

PART II

PRIVATE RIGHTS

Property Interests and Liens

CHAPTER 500

ESTATES IN REAL PROPERTY

500.01 DIVISION AS TO QUANTITY.

HISTORY. R.S. 1851 c. 43 s. 1; P.S. 1858 c. 31 s. 1; G.S. 1866 c. 45 s. 1; G.S. 1878 c. 45 s. 1; G.S. 1894 s. 4362; R.L. 1905 s. 3191; G.S. 1913 s. 6652; G.S. 1923 s. 8032; M.S. 1927 s. 8032.

In 1825 the legislature of New York created a revision commission consisting of Benjamin F. Butler, John Duer and James Spencer. Based upon the report of the commission, the New York legislature at the 1827-1828 session enacted this chapter on estates in real property substantially in its present form. The law took effect January 1, 1830. (New York Revised Statutes of 1830, Part II, Chapter 1.) New York was followed by Michigan 1847, Wisconsin 1849 and Minnesota 1851. (Revised Statutes of the Territory of Minnesota 1851, Chapter 43.) These enactments set up a scheme of real property law which differed materially from the doctrines of common law and equity regarding future interests, powers, and uses and trust.

The statute of Elizabeth, 1601, was merely a declaration of the common law.

A tenant from year to year has a lease for a year certain, with a growing interest during every year thereafter, springing out of the original contract, and a part of it; and though it has many qualities of a tenancy at will, it cannot be determined by either party without due notice to quit, terminating at the end of the year. (Overruling *Gardner v County of Dakota*, 21 M 33, *Dayton v Craik*, 26 M 133, 1 NW 813, and *Smith v Bell*, 44 M 524, 47 NW 263.) The length of the notice is regulated by statute. *Hunter v Frost*, 47 M 1, 49 NW 327; *Minnesota v Douglas*, 135 M 425, 161 NW 163.

Estates defined. *Minnesota v Dean*, 85 M 473, 89 NW 848.

A life tenant in possession must make such repairs as are necessary to preserve the property but is under no duty to improve it; and if he does make improvements it is a voluntary act and the remainderman need not reimburse him. The tenant except by contract is under no duty to insure, but he may do so to protect his own interest from loss. *Rendahl v Hall*, 160 M 502, 200 NW 744, 200 NW 940.

The deceased having left a widow and a minor child, the homestead descended immediately upon the death of the owner, and the fact that there had been no final probate decree does not deprive the district court of jurisdiction to determine title in proceedings to procure a new Torrens certificate. *Application of Lee*, 171 M 182, 213 NW 736.

A life tenant of property subject to a mortgage must keep down the interest on the mortgage debt. If he redeems, he will hold for the benefit of himself and the remainderman, the latter being required to contribute. *Application of Lee*, 171 M 182, 213 NW 736; *Faulkenberg v Windorf*, 194 M 154, 259 NW 802.

Either life tenant or remainderman may buy in encumbrance or title paramount to the interests of both, but neither can acquire and hold as against other title based on his own default. *Hall v Hall*, 173 M 128, 216 NW 798.

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Equity will not take jurisdiction at the instance of a life tenant, who needs money, against a remainderman to aid the applicant by a sale of the property merely because the property being a homestead, becomes unsuitable for occupancy, and if sold, the proceeds, reinvested, would produce a larger net income. *Rekovsky v Slisczynski*, 175 M 531, 221 NW 906.

The intention of testator was to vest the trust fund in right and interest in his daughter's offspring upon her death, and in the event of none living at her death, then to go to testator's nieces and church. So construed, the trust is valid under section 501.11 (6). The direction to postpone the possession and enjoyment does not vitiate the gift. *Estate of Sherk*, 191 M 143, 253 NW 365.

Mistake as to the form of conveyance justifies reformation but not cancellation of the instrument, and there is no limitation except on the ground of laches. An intention to convey a contingent future estate in fee simple and not a joint tenancy is shown by the evidence. *Papke v Pearson*, 203 M 130, 280 NW 183.

Where the holding company was organized and until his death conducted by the testator and settler of the trust, the fact that he took all increases of capital as income is inadmissible to show that the trustee and life tenant could do the same; and she must allocate all profits from the sale of securities, not to income, but to the corpus of the estate as capital gains. *Clarke v Bennett*, 204 M 574, 284 NW 876.

