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# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE  
THE STATUTES OF THE STATE, BY ACT OF THE  
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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4 part of the security, shall vest in, and may be executed by  
5 any person, who by assignment or otherwise, shall become  
6 entitled to the money so secured to be paid.

1 SECT. 60. The provisions of this chapter shall not ex-  
2 tend to a simple power of attorney, to convey lands in the  
3 name and for the benefit of the owner.

1 SECT. 61. The term "grantor of a power" is used in  
2 this chapter as designating the person by whom a power is  
3 created, whether by grant or devise; and the term "gran-  
4 tee of a power," is used as designating the person in whom  
5 a power is vested, whether by grant, devise, or reserva-  
6 tion.

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## CHAPTER XLV.

### ESTATES IN REAL PROPERTY.

1 SECTION 1. Estates in lands are divided into estates of  
2 inheritance, estates for life, estates for years, estates at will  
3 and by sufferance.

c. s., ch. 31.

1 SECT. 2. Every estate of inheritance shall continue to be  
2 termed a fee simple, or fee; and every such estate, when  
3 not defeasible or conditional, shall be a fee simple or an  
4 absolute fee.

1 SECT. 3. In all cases where any person or persons  
2 would, if this chapter had not been passed at any time  
3 hereafter, become seized in fee tail, of any lands, tene-  
4 ments, or hereditaments, by virtue of any devise, gift,  
5 grant, or other conveyance heretofore made, or hereafter  
6 to be made, or by any other means whatsoever, such per-  
7 son or persons, instead of becoming seized thereof, in fee  
8 tail, shall be deemed and adjudged to be seized thereof as  
9 an allodium.

1 SECT. 4. Where lands, tenements, or hereditaments  
2 heretofore have been devised, granted, or otherwise con-  
3 veyed by a tenant in tail, and the person to whom such de-  
4 vise, grant, or other conveyance hath been made, his heirs  
5 or assigns, have from the time such devise took effect, or  
6 from the time such grant or conveyance was made, to the  
7 day of passing this chapter, been in the uninterrupted pos-  
8 session of such lands, tenements, or hereditaments, and

9 claiming and holding the same under or by virtue of such  
 10 devise, grant, or other conveyance, they shall be deemed  
 11 as good and legal to all intents and purposes, as if such  
 12 tenant in tail had, at the time of making such devise, grant,  
 13 or other conveyance, been seized of such lands, tenements,  
 14 or hereditaments, allodially, any law to the contrary hereof  
 15 notwithstanding.

1 SECT. 5. Estates of inheritance and for life, shall be de-  
 2 nominated estates of freehold; estates for years shall be de-  
 3 nominated chattels real; and estates at will or by suffer- C. S., ch. 31.  
 4 ance, shall be chattel interests, but shall not be liable as  
 5 such to sale on execution.

1 SECT. 6. An estate for the life of a third person, wheth-  
 2 er limited to heirs or otherwise, shall be deemed a free-  
 3 hold only during the life of the grantee or devisee; but after  
 4 his death it shall be deemed a chattel real.

1 SECT. 7. Estates, as respects the time of their enjoy-  
 2 ment, are divided into estates in possession, and estates in  
 3 expectancy.

1 SECT. 8. An estate in possession, is where the owner  
 2 has an immediate right to the possession of the land; an  
 3 estate in expectancy, is where the right to the possession is  
 4 postponed to a future period.

1 SECT. 9. Estates in expectancy are divided into:  
 2 *First.*—Estates commencing at a future day, denomina-  
 3 ted future estates; and,  
 4 *Second.*—Reversions.

1 SECT. 10. A future estate, is an estate limited to com-  
 2 mence in possession at a future day, either without the in-  
 3 tervention of a precedent estate, or on the determination  
 4 by lapse of time, or otherwise of a precedent estate created  
 5 at the same time.

1 SECT. 11. When a future estate is dependent upon a  
 2 precedent estate, it may be termed a remainder, and may  
 3 be created and transferred by that name.

