

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING
THE GENERAL STATUTES OF 1866
As amended by subsequent Legislation to the close of the Session of 1873
TOGETHER WITH
ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

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1873

STATUTES AT LARGE
OF THE
STATE OF MINNESOTA.

PART II.

OF RIGHTS OF PERSON AND PROPERTY.

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TITLE I.

ESTATES IN REAL PROPERTY.

(*This Title is Chapter XLV. of the Statutes of 1866.*)

SECTION. 1. *Estates in land, how divided.*—Estates in lands are divided into estates of inheritance, estates for life, estates for years, estates at will and by sufferance.

SEC. 2. *What estate, a fee simple or absolute fee.*—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 or an absolute fee.

SEC. 3. *When persons entitled to estate in fee tail shall take an allodial estate.*—In all cases where any person or persons would, if this chapter had not been passed, 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 or persons, instead of becoming seized thereof, in fee tail, shall be deemed and adjudged to be seized thereof as an allodium.

SEC. 4. *Conveyance by tenant in tail to convey an allodial estate in certain cases.*—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 hath 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 of such lands, tenements, or hereditaments, allodially, any law to the contrary hereof notwithstanding.

SEC. 5. *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.

SEC. 6. *Estate for life of third person, how denominated.*—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.

SEC. 7. *Estates in possession and in expectancy.*—Estates, as respects the time of their enjoyment, are divided into estates in possession and estates in expectancy.

SEC. 8. *Definition of such estates.*—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.

SEC. 9. *Estates in expectancy, how divided.*—Estates in expectancy are divided into:

First. Estates commencing at a future day, denominated future estates; and,

Second. Reversions.

SEC. 10. *Future estates.*—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.

SEC. 11. *Remainders.*—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.

SEC. 12. *Reversions.*—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.

SEC. 13. *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.

SEC. 14. *Future estate void, when.*—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.

SEC. 15. *Absolute power of alienation may be suspended, how long.*—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 the next section.

SEC. 16. *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.

SEC. 17. *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.

SEC. 18. *Remainder, how created in certain cases.*—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.

SEC. 19. *When such remainder shall take 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.

SEC. 20. *Contingent remainder, how created in certain cases.*—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.

SEC. 21. *Estate for life, how limited as a remainder.*—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.

SEC. 22. *Meaning of terms "heirs" and "issue" in certain remainders.*—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.

SEC. 23. *Certain provisions to apply to limitation 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.

SEC. 24. *Future estates, etc.; how created.*—Subject to the rules established in the preceding sections of this chapter, 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.

SEC. 25. *Two or more future estates, how created.*—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.

SEC. 26. *Certain future estates not void.*—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.

SEC. 27. *Remainder upon a contingency, how construed.*—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.

SEC. 28. *Heirs of tenant for life, when to take as purchasers.*—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.

SEC. 29. *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.

SEC. 30. *Posthumous children entitled to take.*—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.

SEC. 31. *Birth of child defeats future estate, when.*—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.

SEC. 32. *Expectant estate not defeated or barred.*—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.

SEC. 33. *Construction of last section.*—The preceding section 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.

SEC. 34. *Remainder valid, when.*—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.

SEC. 35. *Qualities of expectant estates.*—Expectant estates are descendible, devisible, and alienable, in the same manner as estates in possession.

SEC. 36. *Dispositions of rents and profits, how governed.*—Dispositions 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.

SEC. 37. *Accumulation of rents and profits may be directed by will or deed.*—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:

First. 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 terminated at the expiration of their minority.

Second. 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.

SEC. 38. *Directions void in part—void wholly, when.*—If, in either of the cases mentioned in the preceding section, 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.

SEC. 39. *Application of rents and 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.

SEC. 40. *Who entitled to rents and profits in certain cases.*—When, in consequence of a valid limitation of an expectant estate, there is a suspense 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.

SEC. 41. *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.

SEC. 42. *Expectant estates, except as defined herein, abolished.*—All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

SEC. 43. *Division of estates.*—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.

SEC. 44. *Estates in common, when created.*—All grants and devises of lands, made to two or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.

19 Wis. 362.

SEC. 45. *Application of last section.*—The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or to executors.

SEC. 46. *Nominal conditions annexed to a grant may be 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.

TITLE II.

USES AND TRUSTS.*

(This Title is Chapter XLIII. of the Statutes of 1866.)

SEC. 47 (1). *Uses and trusts, except as set forth herein, abolished.*—Uses and trusts, except as authorized and modified in this chapter, are abolished; and every

* Every express trust in lands, or such as are created by agreement of the parties, must be evidenced by writing, and parol proof is not admissible to establish them, 3 Chand. 265; 1 Wis. 527; 3 Wis. 576; 2 Wis. 552; 9 Wis. 379; 12 Wis. 138. What a sufficient writing to establish a trust, 19 Wis. 480. In what cases a resulting trust arises, 3 Chand. 265; 24 Wis. 671; 1 Wis. 527; 2 Wis. 552; 13 Wis. 26; 21 Wis. 121; 22 Wis. 329. A resulting trust may be proved by parol, 1 Wis. 527; 2 Wis. 552.