Since plaintiff in an action for trespass had entered into an agreement with defendants for the building of a line fence between their adjoining properties, the agreement carried with it by implication the right to do such things as were reasonably necessary in order properly to build the fence. *Mixner v Buecksler*, 216 M 586, 13 NW(2d) 754.

Charitable gifts and the Minnesota statute of uses and trusts. 1 MLR 201.

Passing of the corporation in business; the trustee. 2 MLR 407.

Future interests in property in Minnesota. 4 MLR 320.

Restraints on alienation; authorized purposes of trusts of real property. 9 MLR 317.

Necessity of a writing for personal property trusts in Minnesota. 17 MLR 316.

Effect of limitation in form of remainder. 17 MLR 346.

500.02 ESTATES OF INHERITANCE.

HISTORY. R.S. 1851 c. 43 s. 2; P.S. 1858 c. 31 s. 2; G.S. 1866 c. 45 s. 2; G.S. 1878 c. 45 s. 2; G.S. 1894 s. 4363; R.L. 1905 s. 3192; G.S. 1913 s. 6653; G.S. 1923 s. 8033; M.S. 1927 s. 8033.

The royalty tax, Laws 1923, Chapter 226, is imposed upon the right, title, and interest of the lessor in ore lands let for the purpose of mining the ore for a royalty. *Marble v Oliver*, 172 M 263, 215 NW 71.

Future interests in Minnesota. 3 MLR 330.

Suspension of the power of alienation. 8 MLR 297.

500.03 EFFECT OF CONVEYANCE TO GRANTEE IN FEE TAIL.

HISTORY. R.S. 1851 c. 43 s. 3; P.S. 1858 c. 31 s. 3; G.S. 1866 c. 45 s. 3; G.S. 1878 c. 45 s. 3; G.S. 1894 s. 4364; R.L. 1905 s. 3193; G.S. 1913 s. 6654; G.S. 1923 s. 8034; M.S. 1927 s. 8034.

Reversions. 3 MLR 339.

History of a title. 22 MLR 129.

Worthier title rule. 22 MLR 135.

500.04 CONVEYANCE BY OWNER OF FEE TAIL ESTATE.

HISTORY. R.S. 1851 c. 43 s. 4; P.S. 1858 c. 31 s. 4; G.S. 1866 c. 45 s. 4; G.S. 1878 c. 45 s. 4; G.S. 1894 s. 4365; R.L. 1905 s. 3194; G.S. 1913 s. 6655; G.S. 1923 s. 8035; M.S. 1927 s. 8035.

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500.05 DIVISION OF REALTY OR PERSONALTY.

HISTORY. R.S. 1851 c. 43 ss. 5, 6; P.S. 1858 c. 31 ss. 5, 6; G.S. 1866 c. 45 ss. 5, 6; G.S. 1878 c. 45 ss. 5, 6; G.S. 1894 ss. 4366, 4367; R.L. 1905 ss. 3195, 3196; G.S. 1913 ss. 6656, 6657; G.S. 1923 ss. 8036, 8037; M.S. 1927 ss. 8036, 8037.

A man living with his wife on her statutory homestead, but having no property in his own name is not a freeholder. *Hamilton v Village*, 85 M 83, 88 NW 419.

Where the agent was to receive half of the proceeds over \$100.00 an acre, "cash or trade," and the land was traded, the value of the land received forms the basis for figuring the agent's commission. *Doty v Struble*, 140 M 478, 168 NW 551.

A vendor in an executory contract for the sale of land is a freeholder. *School District v Schmidt*, 146 M 403, 178 NW 892.

A contract for the sale of land, part of the price being paid and possession taken, vests in the vendee an equitable title in fee. The legal title in fee is retained by the vendor as security. A policy of insurance issued to the vendor and reciting a forfeiture in case of sale is not forfeited by the contract. *Mark v Liverpool*, 159 M 315, 198 NW 1003.

When land is purchased with money of the wife and title taken in the name of husband and wife as tenants in common, there is no resulting trust in favor of the wife, and the interest of the husband is subject to the claims of his creditors. *Schmitz v Wenzel*, 166 M 435, 208 NW 184.