1 SECT. 12. A reversion is the residue of an estate left in  
 2 the grantor, or his heirs, or in the heirs of a testator, com-  
 3 mencing in possession on the determination of a particular  
 4 estate, granted or devised.

1 SECT. 13. Future estates are either vested or contin-  
 2 gent: They are vested when there is a person in being

3 who would have an immediate right to the possession of the  
4 lands upon the ceasing of the intermediate or precedent es-  
5 tate. They are contingent while the person to whom, or  
6 the event upon which they are limited to take effect, re-  
7 mains uncertain.

C. S., ch. 31.

1 SECT. 14. Every future estate is void in its creation,  
2 which suspends the absolute power of alienation for a longer  
3 period than is prescribed in this chapter; such power of  
4 alienation is suspended, when there are no persons in being  
5 by whom an absolute fee in possession can be conveyed.

1 SECT. 15. The absolute power of alienation shall not be  
2 suspended by any limitation or condition whatever, for a  
3 longer period than during the continuance of two lives in  
4 being at the creation of the estate, except in the single case  
5 mentioned in the next section.

1 SECT. 16. A contingent remainder in fee may be crea-  
2 ted on a prior remainder in fee, to take effect in the event  
3 that the persons to whom the first remainder is limited, die  
4 under the age of twenty-one years, or upon any other-con-  
5 tingency by which the estate of such persons may be deter-  
6 mined before they attain their full age.

1 SECT. 17. Successive estates for life shall not be limited  
2 unless to persons in being at the creation thereof; and when  
3 a remainder is limited on more than two successive estates  
4 for life, all the life estates subsequent to those of the two  
5 persons first entitled thereto, shall be void; and upon the  
6 death of those persons, the remainder shall take effect in  
7 the same manner as if no other life estate had been created.

1 SECT. 18. No remainder shall be created upon an estate  
2 for the life of any other person than the grantee or devisee  
3 of such estate, unless such remainder is in fee; nor shall  
4 any remainder be created upon such estate in a term for  
5 years, unless it is for the whole residue of the term.

1 SECT. 19. When a remainder is created upon any such  
2 life estate, and more than two persons are named as the per-  
3 sons during whose lives the estate shall continue, the re-  
4 mainder shall take effect upon the death of the two persons  
5 first named, in the same manner as if no other lives had been  
6 introduced.

1 SECT. 20. A contingent remainder shall not be created  
2 on a term of years, unless the nature of the contingency up-  
3 on which it is limited, is such that the remainder must vest  
4 in interest during the continuance of not more than two  
5 lives, in being at the creation of such remainder, or upon  
6 the termination thereof.

1 SECT. 21. No estate for life shall be limited as a remain-  
2 der on a term of years, except to a person in being at the  
3 creation of such estate.

1 SECT. 22. When a remainder is limited to take effect  
2 on the death of any person without heirs or heirs of his body,  
3 or without issue, the word "heirs" or "issue" shall be  
4 construed to mean heirs or issue living at the death of the  
5 person named as ancestor.

1 SECT. 23. All the provisions in this chapter contained c. s. ch. 31.  
2 relative to future estates, shall be construed to apply to lim-  
3 itations of chattels real, as well as freehold estates, so that  
4 the absolute ownership of a term of years shall not be sus-  
5 pended for a longer period than the absolute power of alien-  
6 ation can be suspended in respect to a fee.

1 SECT. 24. Subject to the rules established in the pre-  
2 ceding sections of this chapter, a freehold estate as well as a  
3 chattel real may be created to commence at a future day ;  
4 an estate for life may be created in a term of years, and a  
5 remainder limited thereon.

1 SECT. 25. Two or more future estates may also be cre-  
2 ated, to take effect in the alternative, so that if the first in  
3 order fails to vest, the next in succession shall be substitu-  
4 ted for it, and take effect accordingly.