A purchase made by one in the name of another, when the object of the transaction is to defraud creditors; in such case no trust will result in favor of the person paying the money, 3 Wis. 576. When an administrator or executor uses the funds of the estate to purchase lands, he may be held as trustee of the heirs for the lands so purchased, 14 Wis. 131. When an officer is made a trustee of an express trust, his successor in office cannot be held responsible for the execution of the trust unless he accept it, 19 Wis. 476.

Duties and powers of trustee as to trust property, 1 Wis. 286; 8 Wis. 1; 9 Wis. 194, 370; 13 Wis. 26; 15 Wis. 341; 20 Wis. 576; 16 Wis. 91. Of the rights and remedies of the beneficiary or *cestui que trust*, 3 Wis. 576, 699; 15 Wis. 55; 8 Wis. 332; 9 Wis. 352; 14 Wis. 131, 238; 20 Wis. 452; 13 Wis. 472; *Baldwin v. Allison*, 4 Minn. 25.

Who are trustees, *Hope v. Stone et al*, 16 Minn. 141; *Holmes v. Campbell*, *ib.* 401; *Warren v. Van Brunt*, 12 Minn. 70; *vide also Meagher v. Mankato*, 17 Minn. 265.

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.

SEC. 48 (2). *Executed uses confirmed.*—Every estate which is now held as a use, executed under the laws, as they formerly existed, is confirmed as a legal estate.

SEC. 49 (3). *Who deemed to have legal estate in lands.*—Every person who, by virtue of any grant, assignment, or devise, is entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration; and subject to the same conditions as his beneficial interest.

SEC. 50 (4). *Limitation of preceding section.*—The preceding section shall not divest the estate of any trustees in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition, or management, in relation to the lands which are the subject of the trust.

SEC. 51 (5). *Trustees of estate for use of another, take no interest.*—Every disposition of lands, whether by deed or devise, except as otherwise provided in this chapter, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of, or in trust for such person; and if made to one or more persons in trust for, or to the use of, another, no estate or interest, legal or equitable, shall vest in the trustee.

Arnold v. Wainwright, 6 Minn. 358; *Sumner v. Sawtelle*, 8 Minn. 309.

SEC. 52 (6). *Limitation of preceding sections.*—The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law; nor be construed to prevent, or affect, the creation of such express trusts as are hereinafter authorized and defined.

SEC. 53 (7). *Grant to one for money paid by another, no trust results.*—When a grant for a valuable consideration is made to one person, and the consideration therefor is paid by another, no use, or trust, shall result in favor of the person by whom such payment is made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

Irvine v. Marshall, 7 Minn. 286; *Baker v. Terrill*, 8 Minn. 195; *North v. Bradway*, 9 Minn. 183; *Rich v. Rich*, 12 Minn. 468; *Chemedlin v. Prince*, 15 Minn. 231; *Johnson v. Johnson*, 16 Minn. 512.

SEC. 54 (8). *Such conveyance presumed fraudulent trust in favor of creditors.*—Every such conveyance shall be presumed fraudulent as against the creditors, at that time of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

Wentworth v. Wentworth, 2 Minn. 277; *Baker v. Terrill*, 8 Minn. 195; *North v. Bradway*, 9 Minn. 183; *Stone v. Myer*, 9 Minn. 303; *Durfee v. Pavitt*, 14 Minn. 424.

SEC. 55 (9). *Limitation of section fifty-three (seven).*—The preceding fifty-third (seventh) section shall not extend to cases where the alienee named in the conveyance has taken the same as an absolute conveyance, in his own name, without the knowledge, or consent, of the person paying the consideration; or when such alienee, in violation of some trust, has purchased the lands so conveyed, with moneys belonging to another person.

SEC. 56 (10). *Bona fide purchasers protected.*—No implied or resulting trust

shall be alleged, or established, to defeat, or prejudice, the title of a purchaser for a valuable consideration, and without notice of such trust.

16 Wis. 307; 22 Wis. 329; 24 Wis. 671.

SEC. 57 (11). *Purposes for which express trusts may be created.*—Express trusts may be created for any, or either, of the following purposes:

First. To sell lands for the benefit of creditors.

Second. To sell, mortgage, or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon.

Third. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in title one (chapter forty-five).

Fourth. To receive the rents and profits of lands, and to accumulate the same, for either of the purposes, and within the limits prescribed in title one (chapter forty-five).

Greenleaf v. Edes, 2 Minn. 264; *Wentworth v. Wentworth*, 2 Minn. 277. 19 Wis. 487; 24 Wis. 422.