The title was encumbered by a right of way, and within the time specified the vendors obtained a release thereof, but refused to record the same before receiving the payment stated in the contract. The vendee had a right under the circumstances to end the negotiations and demand the return of the earnest money. *Joslyn v Erwin*, 168 M 269, 209 NW 889.

An Indian owning a tribal allotment is not a freeholder. OAG July 7, 1936 (240w).

500.06 DIVISION AS TO TIME.

HISTORY. R.S. 1851 c. 43 ss. 7, 8; P.S. 1858 c. 31 ss. 7, 8; G.S. 1866 c. 45 ss. 7, 8; G.S. 1878 c. 45 ss. 7, 8; G.S. 1894 ss. 4368, 4369; R.L. 1905 s. 3197; G.S. 1913 s. 6658; G.S. 1923 s. 8038; M.S. 1927 s. 8038.

500.07 ESTATES IN POSSESSION.

HISTORY. R.S. 1851 c. 43 ss. 7, 8; P.S. 1858 c. 31 ss. 7, 8; G.S. 1866 c. 45 ss. 7, 8; G.S. 1878 c. 45 ss. 7, 8; G.S. 1894 ss. 4368, 4369; R.L. 1905 s. 3197; G.S. 1913 s. 6658; G.S. 1923 s. 8038; M.S. 1927 s. 8038.

Estates defined. *Minnesota v Dean*, 85 M 473, 89 NW 848.

Where a grantor executes a deed of real estate and deposits it with a third person to be delivered to the grantee after the death of the grantor, full and complete title vests in the grantee after the death of the grantor. *Innes v Potter*, 130 M 320, 153 NW 604.

Future interests in Minnesota; statutory changes in future estates. 4 MLR 319.

500.08 ESTATES IN EXPECTANCY.

HISTORY. R.S. 1851 c. 43 ss. 9, 42; P.S. 1858 c. 31 ss. 9, 42; G.S. 1866 c. 45 ss. 9, 42; G.S. 1878 c. 45 ss. 9, 42; G.S. 1894 ss. 4370, 4403; R.L. 1905 ss. 3198, 3231; G.S. 1913 ss. 6659, 6692; G.S. 1923 ss. 8039, 8072; M.S. 1927 ss. 8039, 8072.

500.09 REVERSIONS.

HISTORY. R.S. 1851 c. 43 s. 12; P.S. 1858 c. 31 s. 12; G.S. 1866 c. 45 s. 12; G.S. 1878 c. 45 s. 12; G.S. 1894 s. 4373; R.L. 1905 s. 3201; G.S. 1913 s. 6662; G.S. 1923 s. 8042; M.S. 1927 s. 8042.

Reversion of bankrupt in his estate in bankruptcy. *King v Remington*, 36 M 15, 29 NW 352.

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Where land has been conveyed in trust, the residuary estate of the grantor is subject to attachment and sale. *Atwater v Bank*, 45 M 341, 48 NW 187.

Reversion defined. *Papke v Pearson*, 203 M 134, 280 NW 183.

Under a statute providing conditions under which a life estate shall be changed into a fee where there is no express trust, a grant or devise of land for life with power of disposition with remainder over, creates, so far as a life tenant and remaindermen are concerned, conventional life estate coupled with power of disposition with remainder over, and so far as creditors, purchasers, and encumbrancers of life tenant are concerned, a fee simple. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

The rule requiring income from wasting asset to be apportioned as between life tenant and remainderman so as to set up a reserve for depletion of assets had no application where trustee was authorized to retain the asset as an investment of testator with power to sell in his discretion. The rule that, as between life tenant and remainderman, corporate dividends will be treated as income or corpus, depending on whether they were earned or accrued before or after the life estate arose, is limited to stock dividends and extraordinary cash dividends. *Koffend's Will*, 218 M 206, 15 NW(2d) 591.

Determinable estates. 3 MLR 339.

Future interests in property. 4 MLR 321.

Outlines of real property. 21 Corpus Juris 927.

500.10 FUTURE ESTATE; STATUTORY REMAINDERS.

HISTORY. R.S. 1851 c. 43 s. 10; P.S. 1858 c. 31 s. 10; G.S. 1866 c. 45 s. 10; G.S. 1878 c. 45 s. 10; G.S. 1894 s. 4371; R.L. 1905 s. 3199; G.S. 1913 s. 6660; G.S. 1923 s. 8040; M.S. 1927 s. 8040.