1 SECT. 26. No future estate otherwise valid, shall be void  
2 on the ground of the probability or improbability of the  
3 contingency on which it is limited to take effect.

1 SECT. 27. A remainder may be limited on a contingen-  
2 cy, which, in case it should happen, will operate to abridge  
3 or determine the precedent estate ; and every such remain-  
4 der shall be construed a conditional limitation, and shall  
5 have the same effect as such a limitation would have by  
6 law.

1 SECT. 28. When a remainder is limited to the heirs or  
2 heirs of the body of a person to whom a life estate in the  
3 same premises is given, the persons who, on the termina-  
4 tion of the life estate are the heirs or heirs of the body of  
5 such tenant for life, shall be entitled to take as purchasers,  
6 by virtue of the remainder so limited to them.

1 SECT. 29. When a remainder on an estate for life, or for  
2 years is not limited on a contingency, defeating or avoiding  
3 such precedent estate, it shall be construed as intended to  
4 take effect only on the death of the first taker, or at the ex-  
5 piration by lapse of time, of such term of years.

1 SECT. 30. When a future estate is limited to heirs or is-  
2 sue, or children, posthumous children shall be entitled to  
3 take, in the same manner as if living at the death of their  
4 parent.

1 SECT. 31. A future estate depending on the contingency  
2 of the death of any person without heirs or issue, or chil-  
3 dren, shall be defeated by the birth of a posthumous child  
4 of such person, capable of taking by descent.

c. S., ch. 31.

1 SECT. 32. No expectant estate can be defeated or bar-  
2 red by any alienation or other act of the owner of the inter-  
3 mediate or precedent estate, nor by any destruction of such  
4 precedent estate, by disseizin, forfeiture, surrender, merger,  
5 or otherwise.

1 SECT. 33. The preceding section shall not be construed  
2 to prevent an expectant estate from being defeated in any  
3 manner, or by any act or means which the party creating  
4 such estate has in the creation thereof, provided or autho-  
5 rized; nor shall an expectant estate thus liable to be defeat-  
6 ed, be on that ground adjudged void in its creation.

1 SECT. 34. No remainder, valid in its creation, shall be  
2 defeated by the determination of the precedent estate, be-  
3 fore the happening of the contingency on which the remain-  
4 der is limited to take effect; but should such contingency  
5 afterward happen, the remainder shall take effect in the same  
6 manner and to the same extent as if the precedent estate had  
7 continued to the same period.

1 SECT. 35. Expectant estates are descendible, devisible,  
2 and alienable, in the same manner as estates in possession.

1 SECT. 36. Dispositions of the rents and profits of lands  
2 to accrue and be received at any time subsequent to the exe-  
3 cution of the instrument creating such disposition, shall be  
4 governed by the rules established in this chapter, in relation  
5 to future estates in lands.

1 SECT. 37. An accumulation of rents and profits of real  
2 estate, for the benefit of one or more persons, may be direct-  
3 ed by any will or deed, sufficient to pass real estate, as  
4 follows:

5 *First.*—If such accumulation is directed to commence  
6 on the creation of the estate, out of which the rents and  
7 profits are to arise, it must be made for the benefit of one  
8 or more minors then in being, and terminated at the expira-  
9 tion of their minority.

10 *Second.*—If such accumulation is directed to commence

11 at any time subsequent to the creation of the estate out of  
 12 which the rents and profits are to arise, it shall commence  
 14 within the time in this chapter permitted, for the vesting of  
 15 future estates, and during the minority of the persons for  
 16 whose benefit it is directed, and shall terminate at the ex-  
 17 piration of such minority.

1 SECT. 38. If, in either of the cases mentioned in the  
 2 preceding section, the direction for such accumulation is for  
 3 a longer time than during the minority of the persons intend-  
 4 ed to be benefitted thereby, it shall be void as to the time be-  
 5 yond such minority, and all directions for the accumulation  
 6 of the rents and profits of real estate, except such as are C. S., ch. 31.  
 7 herein allowed, shall be void.