SEC. 58 (12). *Devise of lands deemed a power, when.*—A devise of lands to executors or other trustees, to be sold or mortgaged when such trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to their heirs, or pass to the devisees of the testator, subject to the execution of the power.

15 Wis. 684.

SEC. 59 (13). *Profits of lands held in trust liable to creditors, when.*—When a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits beyond the sum that is necessary for the education and support of the person for whose benefit the trust is created, shall be liable in equity to the claims of the creditors of such person, in the same manner as other personal property which cannot be reached by an execution at law.

SEC. 60 (14). *Express trust to be power in trust, when.*—When an express trust is treated for any purpose, not enumerated in the preceding sections of this title (chapter), no estate shall vest in the trustees, but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers contained in the next succeeding chapter.

SEC. 61 (15). *Title to such land shall descend, how.*—In every case where the trust is valid as a power, the land to which the trust relates shall remain in, or descend to, the persons otherwise entitled, subject to the execution of the trust as a power.

SEC. 62 (16). *Trustees of express trust to possess whole estate.*—Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

SEC. 63 (17). *Limitation of preceding section.*—The preceding section shall not prevent any person creating a trust, from declaring to whom the lands, to which the trust relates, shall belong, in the event of the failure or termination of the

trust; nor shall it prevent him from granting or devising such lands subject to the execution of the trust; and every such grantee shall have a legal estate in the lands as against all persons except the trustees and those lawfully claiming under them.

SEC. 64 (18). *Interest not embraced in express trust to remain, where.*—When an express trust is created, every estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to the person creating the trust, or his heirs, as a legal estate.

SEC. 65 (19). *Trust interests, when assignable.*—No person beneficially interested in a trust for the receipt of rents and profits of the lands, can assign, or in any manner dispose of, such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross, is created, are assignable.

SEC. 66 (20). *Effect of omitting trust in conveyance.*—When an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

SEC. 67 (21). *Sales by trustees void, when.*—When the trust is expressed in the instrument creating the estate, every sale, conveyance, or other act of the trustees in contravention of the trust, shall be absolutely void.

SEC. 68 (22). *Misconduct of trustees not to affect other parties.*—No person who actually, and in good faith, makes any payment to a trustee, which the trustee as such is authorized to receive, shall be responsible for the proper application thereof, according to the trust; nor shall any right or title derived by such person from the trustee, in consideration of such payment, be impeached or called in question in consequence of any misapplication of such payment by the trustee.

SEC. 69 (23). *When estate of trustee ceases.*—When the purposes for which an express trust is created cease, the estate of the trustee shall also cease.

SEC. 70 (24). *Death of trustee, trust how executed.*—Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the district court, with all the powers and duties of the original trustees, and shall be executed by some person appointed for that purpose, under the direction of the court.

SEC. 71 (25). *Resignation of trustees.*—Upon the petition of any trustee of an express trust, the district court may accept his resignation, and discharge him from the trust under such regulations as shall be established by the court for that purpose, and upon such terms as the rights and interests of the person interested in the execution of the trust require.

SEC. 72 (26). *Removal of trustees.*—Upon the complaint of any person interested in the execution of an express trust, and under such regulations as shall be established by the court for that purpose, the district court may remove any trustee who has violated or threatened to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who, for any other cause, is deemed an unsuitable person to execute the trust.

Goncalier v. Foret, 4 Minn. 13.

SEC. 73 (27). *Powers of district court.*—The district court has full powers to appoint a new trustee in the place of a trustee resigned or removed; and when in

consequence of such resignation or removal, there is no acting trustee, the court in its discretion may appoint new trustees, or cause the trust to be executed by one of its officers under its direction.

TITLE III.

POWERS.*

(This Title is Chapter XLIV. of the Statutes of 1866.)

SEC. 74 (1). *Powers, except as authorized in this chapter, abolished.*—Powers, except as authorized and provided for in this (chapter) title, are abolished; and the creation, construction, and execution of powers, shall be governed by the provisions herein contained.

SEC. 75 (2). *Power defined.*—A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the owner granting or reserving such power might himself lawfully perform.

SEC. 76 (3). *Who can grant a power.*—No person is capable in law of granting a power, who is not at the same time capable of alienating some interest in the land to which the power relates.

SEC. 77 (4). *Division of powers.*—Powers as authorized in this (chapter) title are general or special, and beneficial or in trust.

SEC. 78 (5). *General power defined.*—A power is general when it authorizes the alienation in fee by means of a conveyance, will, or charge of the lands embraced in the power to any alienee whatever.

SEC. 79 (6). *Special power defined.*—A power is special:

First. When the person or class of persons to whom the disposition of the lands under the power is to be made, are designated.

Second. When the power authorizes the alienation, by means of a conveyance, will, or charge of a particular estate, or interest less than a fee.