A freehold estate to commence in the future may be created without the intervention of a precedent estate. *Sabledowsky v Arbuckle*, 50 M 475, 52 NW 920.

Estates and statutory remainders defined. *Minnesota v Dean*, 85 M 473, 89 NW 848.

Future interests in Minnesota; statutory changes in future estate. 4 MLR 319.

500.11 FUTURE ESTATES; INCLUSIVENESS.

HISTORY. R.S. 1851 c. 43 ss. 11, 24, 27, 29; P.S. 1858 c. 31 ss. 11, 24, 27, 29; G.S. 1866 c. 45 ss. 11, 24, 27, 29; G.S. 1878 c. 45 ss. 11, 24, 27, 29; G.S. 1894 ss. 4372, 4385, 4388, 4390; R.L. 1905 ss. 3200, 3213, 3216, 3218; G.S. 1913 ss. 6661, 6674, 6677, 6679; G.S. 1923 ss. 8041, 8054, 8057, 8059; M.S. 1927 ss. 8041, 8054, 8057, 8059.

A remainder may be limited after a fee. *Whiting v Whiting*, 42 M 548, 44 NW 1030.

Future freehold estate may be created without intervention of precedent supporting estate. *Sabledowsky v Arbuckle*, 50 M 475, 52 NW 920.

Improvements made on real estate by a life tenant become part thereof, and pass to the remaindermen; and consent to removal requires consent of all remaindermen. *Day v Day*, 180 M 151, 320 NW 634.

Remainder may be limited on a contingency abridging or determining a precedent estate. Restraint of alienation limited to grantee only. *Youngers v Schafer*, 196 M 147, 264 NW 794.

A cotenant in exclusive possession of the property belonging to several cotenants and who receives the income and profits from the property is in duty bound to apply such income, as far as it may go, to the payment of necessary improvements, taxes, and general upkeep of the property. *Hoverson v Hoverson*, 216 M 228, 12 NW(2d) 501.

A life tenant is a quasi trustee of property in the sense that he cannot injure or dispose of it to the injury of the remaindermen, even though power of disposition and encroachment are annexed to the life estate. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

Statutory changes in future estates. 4 MLR 319.

Suspension of power of alienation. 8 MLR 187, 297.

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Effect of conveyance leaving control in grantor. 23 MLR 95, 684.

500.12 . FUTURE ESTATE; CONTINGENT.

HISTORY. R.S. 1851 c. 43 c. 13; P.S. 1858 c. 31 s. 13; G.S. 1866 c. 45 s. 13; G.S. 1878 c. 45 s. 13; G.S. 1894 s. 4374; R.L. 1905 s. 3202; G.S. 1913 s. 1663; G.S. 1923 s. 8043; M.S. 1927 s. 8043; 1943 c. 69 s. 1.

Life estate and remainders held valid notwithstanding power of sale. Bond not required of life tenant. Estate Charles Oertle, 34 M 173, 24 NW 924.

A fee may be limited on a fee. A conditional limitation does not prevent vesting of remainder. Whiting v Whiting, 42 M 248, 44 NW 1030.

The will in the instant case creates a contingent remainder. Armstrong v Armstrong, 54 M 248, 55 NW 971.

Vested and contingent remainders distinguished. Minnesota Debenture Co. v Dean, 85 M 473, 89 NW 848.

A vested remainder is effective on testator's death. Johrden v Pond, 126 M 249, 148 NW 113.

Members of a class entitled to take are determined as of the time when the conveyance to the class vests in enjoyment. Applied in the instant case to after-born grandchildren. Savella v Erickson, 138 M 96, 163 NW 1030.

A will held not to create a vested remainder on death of the testator. Buck v Huntley, 151 M 448, 187 NW 411.

One person may own the surface of the land and another the growing timber. Landowner's deed of timber, limiting time for removal conveys an interest in land. Grantor has a contingent future estate in the timber, and an estate in reversion in the soil. A deed conveying the landowner's reversionary estate does not defeat the possibility of the vesting of his contingent future estate in the timber. La Cook Co. v Northern Lumber, 159 M 523, 200 NW 801.