1 SECT. 39. When such rents and profits are directed to  
 2 be accumulated for the benefit of infants, entitled to the ex-  
 3 pectant estate, and such infants are destitute of other suffic-  
 4 ient means of support and education, the district court, up-  
 5 on the application of their guardian, may direct a suitable  
 6 sum out of such rents and profits to be applied to their  
 7 maintenance and education.

1 SECT. 40. When, in consequence of a valid limitation of  
 2 an expectant estate, there is a suspense of the power of alien-  
 3 ation, or of ownership, during the continuance of which the  
 4 rents and profits are undisposed of, and no valid direction  
 5 for their accumulation is given, such rents and profits shall  
 6 belong to the person presumptively entitled to the next  
 7 eventual estate.

1 SECT. 41. The delivery of the grant, where an expect-  
 2 ant estate is created by grant, and where it is created by de-  
 3 vise, the death of the testator shall be deemed the time of  
 4 the creation of the estate.

1 SECT. 42. All expectant estates, except such as are  
 2 enumerated and defined in this chapter, are abolished.

1 SECT. 43. Estates in respect to the number and connec-  
 2 tion of their owners, are divided into estates in severalty,  
 3 in joint tenancy, and in common; the nature and properties  
 4 of which, respectively, shall continue to be such as are now  
 5 established by law, except so far as the same may be modi-  
 6 fied by the provisions of this chapter.

1 SECT. 44. All grants and devises of lands, made to two  
 2 or more persons, except as provided in the following sec-  
 3 tion, shall be construed to create estates in common, and  
 4 not in joint tenancy, unless expressly declared to be in joint  
 5 tenancy.

Amended. 1 SECT. 45. The preceding section shall not apply to  
2 mortgages, nor to devises or grants made in trust, or to ex-  
3 ecutors.

1 SECT. 46. When any conditions, annexed to a grant, or  
2 conveyance of lands, are merely nominal, and evince no in-  
3 tention of actual and substantial benefit to the party to whom  
4 or in whose favor they are to be performed, they may be  
5 wholly disregarded; and a failure to perform the same,  
6 shall in no case operate as a forfeiture of the lands conveyed  
7 subject thereto.

## CHAPTER XLVI.

### TITLE TO REAL PROPERTY BY DESCENT.

1 SECTION. 1. When any person dies seized of any lands,  
2 tenements or hereditaments, or of any right thereto, or en-  
3 titled to any interest therein, in fee simple, or for the life  
4 of another, not having lawfully devised the same, they shall  
5 descend, subject to his debts, in the manner following:

6 *First.*—In equal shares to his children, and to the lawful  
7 issue of any deceased child by right of representation; and  
8 if there is no child of the intestate living at his death, his  
9 estate shall descend to all his other lineal descendants; and  
10 if all the said descendants are in the same degree of kindred  
11 to the intestate, they shall share the estate equally; other-  
12 wise they shall take according to the right of representation.

13 *Second.*—If he leaves no issue, his estate shall descend  
14 to his widow during her natural life, and after her decease  
15 to his father; and if he leaves no issue or widow, his estate  
16 shall descend to his father.

17 *Third.*—If he leaves no issue nor father his estate shall  
18 descend to his widow during her life and after her decease  
19 in equal shares to his brothers and sisters and to the chil-  
20 dren of any deceased brother or sister by right of represen-  
21 tation; *Provided*, That if he leaves a mother she shall take  
22 an equal share with his brothers and sisters.

23 *Fourth.*—If he leaves no issue, nor widow, nor father,  
24 his estate shall descend in equal shares to his brothers and  
25 sisters, and to the children of any deceased brother or sis-  
26 ter, by right of representation: *provided*, that if he leaves a  
27 mother she shall take an equal share with his brothers and  
28 sisters.

29 *Fifth.*—If the intestate leaves no issue, nor widow, nor  
30 father, and no brother nor sister living at his death, his

31  
C. S. p. 411, Sect. 1.  
Amended.