SEC. 80 (7). *Power is beneficial, when.*—A general or special power is beneficial when no person other than the grantee has, by the terms of its creation, any interest in its execution.

SEC. 81 (8). *Powers to married women.*—A general and beneficial power may be given to a married woman to dispose during the marriage, and without the concurrence of her husband, of land conveyed or devised to her in fee.

SEC. 82 (9). *Estate of tenant for life or years when changed into a fee.*—When an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate shall be changed into a fee; absolute in respect to the rights of creditors and purchasers, but subject to any future estate limited thereon, in case the power is not executed, or the lands sold for the satisfaction of debts.

SEC. 83 (10). *Power creates fee, when.*—When a like power of disposition is given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estate that may be limited thereon, but absolute in respect to creditors and purchasers.

* A power conferred upon several for a more private purpose must be executed by all, 1 Wis. 597; 10 Wis. 271.

SEC. 84 (11). *Power creates absolute fee, when.*—In all cases where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

SEC. 85 (12). *Effect of power to tenant for life or years to devise the inheritance.*—When a general and beneficial power to devise the inheritance is given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of the three preceding sections.

SEC. 86 (13). *What powers deemed absolute.*—Every power of disposition shall be deemed absolute, by means of which the grantee is enabled, in his life time, to dispose of the entire fee for his own benefit.

SEC. 87 (14). *Effect of reservation of power of revocation.*—When the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

SEC. 88 (15). *Special and beneficial powers, who may take.*—A special and beneficial power may be granted :

First. To a married woman to dispose during the marriage, and without the consent of her husband, of any estate less than a fee, belonging to her in the lands to which the power relates.

Second. To a tenant for life, of the lands embraced in the power to make leases for not more than twenty-one years, and to commence in possession during his life.

SEC. 89 (16). *Power of tenant for life to make leases assignable, when.*—The power of a tenant for life to make leases is not assignable as a separate interest, and will pass, unless specially excepted, by any conveyance of such estate ; and if specially excepted in any such conveyance, it is extinguished.

SEC. 90 (17). *Release of such power.*—Such power may be released by the tenant to any person entitled to an expectant estate in the land, and shall thereupon be extinguished.

SEC. 91 (18). *Power to lease bound by mortgage.*—A mortgage executed by a tenant for life having a power to make leases, or by a married woman by virtue of any beneficial power, does not extinguish or suspend the power ; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

SEC. 92 (19). *Effects of mortgage on power.*—The effects of such lien by mortgage on the power are :

First. That the mortgagee is entitled in equity, to an execution of the power, so far as the satisfaction of his debt may require.

Second. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

SEC. 93 (20). *Future beneficial powers.*—No beneficial power, general or special, hereafter created, other than such as are enumerated and defined in the preceding sections of this chapter, shall be valid.

SEC. 94. (21). *Powers liable to creditors.*—Every special and beneficial power, is liable in equity to the claims of creditors in the same manner as other interests that cannot be reached by an execution at law ; and the execution of the power may be decreed for the benefit of the creditors entitled.

SEC. 95 (22). *General power, when in trust.*—A general power is in trust when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds or other benefits, to arise from the alienation of the lands according to the power.

SEC. 96 (23). *Special power, when in trust.*—A special power is in trust :

First. When the disposition which it authorizes is limited to be made to any particular person or class of persons other than the grantee of such power.

Second. When any person or class of persons, other than the grantee, is entitled to any benefit from the disposition or charge authorized by the power.

SEC. 97 (24). *Trust powers imperative.*—Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity, for the benefit of the parties interested.

SEC. 98 (25). *Effect of right of selection.*—A trust power does not cease to be imperative when the grantee has the right to select any, and exclude others, of the persons designated as the objects of the trust.

SEC. 99 (26). *Construction of power in certain cases.*—When a disposition under a power is directed to be made to, or among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion.

SEC. 100 (27). *Construction of power in other cases.*—But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportion as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the others.

SEC. 101 (28). *When district courts shall execute power.*—If the trustee of a power with the right of selection dies, leaving the power unexecuted, its execution shall be decreed in the district court for the benefit, equally, of all the persons designated as objects of the trust.

SEC. 102 (29). *When district court shall execute trust created by will.*—When a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution shall devolve on the district court.

SEC. 103 (30). *Application of certain sections of preceding chapter.*—The provisions contained in the preceding chapter, from section twenty-two to section twenty-seven, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

SEC. 104 (31). *Creditors' can compel execution of trust power, when.*—The execution, in whole or in part, of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled, as one of the objects of the trust, to compel its execution, when the interest of the objects of such trust is assignable.

SEC. 105 (32). *What power will pass by general assignment.*—Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignees of the estate and effects of the person in whom such power or interest is vested, under any general assignment of the estate and effects of such person, for the benefit of creditors made pursuant to law.