Grantor may fix time for the vesting of a remainder. Levings v Bank, 192 M 143, 255 NW 828.

Instrument held to create a contingent future estate rather than a joint tenancy. Papke v Pearson, 203 M 130, 280 NW 183.

Intent of the testator, when clear, confines the distribution and fixes the date of the vesting of the remainder. Long v Disque, 207 M 7, 290 NW 312.

Future estates. 4 MLR 319.

Suspension of power of alienation. 8 MLR 301.

Title. 22 MLR 135.

Walsh on Future Estates, page 197.

500.13 FUTURE ESTATES; RESTRICTIONS ON CREATION.

HISTORY. R.S. 1851 c. 43 ss. 14 to 21, 23; P.S. 1858 c. 31 ss. 14 to 21, 23; G.S. 1866 c. 45 ss. 14 to 21, 23; G.S. 1878 c. 45 ss. 14 to 21, 23; G.S. 1894 ss. 4375 to 4382, 4384; R.L. 1905 ss. 3203 to 3210, 3212; G.S. 1913 ss. 6664 to 6671, 6673; G.S. 1923 ss. 8044 to 8051, 8053; M.S. 1927 ss. 8044 to 8051, 8053.

Subdivision 1. Effect of Suspension of Power of Alienation.

Power of alienation may be suspended during the minority of a minor, and cease with the death of the minor before coming to majority. Simpson v Cook, 24 M 180.

Differences between real property and personal property distinguished as to the power of suspension. Converting real property into cash is allowable to uphold the trust. Tower's Estate, 49 M 371, 52 NW 27.

A devise of land suspending the power of alienation without reference to lives in being is void. A valid suspension of the power of alienation must terminate within the period of two specified lives. Rong v Haller, 109 M 191, 123 NW 471, 806.

Common law as to perpetuities superseded by statute. Right to reserve mineral rights upheld. Buck v Walker, 115 M 239, 132 NW 205.

Perpetual trust in personality may be created. Real property may be converted into personal property to establish a valid trust. Christian Assn. v Horn, 120 M 404, 139 NW 805.

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An option on mineral lands did not suspend the power of alienation and did not violate rules as to perpetuities. *Mineral Land Co. v Bishop*, 134 M 416, 159 NW 967.

A devise of a remainder in fee to the son of the testatrix, with the provision against the sale for a certain number of years after the death of his father, does not violate the statute. *Hause v O'Leary*, 136 M 128, 161 NW 392.

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 vendor. *Larson v Johnson*, 175 M 502, 221 NW 871.

To constitute a joint tenancy, four unities are required: unity of interest, title, time, and possession. If any of these elements is lacking the estate is not one in joint tenancy. The general rule is that a joint tenant may, at his pleasure, dispose of his share in the joint property and convey it to another, and that such conveyance results in the severance or termination of the joint tenancy. *Greiger v Pye*, 210 M 71, 297 NW 173.

Statutory modification of the rule against perpetuities. 1 MLR 158.

Charitable trusts. 1 MLR 224.

Possibility of reverter. 3 MLR 333.

Rationale of the rule against perpetuities. 6 MLR 560.

Rules against direct restraint of alienation. 8 MLR 187, 296.

Restriction on duration of trusts. 9 MLR 328.

Charitable trusts. 14 MLR 590.

Worthier title rule. 22 MLR 135.

Subdivision 2. Limit of Suspension; Exception.

See *Simpson v Cook*, *Tower v Lee*, *Mineral Land Co. v Bishop*, and *Hause v O'Leary*, annotations under subdivision 1.

See Laws 1931, Chapter 65, in re express trusts.

Effect of foreign and domestic statutes on the rules as to suspension of the power of alienation. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Royalties on severance of iron ore distinguished from rents and profits in construing the rule against perpetuities. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Deed prohibiting the grantee from mortgaging or selling within a certain number of years after the death of the grantor, and indicating distribution in certain contingencies is not an unlawful restraint. *Youngers v Schafer*, 196 M 147, 264 NW 794.

Statutory modification of the rule against perpetuities. 1 MLR 158.

Charitable trusts. 1 MLR 224; 14 MLR 590; 17 MLR 564.

Possibility of reverter. 3 MLR 333.

Future interests in real property. 4 MLR 323.

Rules against restraints on alienation. 8 MLR 187.

