court may after hearing dismiss the petition and order the property in possession of the officer to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the officer and named in his schedule. If a receiver is appointed the court shall find and record the date of the disappearance or absconding of the absentee; and such receiver shall give a bond to the state in such sum and with such condition as the court orders, to be approved by the court. In the appointment of such receiver, the court shall give preference to the wife of such absentee, if she is competent and suitable. ('25, c. 262, § 5)

**8080-6. Same—Possession of property by receiver—**After the approval of such bond the court may order the sheriff or his deputy to transfer and deliver to such receiver the possession of the property under the aforesaid warrant, and the receiver shall file in the office of the clerk of court a schedule of the property received by him. ('25, c. 262, § 6)

**8080-7. Same—Additional property—Receiver to take possession of—**Such receiver upon petition filed by him may be authorized and directed to take possession of any additional property within the state which belongs to such absentee and to demand and collect all debts due such absentee from any person within the state, and behold [hold] the same as if it had been transferred and delivered to him by the officer. ('25, c. 262, § 7)

**8080-8. Same—Procedure where absentee leaves no corporeal property—Receiver—bond—**If such absentee has left no corporeal property within the state, but there are debts and obligations due or owing to him from persons within the state, a petition may be filed as provided in section one, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice as above provided, without issuing a warrant, and may, upon the return of said notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct him to demand and collect the debts and obligations specified in said petition. The receiver shall give bond as provided in Section 5, and shall hold the proceeds of such debts and obligations and all property received by him, and distribute the same as hereinafter provided. He may be further authorized and directed as provided in the preceding section. ('25, c. 262, § 8)

**Explanatory note—**For sections 1 and 5, see §§ 8080-1, 8080-5, herein.

**8080-9. Same—Care, lease, or sale of property—**The court may make orders for the care, custody,

leasing and investing of all property and its proceeds in the possession of the receiver. If any of said property consists of live animals or is perishable or cannot be kept without a great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of said property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by this chapter or for reinvestment approved by the court. ('25, c. 262, § 9)

**8080-10. Same—Use of proceeds of sale to support family and pay debts**—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 wife and minor children, and to the discharge of such debts and claims for alimony as may be proved against said absentee. ('25, c. 262, § 10)

**8080-11. Same—Claims—Adjustment by receiver**—The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of such absentee. ('25, c. 262, § 11)

**8080-12. Same—Compensation of receiver—Title of absentee lost after ten years**—The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of said property or proceeds. If within ten years after the date of the disappearance and absconding as found and recorded by

the court, such absentee appears, or an administrator, executor, assignee in insolvency or trustee in bankruptcy of said absentee is appointed, such receiver shall account for, deliver and pay over to him the remainder of said property. If said absentee does not appear and claim said property within said ten years, all his right, title and interest in said property, real or personal, or the proceeds thereof shall cease, and no action shall be brought by him on account thereof. ('25, c. 262, § 12)

**8080-13. Same—Distribution of balance of property**—If at the expiration of said ten years said property has not been accounted for, delivered or paid over under the preceding section, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if said absentee had died intestate within the state on the day ten years after the date of the disappearance or absconding as found and recorded by the court.

If such receiver is not appointed within nine years after the date found by the court under Section five, the time limited for accounting for, or fixed for distributing, said property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the ten years provided in the two preceding sections.

The provisions of this act shall not be construed as exclusive, but as providing additional and cumulative remedies. ('25, c. 262, § 13)

**Explanatory note**—For section 5 see § 8080-5, herein.

CHAPTER 60

USES AND TRUSTS

Uses and trusts abolished—Exception .....	8081
Executed trusts confirmed .....	8082
Who deemed to have legal estate in lands—Limitations .....	8083
Trustee takes no interest—Exception .....	8084
Limitation of preceding sections .....	8085
Grant to one for money paid by another .....	8086
Such conveyance fraudulent—Trust for creditors Limitation .....	8087
Bona fide purchasers protected .....	8088
Purposes of express trusts—Duration .....	8089
Express trusts for charitable, benevolent, educational, religious or other public use .....	8090-1
Same—Validity and construction .....	8090-2
Same—Construction to effect intent—Administration .....	8090-3
Same—Laws not affected .....	8090-4
Devise of land, when it creates only a power ..	8091
Profits of lands held in trust—Liable to creditors, when .....	8092
Express trust a power in trust, when .....	8093
Title to such land shall descend, how .....	8094
Trustees of express trust to possess estate .....	8095
Limitation .....	8095
Interest not disposed of .....	8097
Trust interest—Assignable, when .....	8098
Effect of omitting trust in conveyance .....	8099
Powers of district court—Sale, mortgage and lease—Payment to trustee .....	8100
Sale, mortgage, pledge, lease, etc., of property held in trust .....	8100-1
Same—Leases—Authority of trustee—Order of court for lease .....	8100-2
Same—Applications for order for sale, etc. ....	8100-3
Same—Notice of hearing—Service .....	8100-4
Same—Notice of hearing—Service on incompetents .....	8100-5
Same—Hearing—Conduct of—Final order—Report of sale, etc. ....	8100-6
Same—Final order—Effect of—Objections—Time for .....	8100-7
Same—Persons entitled to object .....	8100-8

Same—Final orders, conveyances, etc., valid as to persons served with notice .....	8100-9
Same—Liability of persons paying money to trustee .....	8100-10
Effect of misconduct of trustees .....	8101
Termination of trust estate .....	8102
Death of trustee—Trust, how executed .....	8103
Resignation of trustee .....	8104
Removal of trustee .....	8105
Powers of court .....	8106

**8081. Uses and trusts abolished—Exception**—Uses and trusts, except as authorized and modified in this chapter, are abolished; and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided by statute. (3240) [6701]

All express trusts in both real and personal property, including charitable trusts are abolished, except as authorized by this chapter (69-141, 71+1031; 81-7, 83+460; 88-202, 92+948; 88-318, 92+1122; 93-210, 100+1104; 95-220, 103+882). Chapter cited generally (37-447, 452, 35+260; 52-208, 53+1145; 68-260, 71+22; 88-202, 212, 92+948; 88-318, 323, 92+1122; 93-210, 221, 100+1104). 128-99, 150+233, 163-35, 203+439.

It is further held, that the finding of the jury defeats the contention of appellants that there was a constructive trust, and consequently a legal fraud. 159-149, 198+412.

The common law, as to trusts in real or personal property, or both, prevailed in our territory from our beginning up to the enactment of chapter 43 and chapter 44. R. S. 1851. 160-343, 200+76.

Chapter 53, Laws 1875, being subdivision 5 of section 6710, G. S. 1913, abolished personal property trusts, except as authorized by statute. 160-343, 200+76.

**8082. Executed trusts confirmed**—Every estate which is now held as a use executed under laws as

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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).

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.