SEC. 106 (33). *Reservation of powers in conveyance.*—The grantor of any con-

veyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power so reserved shall be subject to the provisions of this chapter, in the same manner as if granted to another.

SEC. 107 (34). *How a power may be granted.*—A power may be granted :

First. By a suitable clause contained in a conveyance of some estate in the lands to which the power relates.

Second. By devise in a last will and testament.

SEC. 108 (35). *Recording power, effect of.*—Every power shall be a lien or charge upon the lands which it embraces as against creditors and purchasers in good faith, and without notice of or from any person having an estate in such lands only from the time the instrument containing the power is duly recorded ; but as against all other persons the power shall be a lien from the time the instrument in which it is contained takes effect.

SEC. 109 (36). *When power is irrevocable.*—Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is reserved or granted in the instrument creating the power.

SEC. 110 (37). *In whom power may be vested.*—A power may be vested in any person capable in law of holding lands, but cannot be executed by any person not capable of alienating lands, except in the single case mentioned in the next section.

SEC. 111 (38). *Married woman may execute power, how.*—A married woman may execute a power during her marriage, by grant or devise, as may be authorized by the power, without the concurrence of her husband, unless by the terms of the power its execution by her during marriage is expressly or impliedly prohibited ; but no power vested in a married woman during her infancy, can be exercised by her until she attains her full age.

SEC. 112 (39). *Survivors may execute power.*—When a power is vested in several persons, all must unite in its execution ; but if, previous to such execution, one or more of such persons shall die, the power may be executed by the survivors.

SEC. 113 (40). *Power, how executed.*—No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

SEC. 114 (41). *What instrument to be deemed a conveyance.*—Every instrument, except a will, made in execution of a power, whether it is a power of revocation or otherwise, shall be deemed a conveyance within the meaning, and subject to the provisions of chapter forty.

SEC. 115 (42). *Execution of power by will.*—When a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of law relating to wills of real and personal estate.

SEC. 116 (43). *Execution by grant.*—When a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party in whom the power is vested.

SEC. 117 (44). *Power not void though execution of instrument is insufficient.*—When the grantor of a power has directed or authorized it to be executed by an instrument not sufficient to pass the estate, such power shall not be void, but its execution shall be governed by the rules prescribed in this chapter.

SEC. 118 (45). *Directions of grantor.*—When the grantor has directed any formalities to be used in the execution of a power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

SEC. 119 (46). *Nominal conditions may be disregarded.*—When the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power.

SEC. 120 (47). *When directions of grantor shall be observed.*—With the exceptions contained in the preceding sections, the intentions of a grantor of a power, as to the mode, time, and conditions of its execution, shall be observed, subject to the power of the district court to supply a defective execution, in the cases hereinafter provided.

SEC. 121 (48). *Consent of third person to be expressed in instrument.*—When the consent of a third person to the execution of the power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon; and in the first case the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature shall be duly proved or acknowledged in the same manner as if subscribed to a conveyance of land.

SEC. 122 (49). *Certain dispositions not void.*—No disposition by virtue of a power shall be void in law or equity, on the ground that it is more extensive than was authorized by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be good and valid.

SEC. 123 (50). *Omission to recite power, effect of.*—Every instrument executed by the grantee of a power conveying an estate, or creating a charge, which such grantee is authorized by the power to convey or create, but which he would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power is not recited or referred to therein.

SEC. 124 (51). *Fraud.*—Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

SEC. 125 (52). *Lands embraced in a power to devise, pass by will, when.*—Lands embraced in a power to devise, pass by a will purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, appears expressly, or by necessary implication.

SEC. 126 (53). *What estate or interest given by parent deemed an advancement.*—Every estate or interest given by a parent to a descendant, by virtue of a beneficial power, or of a power in trust, with a right of selection, shall be deemed an advancement to such descendant, to the same extent, and under the same circumstances, that a gift of real or personal estate would be deemed an advancement.

SEC. 127 (54). *Period of suspension, how computed.*—The period during which the absolute right of alienation may be suspended by any instrument in execution of a power, shall be computed from the time of the creation of the power, and not from the date of such instrument.

SEC. 128 (55). *Who may not take under power.*—No estate or interest can be given or limited to any person, by an instrument in execution of a power, which

such person would not have been capable of taking under the instrument by which the power was granted.

SEC. 129 (56). *Married woman may create estate.*—When a married woman entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

SEC. 130 (57). *Defective execution remedied in equity.*—When the execution of a power in trust is defective in whole or in part, under the provisions of this chapter, its proper execution may be decreed in equity, in favor of the person designated as the object of the trust.

SEC. 131 (58). *Purchasers entitled to relief, when.*—Purchasers for a valuable consideration, claiming under a defective execution of any power, are entitled to the same relief in equity as similar purchasers claiming under a defective conveyance from an actual owner.