Suspension of the power of alienation. 8 MLR 296.

Duration of trusts in personal property. 9 MLR 328.

History of a title. 22 MLR 135.

Subdivision 3. Allowable Successive Life Estates.

Rules against restraints on alienation. 8 MLR 296.

Creation of future interests in personalty. 8 MLR 315.

Subdivision 4. Remainder Following Estate Pur Autre Vie.

Future interests in real property. 4 MLR 323.

Restriction on number of lives in estates pur autre vie. 10 MLR 326.

Vested and contingent remainders. 10 MLR 550.

Subdivisions 5, 6, 7.

See annotations under subdivisions 1, 2, 3, 4.

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500.14 FUTURE ESTATES; CONSTRUCTION, VALIDITY, AND EFFECT OF CREATING INSTRUMENTS.

HISTORY. R.S. 1851 c. 43 ss. 22, 25, 26, 28, 30, 31; P.S. 1858 c. 31 ss. 22, 25, 26, 28, 30, 31; G.S. 1866 c. 45 ss. 22, 25, 26, 28, 30, 31; G.S. 1878 c. 45 ss. 22, 25, 26, 28, 30, 31; G.S. 1894 ss. 4383, 4386, 4387, 4389, 4391, 4392; R.L. 1905 ss. 3211, 3214, 3215, 3217, 3219, 3220; G.S. 1913 ss. 6675, 6676, 6678, 6680, 6681; G.S. 1923 ss. 8055, 8056, 8058, 8060, 8061; M.S. 1927 ss. 8055, 8056, 8058, 8060, 8061; 1939 c. 378; M. Supp. s. 8052-1.

A fee may be limited in a fee. A conditional limitation does not prevent vesting of remainder. *Whiting v Whiting*, 42 M 548, 44 NW 1030.

The word "issue" is one of purchase and not of limitation where there is a devise of real estate for life with gift over of the fee to the heirs of the life tenant. *Whiting v Whiting*, 42 M 548, 44 NW 1030; *Holden v Bank*, 207 M 220, 291 NW 104.

Abolition of the rule in *Shelley's case* construed. *Bank v Higgins*, 208 M 308, 293 NW 585.

Worthier title rule abolished. Laws 1939, Chapter 90.

Failure of issue defined. Laws 1939, Chapter 378, Section 1:

Worthier title rule; failure of issue; history of a title. 22 MLR 135.

Limitation in the form of a remainder to grantor or his heirs *eo nomine* is void, and the grantor has a reversion in himself. 24 MLR 253.

500.15 FUTURE ESTATES; PROTECTION FROM DESTRUCTIBILITY RULES.

HISTORY. R.S. 1851 c. 43 ss. 32 to 34; P.S. 1858 c. 31 ss. 32 to 34; G.S. 1866 c. 45 ss. 32 to 34; G.S. 1878 c. 45 ss. 32 to 34; G.S. 1894 ss. 4393 to 4395; R.L. 1905 ss. 3221 to 3223; G.S. 1913 ss. 6682 to 6684; G.S. 1923 ss. 8062 to 8064; M.S. 1927 ss. 8062 to 8064.

Right of life tenant to dispose of real or personal property for care and education of the children remaindermen. *Estate of Oertle*, 34 M 173, 24 NW 924.

A bankrupt's interest in his estate is not extinguished by filing in bankruptcy. A reversion of any residuum is implied after the purposes of the bankruptcy proceedings are accomplished. *King v Remington*, 36 M 15, 29 NW 352.

Where land is conveyed in trust to pay certain charges and debts, the reversionary interest of the grantor is subject to attachment. *Atwater v Bank*, 45 M 341, 48 NW 187.

A merger may not take place in certain cases where the mortgagee takes the legal title to the mortgaged land, as where a merger would not be in the interest of the mortgagee. *Hartford Co. v Federal B & M Co.* 59 F(2d) 950.

Termination of life estate by merger. 3 MLR 136.

Statutory changes in future estates. 4 MLR 320.

Contingent remainders. 5 MLR 134.

Restrictions on suspension of the power of alienation. 8 MLR 295.

Effect of creation of a resulting trust. 13 MLR 749.

