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CHAPTER 45.

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59. Defective executions may be decreed in equity.
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SEC. 1. Powers, except as authorized and provided for in this chapter, are abolished; and from the time this chapter shall be in force, the creation, construction, and execution of powers, shall be governed by the provisions herein contained.

Powers except as provided for in this chapter, abolished.

SEC. 2. 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.

Definition of power.

SEC. 3. 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.

Who incapable of granting a power.

SEC. 4. Powers as authorized in this chapter, are general or special, and beneficial or in trust.

Division of powers.

Definition of general powers.

SEC. 5. 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.

Definition of special powers.

SEC. 6. A power is special :

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

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

Beneficial powers.

SEC. 7. 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.

Powers to married women.

SEC. 8. 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.

Estate of tenant for life, &c., when changed into a fee.

SEC. 9. When an absolute power of disposition, not accompanied by any trust, shall be 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 should not be executed, or the lands should not be sold for the satisfaction of debts.

Certain powers create fee, &c.

SEC. 10. When a like power of disposition shall be 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.

Certain powers create a fee.

SEC. 11. 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.

Effect of power to devise the inheritance in certain cases.

SEC. 12. When a general and beneficial power to devise the inheritance, shall be 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 last preceding sections.

What powers to be deemed absolute.

SEC. 13. 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.

Power to revoke.

SEC. 14. When the grantor, in any conveyance shall reserve 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.

Special and beneficial powers, who may take.

SEC. 15. A special and beneficial power may be granted :

1. 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.

2. 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.

Powers to make leases by tenant for life.

SEC. 16. 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.

Release of such power.

SEC. 17. Such power may be released by the tenant to any person entitled to an expectant estate in the land, and shall thereupon be extinguished.

Mortgage by party having power to lease, &c.

SEC. 18. 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.

Effect of mortgage on power.

SEC. 19. The effects of such a lien by mortgage on the power are :

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

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

SEC. 20. No beneficial powers, general or special, hereinafter to be created, other than such as are enumerated and defined in the preceding sections of this chapter, shall be valid.

Future beneficial powers.

SEC. 21. 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.

Beneficial powers liable to creditors.

SEC. 22. 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.

General powers, when in trust.

SEC. 23. A special power is in trust,

Special powers, when in trust.

1. 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.

2. 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. 24. 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.

Trust powers imperative.

SEC. 25. 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.

Effect of right of selection.

SEC. 26. 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 allowed to each; all the persons designated shall be entitled to an equal proportion.

Construction of powers in certain cases.

SEC. 27. 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.

Construction of powers in certain cases.

SEC. 28. If the trustee of a power, with the right of selection, shall die, leaving the power unexecuted, its execution shall be decreed in the court of chancery, for the benefit, equally, of all the persons designated as objects of the trust.

When chancery to execute powers.

SEC. 29. 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 court of chancery.

When chancery to execute powers.

SEC. 30. The provisions contained in the next 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.

Application of certain sections of preceding chapter.

SEC. 31. The execution, in whole or in part, of any trust power may be decreed in chancery 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.

Execution of trust powers when compelled by creditors, &c.

SEC. 32. 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

Beneficial powers, &c., to pass by general assignment.

interest is vested, under any general assignment of the estate and effects of such person, for the benefit of creditors made pursuant to law.

Reservation of powers in conveyances.

SEC. 33. The grantor of any conveyance may reserve to himself any power, beneficial or 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.

How powers to be granted.

SEC. 34. A power may be granted :

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

2. By devise in a last will and testament.

Recording powers, effect of, &c.

SEC. 35. 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, shall be recorded; but as against all other persons the power shall be a lien from the time the instrument in which it is contained shall take effect.

When powers irrevocable.

SEC. 36. Every power beneficial or in trust, is irrevocable, unless an authority to revoke, it is recorded or granted in the instrument creating the power.

In whom power may be vested, &c.

SEC. 37. 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 holden by such person, except in the single case mentioned in the next section.

Married woman.

SEC. 38. 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.

Survivors may execute power in case of death.

SEC. 39. 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 survivor or survivors.

How executed.

SEC. 40. 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.

Instruments deemed conveyances as to certain particulars.

SEC. 41. Every instrument, except a will, made in execution of a power, whether it be a power of vocation or otherwise, shall be deemed a conveyance with the meaning and subject, to the provisions of the next succeeding chapter.

Execution of power to dispose by devise.

SEC. 42. When a power of disposition is confined to a disposition by devise or will, the instrument must be a will duly executed according to the provisions of law relating to wills of real and personal estate.

Execution of power to dispose by grant.

SEC. 43. 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.

How grant to be acknowledged by married women.

SEC. 44. If a married woman execute a power by grant, such grant shall be acknowledged by her on a private examination in the manner prescribed in the next succeeding chapter, in relation to conveyances by married women, and shall not be valid unless so acknowledged.

Power not void, though execution of instrument insufficient, &c.

SEC. 45. When the grantor of a power shall have 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.

Directions of grantor.

SEC. 46. When the grantor shall have 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. 47. 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.

Nominal conditions.

SEC. 48. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time, and conditions of its execution, shall be observed, subject to the power of a court of chancery to supply a defective execution, in the cases hereinafter provided.

When directions of grantor to be observed.

SEC. 49. 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 must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of land.

Consent of third person to execution of power.

SEC. 50. 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.

Certain dispositions not void.

SEC. 51. 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 be not recited or referred to therein.

Omission to recite power.

SEC. 52. 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.

Fraud.

SEC. 53. Lands embraced in a power to devise, shall 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, shall appear expressly, or by necessary implication.

Power to devise, when to pass by will.

SEC. 54. 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.

Certain estates to be advancements.

SEC. 55. 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.

Computation of time of suspension.

SEC. 56. 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.

Who may not take under powers.

SEC. 57. When a married woman entitled to an estate in fee, shall be 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.

Married women, their authority, &c.

SEC. 58. When the execution of a power in trust shall be 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 objects of the trust.

Defective executions may be decreed in equity.

SEC. 59. Purchasers for a valuable consideration, claiming under a

Defective execu-

tions may be decreed in equity.

defective execution of any power, shall be entitled to the same relief in equity as similar purchasers claiming under a defective conveyance from an actual owner.

Powers to sell contained in mortgages.

SEC. 60. When a power to sell lands, shall be 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, and 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.

Application of this chapter.

SEC. 61. The provisions of this chapter shall not extend to a simple power of attorney, to convey lands in the name and for the benefit of the owner.

Terms "grantor of a power," and "grantee of a power," defined.

SEC. 62. The term "grantor of a power" is used in this 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.

CHAPTER 46.

OF ALIENATION BY DEED, OF THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

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