SEC. 132 (59). *Power of sale in mortgage deemed part of security.*—When a power to sell lands is given to the grantee in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, shall vest in, and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

SEC. 133 (60). *Chapter not to apply to simple power of attorney to convey lands.*—The provisions of this title (chapter) shall not extend to a simple power of attorney, to convey lands in the name and for the benefit of the owner.

SEC. 134 (61). *Terms "grantor of a power" and "grantee of a power" defined.*—The term "grantor of a power" is used in this title (chapter) as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power" is used as designating the person in whom a power is vested, whether by grant, devise, or reservation.

TITLE IV.

ESTATES IN DOWER AND BY THE CURTESY.*

(This Title is Chapter XLVIII. of the Statutes of 1866.)

SEC. 135 (1). *Widows to have dower, in what lands.*—Every woman is entitled to dower, in the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, to be assigned to her after his decease, unless she is lawfully barred thereof.

SEC. 136 (2). *Dower in lands exchanged.*—If a husband, seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election is not evinced by commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

* Of decisions upon subject of dower generally vide 6 Wis. 127; 11 Wis. 126; 15 Wis. 256; 22 Wis. 120, 501.

SEC. 137 (3). *Dower in lands mortgaged.*—When a person seized of an estate of inheritance in land executes a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

SEC. 138 (4). *Dower in lands mortgaged to secure purchase money.*—When a husband purchases lands during coverture, and shall, at the same time, mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she did not join in such mortgage; but she shall be entitled to dower as against all other persons.

SEC. 139 (5). *Dower in surplus on sale of lands mortgaged.*—When, in either of the cases mentioned in the two preceding sections, or in case of a mortgage in which she joined with her husband, the mortgagee, or those claiming under him, shall, after the death of the husband, cause the mortgaged premises to be sold by virtue of such mortgage; and if any surplus remains after payment of the moneys due thereon, and the costs and charges of the sale, such widow shall be entitled to the interest or income of one-third part of such surplus for her life as dower.

SEC. 140 (6). *Dower in residue of lands mortgaged after payment of mortgage.*—If, in either of the cases above specified, the heir, or other person claiming under the husband, pays and satisfies the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of one-third of the residue, after such deduction.

SEC. 141 (7). *Lands aliened, how estimated for purposes of dower.*—When a widow is entitled to dower out of any lands, aliened by the husband in his lifetime, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower, according to their value at the time when they were so aliened.

SEC. 142 (8). *Dower assigned by probate court, when.*—When a widow is entitled to dower in the lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them, or either of them, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon the application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees, or other persons, in such manner as the judge of probate shall direct.

SEC. 143 (9). *Commissioners to be appointed to set off dower.*—For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

SEC. 144 (10). *Commissioners to be sworn and make report to probate court—costs, how paid.*—The commissioners shall be sworn to the faithful discharge of their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the probate court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the register of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation is set aside, or reversed on appeal, and one-half of the costs of such proceedings shall be paid by the widow, and one-half by the adverse party.

SEC. 145 (11). *Dower assigned out of rents, issues, and profits, when.*—When the estate out of which dower is to be assigned consists of a mill or other tenement, which can not be divided without damage to the whole, and in all cases where the estate can not be divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the owners of the estate.

SEC. 146 (12). *Widow may occupy lands with heirs.*—When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive one-third part of the rents, issues, and profits thereof, so long as the heirs, or others interested, do not object, without having the dower assigned.

SEC. 147 (13, AS AMENDED BY ACT OF MARCH 1, 1873). *Married woman may bar her right of dower, how.*—A married woman may bar her right of dower in any estate conveyed by her husband, or by his guardian, if he is a minor, by joining in the deed of conveyance, and acknowledging the same, or by a subsequent deed, which may be executed either by joining with her husband therein, or by her husband therein, or by herself alone, to be acknowledged as in other cases.

S. L. 1873, 173.

SEC. 148 (14). *Dower, how barred by jointure.*—A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage: *provided*, such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.

SEC. 149 (15). *Assent to jointure in bar of dower, how expressed.*—Such assent shall be expressed, if the woman is of full age, by her becoming a party to the conveyance by which it is settled, and if she is under age, by her joining with her father or guardian in such conveyance.

SEC. 150 (16). *Assent to any pecuniary provision in lieu of dower, is a bar.*—Any pecuniary provision made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

SEC. 151 (17). *Election after jointure in certain cases.*—If any such jointure or pecuniary provision is made before marriage, and without the assent of the intended wife, or if it is made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband, but she shall not be entitled to both.

SEC. 152 (18). *Election in case of will.*—If any lands are devised to a woman, or other provisions made for her in the will of her husband, she shall make her election whether she will take the lands so devised, or the provisions so made, or whether she will be endowed of the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

SEC. 153 (19). *Election, when deemed to have been made.*—When a widow is entitled to an election under either of the two preceding sections, she shall be deemed to have elected to take such jointure, devise, or other provision, unless, within one year after notice of the death of her husband, she commences proceedings for the assignment or recovery of her dower.