500.16 ALIENABILITY AND DESCENDIBILITY OF EXPECTANT ESTATES INCLUDING REVERSIONARY POSSIBILITIES.

HISTORY. R.S. 1851 c. 43 s. 35; P.S. 1858 c. 31 s. 35; G.S. 1866 c. 45 s. 35; G.S. 1878 c. 45 s. 35; G.S. 1894 s. 4396; R.L. 1905 s. 3224; G.S. 1913 s. 6685; G.S. 1923 s. 8065; M.S. 1927 s. 8065; 1937 c. 487 s. 2.

Intent of testator trustor construed and upheld. *Long v Disque*, 207 M 7, 290 NW 312.

Amendment excepting certain grand leases, section 500.21, Laws 1937, Chapter 487, Section 2.

Sale on execution of a contingent remainder. 15 MLR 837.

500.17 FUTURE ESTATES; RENTS AND PROFITS.

HISTORY. R.S. 1851 c. 43 ss. 36 to 40; P.S. 1858 c. 31 ss. 36 to 40; G.S. 1866 c. 45 ss. 36 to 40; G.S. 1878 c. 45 ss. 36 to 40; G.S. 1894 ss. 4397 to 4401; R.L. 1905

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ss. 3225 to 3229; G.S. 1913 ss. 6686 to 6690; G.S. 1923 ss. 8066 to 8070; M.S. 1927 ss. 8066 to 8070.

Unaccrued rents are not personal property. *State v Royal*, 132 M 232, 156 NW 128.

Trust for accumulation of royalties from mineral leases construed as to validity. *Minnesota Loan and Trust Co. v Douglas*, 135 M 413, 161 NW 159; *Minnesota L. & T. v Pettit*, 144 M 244, 175 NW 540; 129 M 442, 152 NW 845.

Section 500.17, subdivision 2, has no application to trusts in personal property. The common law was in force until 1875. Our original statutes on uses and trusts related exclusively to real estate. Laws 1875, Chapter 53, abolished the common law trusts in personal property except as authorized by statute. *Congdon v Congdon*, 160 M 343, 200 NW 76.

The rule against accumulation of income is purely statutory, unlike the common rule against perpetuities which is the outgrowth of judicial expression. *Congdon v Congdon*, 160 M 343, 200 NW 76.

Income of trust fund to testator's daughter for life, with corpus to her offspring after her death evidences no intention as to accumulation after her death. The direction to postpone possession or enjoyment does not vitiate the gift. *Jacobson v Mankato*, 191 M 143, 253 NW 365.

Trust agreement between reorganizing bank and depositors does not offend the rule against perpetuities or restraint on alienation. *Holm v Bank*, 197 M 384, 267 NW 201.

Under a will creating a trust until 21 years after death of survivor of two named nieces of testator and directing that the trust cease at expiration of 21 years after the two lives in being, the future interests created did not violate the "rule against perpetuities." *Gertman v Burdick*, 123 F(2d) 924 (District of Columbia).

Statutory modification of rule against perpetuities. 1 MLR 158.

Rule as to perpetuities applied as to ore royalties. 1 MLR 378.

Rule as to suspension of the power of alienation. 8 MLR 297.

Restriction as to duration of a trust. 9 MLR 328.

Suspension of the power of alienation. 9 MLR 352.

500.18 COMMENCEMENT OF EXPECTANT ESTATES.

HISTORY. R.S. 1851 c. 43 s. 41; P.S. 1858 c. 31 s. 41; G.S. 1866 c. 45 s. 41; G.S. 1878 c. 45 s. 41; G.S. 1894 s. 4402; R.L. 1905 s. 3230; G.S. 1913 s. 6691; G.S. 1923 s. 8071; M.S. 1927 s. 8071.

500.19 DIVISION.

HISTORY. R.S. 1851 c. 43 ss. 43 to 45; P.S. 1858 c. 31 ss. 43 to 45; G.S. 1866 c. 45 ss. 43 to 45; G.S. 1878 c. 45 ss. 43 to 45; G.S. 1894 ss. 4404 to 4406; R.L. 1905 ss. 3232, 3233; G.S. 1913 ss. 6693, 6694; G.S. 1923 ss. 8073, 8074; M.S. 1927 ss. 8073, 8074.

Subdivision 1. According to Number.