SEC. 154 (20). *Widow endowed anew, when.*—If a woman is lawfully evicted

of lands assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

SEC. 155 (21). *Alienage does not bar dower, nor non-residence.*—A woman shall not be barred of her dower on account of alienage; and any woman residing out of the state shall be entitled to dower of the lands of her deceased husband lying in this state, of which he died seized; and the same may be assigned to her or recovered by her in like manner as if she and her deceased husband had been residents within the state at the time of his death.

SEC. 156 (22). *Waste not to be committed.*—No woman endowed of any lands, shall commit or suffer waste on the same, but she shall maintain the houses and tenements, with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein, for all damages occasioned by any waste committed or suffered by her.

SEC. 157 (23). *Widow may remain in house and have sustenance one year.*—A widow may remain in the dwelling-house of her husband one year after his death, without being chargeable with rent, therefor, and shall have her reasonable sustenance out of the estate for one year.

SEC. 158 (24). *May recover damages, when.*—Whenever, in an action brought for the purpose, a widow recovers dower in lands in which her husband died seized, she shall also recover damages for the withholding of such dower.

SEC. 159 (25). *Damages, how estimated.*—Such damages shall be one-third part of the annual value of the mesne profits of the lands in which she so recovers her dower, to be estimated in an action against the heirs of her husband, from the time of his death, and in actions against other persons from the time of her demanding her dower of such persons.

SEC. 160 (26). *Not to be estimated for use of permanent improvements.*—Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to any lands.

SEC. 161 (27). *Widow may recover damages for withholding dower, when.*—When a widow recovers her dower in any lands alienated by the heir of her husband, she may recover of such heir in a civil action her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she is entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from his grantee, and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

SEC. 162 (28). *Effect of acceptance of assignment of dower.*—When the widow accepts an assignment of dower in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow is lawfully evicted of the lands so assigned to her as aforesaid.

SEC. 163 (29). *Dower recovered by collusion or default of guardian of infant heir, such heir not prejudiced.*—When a widow, not having a right to dower, during

the infancy of the heirs of her husband, or any of them, or of any person entitled to the lands, recovers dower by the default or collusion of the guardian of such infant heir, or other person, such heir, or other person so entitled, shall not be prejudiced thereby; but when he comes of full age, he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

ESTATES BY THE CURTESY.

SEC. 164 (30). *Husband to hold lands of deceased wife as tenant by the curtesy, when.*—When any man and his wife are seized in her right, and when a married woman is seized to her sole and separate use free from the control of her husband of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy: *provided*, that if the wife, at her death, leaves issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the curtesy.

TITLE V.

OF HOMESTEADS AND HOMESTEAD EXEMPTION.

(*This Title is Chapter LXVIII. of the Statutes of 1866.*)

SEC. 165 (1). *Quantity of land exempt as a homestead.*—A homestead consisting of any quantity of land not exceeding eighty acres, and the dwelling house thereon, and its appurtenances, to be selected by the owner thereof, and not included in any incorporated town, city, or village, or instead thereof, at the option of the owner, a quantity of land not exceeding in amount one lot, being within an incorporated town, city, or village, and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this state, shall not be subject to attachment, levy, or sale upon execution or any other process, issuing out of any court within this state. This section shall be deemed and construed to exempt such homestead in the manner aforesaid, during the time it shall be occupied by the widow or minor child or children of any deceased person who was, when living, entitled to the benefits of this act.

Olsen v. Nelson, 3 Minn. 53; *Folsom et al v. Carli*, 5 Minn. 333; *Tillotson v. Millard*, 7 Minn. 513; *Kelly v. Baker et al*, 10 Minn. 154; *Cogel v. Mickon*, 11 Minn. 475; *Kresin v. Muir*, 15 Minn. 116; *Ward v. Huhn*, 16 Minn. 159. *Vide also* 8 Minn. 309.

SEC. 166 (2, AS AMENDED BY ACT OF MARCH 4, 1869). *Exemption not to extend to mortgage, when.*—Such exemption shall not extend to any mortgage thereon lawfully obtained, but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same, unless such mortgage shall be given to secure the payment of the purchase money, or some portion thereof; and such exemption shall not extend to any contract for a lien, or upon which a lien would arise under the lien laws of this

state, for work done or material furnished in the erection or repair of a dwelling house or other building on said land.

S. L. 1869, 35. *Vide Cogel v. Mickon et al*, 11 Minn. 475.

SEC. 167 (3). *Homestead to be selected in case of levy.*—Whenever a levy shall be made upon the lands or tenements of a householder, whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy of what he regards as his homestead, with a description thereof, within the limits above described; and the remainder alone shall be subject to sale under such levy.