Upon grant or devise to husband and wife, they take as tenants in common unless expressly declared to be joint tenants. *Wilson v Wilson*, 43 M 398, 45 NW 710.

Evidence construed to convey a tenancy in common rather than a joint tenancy. *Papke v Pearson*, 203 M 130, 280 NW 183.

Subdivision 2. Construction of Grants and Devises.

Estates by entireties have never been recognized in Minnesota. *Wilson v Wilson*, 43 M 398, 45 NW 710.

Estates by entireties and joint tenancies, with right of survivorship in favor of the husband surviving his wife, do not exist as applied to rent and personal property owned by them in common. *Semper v Coates*, 93 M 76, 100 NW 662.

Right of tenant in common to redeem from mortgage. *Kirsh v Scandia Bank*, 160 M 269, 199 NW 881.

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ESTATES IN REAL PROPERTY 500.22

Acts of one cotenant do not impair the rights of the others. *Krost v Mayer*, 166 M 152, 207 NW 311.

Where a deed runs to two persons "or the survivor of either" upon the death of one of them, the other becomes sole owner in fee. *Forney v Insurance Co.* 181 M 8, 231 NW 401.

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 Bank*, 204 M 200, 283 NW 408.

One in possession of real estate and personal property owes a duty to a cotenant preventing him from enriching himself by taking more than his just share of the income. The tenant in possession may even sue or be sued for an accounting if at any time the receipts or contributions are not in proper proportion. *Hoverson v Hoverson*, 216 M 228, 15 NW(2d) 501.

Use and appropriation of the benefits of land by the cotenant in possession does not extend opening a new mine on the property or so to drain a lake to get access to ore, thus damaging shore rights of a cotenant. *Petraborg v Zontelli*, 217 M 536, 15 NW(2d) 174.

Extent of right of survivorship in a joint tenancy. *Irvine v Helvering*, 99 F(2d) 265.

Right of survivorship in joint tenancy of real or personal property. 3 MLR 349.

Gift to a class; survivorship as tenants in common. 5 MLR 368.

Creditor's rights against survivor of tenant by entirety. 9 MLR 684.

Effect of divorce on tenants by entirety. 14 MLR 563.

Right of corporate trust company to hold property in joint tenancy. 17 MLR 340.

Grant to several persons "and to the survivor" creates joint tenancy. 18 MLR 79.

Joint tenant; tenant by entirety; disinheritance for murder. 24 MLR 430.

Tenancy by entirety; liability of wife for negligence as landlord. 27 MLR 536.

500.20 DEFEASIBLE ESTATES.

HISTORY. R.S. 1851 c. 43 s. 46; P.S. 1858 c. 31 s. 46; G.S. 1866 c. 45 s. 46; G.S. 1878 c. 45 s. 46; G.S. 1894 s. 4407; R.L. 1905 s. 3234; G.S. 1913 s. 6695; G.S. 1923 s. 8075; M.S. 1927 s. 8075; 1937 c. 487 s. 1.

Conveyance with express condition that intoxicants should not be sold as a beverage construed as a condition subsequent, and not a condition "merely nominal," and on its face valid. *Railroad v Singer*, 49 M 301, 51 NW 905.

Devise and bequest of testator to wife with condition against conveying or devising any part thereof to any relative of either held invalid as against public policy. *Morse v Blood*, 68 M 442, 71 NW 682.

500.21 APPLICATION TO GROUND LEASE.

HISTORY. 1937 c. 487 s. 3; M. Supp. s. 8075-1.

500.22 RESTRICTIONS ON ACQUISITION OF TITLE.

HISTORY. 1887 c. 204 ss. 1 to 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 75 ss. 41a to 41d; 1889 c. 113 ss. 1 to 4; 1889 cc. 117, 129; G.S. 1894 ss. 5875 to 5878; 1897 c. 112; 1899 c. 129; R.L. 1905 ss. 3235 to 3239; 1907 c. 439; 1911 c. 130 s. 1; G.S. 1913 ss. 6696 to 6700; G.S. 1923 ss. 8076 to 8080; M.S. 1927 ss. 8076 to 8080; 1945 c. 280 s. 1.

A corporation organized under the laws of the state is presumed, until the contrary appears, to have as its stockholders a sufficient percentage of citizens. *Telephone Co. v Railway Co.* 76 M 334, 79 NW 315.