Kelly v. Baker, 10 Minn. 154.

SEC. 168 (4). *Survey may be made.*—If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making the levy shall cause the same to be surveyed, beginning at a point to be designated by the owner, and set off in a compact form, including the dwelling-house and its appurtenances, the amount specified in the first section of this act, and the expense of such survey shall be chargeable on the execution and collected thereupon.

Ib.

SEC. 169 (5). *After survey, property not included in the set-off may be sold.*—After the survey shall have been made, the officer making the levy may sell the property levied upon, and not included in the set-off, in the same manner as provided in other cases for the sale of real estate on execution, and in giving a deed of the same, he may describe it according to his original levy, excepting therefrom by metes and bounds according to the certificate of the survey, the quantity set off as aforesaid.

Ib.

SEC. 170 (6). *Dwelling house exempt, when.*—Any person owning and occupying any house on land not his own, and claiming said house as a homestead, shall be entitled to the exemption aforesaid.

SEC. 171 (7). *Not exempt from taxation.*—Nothing in this act shall be considered as exempting any real estate from taxation or sale for taxes.

SEC. 172 (ACT OF MARCH 10, 1860).^{*} *Removal of owner or sale does not subject homestead to levy—judgment not a lien on homestead for any purpose.*—The owner of a homestead under the laws of this state, may remove therefrom, or sell and convey the same, and such removal or sale and conveyance shall not render such homestead liable or subject to forced sale on execution or other process hereafter issued on any judgment or decree of any court of this state, or of the district court of the United States for the state of Minnesota against such owner; nor shall any judgment or decree of any such court be a lien on such homestead for any purpose whatever: *provided*, that this act shall not be so construed as in any manner to relate to judgments or decrees rendered on the foreclosure of mortgages either equitable or legal.

SEC. 173 (ACT OF MARCH 6, 1868). *When right to claim homestead shall cease.*—Whenever the owner of a homestead under the laws of this state shall remove therefrom, and cease to occupy the same as such homestead for a period

^{*} Unrepealed by the general repealing chapter of the Statutes of 1866 (chapter 122).

of more than six consecutive months, his right to claim the same as such shall cease and determine on the expiration of such period of six months, unless prior thereto he shall file in the office of the register of deeds of the county wherein such homestead is situate, a notice by him subscribed and acknowledged in the manner deeds are required by law to be acknowledged, particularly designating such homestead and that he claims the same as such, and in no case shall his right to claim the same as a homestead continue for a longer period than five years from the filing of such notice, unless it has been accompanied during some portion of said period by an actual occupancy and residence thereon by him or his family.

S. L. 1868, 97.

MINNESOTA STATUTES 1873 SUPPLEMENT

AN ACT

TO PROVIDE FOR THE TAXATION OF IMPROVEMENTS ON HOMESTEAD CLAIMS MADE UNDER THE ACT OF CONGRESS APPROVED MAY TWENTIETH (20), EIGHTEEN HUNDRED AND SIXTY-TWO (1862), ENTITLED "AN ACT TO SECURE HOMESTEADS TO ACTUAL SETTLERS ON THE PUBLIC DOMAIN AND THE INTEREST OF CLAIMANTS IN SUCH CLAIMS."

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. It shall be the duty of the assessors of the several towns and assessment districts in this state, at the time of making the assessment for the year eighteen hundred and sixty-eight, and for any year thereafter, to appraise and determine the actual cash value of all improvements made by settlers on the public lands of the United States taken and settled upon under the provisions of an act of Congress approved May twentieth, eighteen hundred and sixty-two (1862), entitled "An Act to secure homesteads to actual settlers on the public domain, and of the interest of the claimant in and to such lands," and enter upon the general assessment roll the name of such person occupying or owning such improvements and having such interest, and a full description of the land claimed by said owner or occupant, also the value of such improvements and interest of the claimant as appraised by him as aforesaid, and return the same to the county auditor of his county with the other assessments made by him.

SEC. 2. It shall be the duty of the county auditors in the several counties of this state where there are such homestead settlers, to extend on the personal tax rolls of their respective counties, upon the assessed valuation of such improvements and interest or upon the valuation of the same, as it may be fixed by the board of equalization of their respective counties (should the same be changed by said board) a tax against such of the owners of said improvements and interest, the same as is required by law to extend on other personal property in his county; which tax shall be collected in the same manner and at the same time as is provided by the laws of this state for the collection of taxes on personal property.

SEC. 3. The improvements of any person or persons upon any of the lands held or occupied as homesteads under and by virtue of said act of Congress in which the title is in the United States, and the interest of such claimant in such lands, are hereby declared to be personal property within the meaning of this act.

SEC. 4. No tax shall be assessed or levied on any lands held or occupied by settlers under said act of Congress, other than on the improvements made on the same, and the interest of the claimant therein, so long as the fee of the same remains in the United States.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 6, 1868.