

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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Purchasers entitled to relief, when.

SEC. 58. 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.

Power of sale in mortgage deemed part of security.

SEC. 59. 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.

Chapter not to apply to simple power of attorney to convey lands.

SEC. 60. 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. 61. 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 XLV.

ESTATES IN REAL PROPERTY.

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Estates in lands, how divided.

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

SEC. 2. 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. What estate, a fee simple or absolute fee.

SEC. 3. 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. When persons entitled to estate in fee tail shall take an allodial estate.

SEC. 4. 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. Conveyance by tenant in tail to convey an allodial estate in certain cases.

SEC. 5. 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. Freeholds; chattels real; chattel interests.

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

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

SEC. 8. 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. Definition of such estates.

SEC. 9. Estates in expectancy are divided into—

First. Estates commencing at a future day, denominated future estates; and, Estates in expectancy—how divided.

Second. Reversions.

SEC. 10. 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. Future estates.

SEC. 11. 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. Remainders.

SEC. 12. 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. Reversions.

SEC. 13. 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. Future estates vested or contingent.

SEC. 14. Every future estate is void in its creation, which suspends the absolute power of alienation for a longer period than is prescribed in Future estate void, when.

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.

Absolute power of alienation may be suspended, how long.

SEC. 15. 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.

Contingent remainder in fee, how created.

SEC. 16. 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.

Successive estates for life, how limited.

SEC. 17. 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.

Remainder, how created in certain cases.

SEC. 18. 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.

When such remainder shall take effect.

SEC. 19. 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.

Contingent remainder, how created in certain cases.

SEC. 20. 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.

Estate for life, how limited as a remainder.

SEC. 21. 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.

Meaning of terms "heirs" and "issue" in certain remainders.

SEC. 22. 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.

Certain provisions to apply to limitation of chattels real.

SEC. 23. 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.

Future estates, &c., how created.

SEC. 24. 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.

Two or more future estates, how created.

SEC. 25. 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.

Certain future estates not void.

SEC. 26. 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.

Remainder upon a contingency, how construed.

SEC. 27. 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 limita-

tion, and shall have the same effect, as such limitation would have, by law.

SEC. 28. 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.

Heirs of tenant for life, when to take as purchasers.

SEC. 29. 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.

Construction of certain remainders.

SEC. 30. 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.

Posthumous children, entitled to take.

SEC. 31. 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.

Birth of child defeats future estate, when.

SEC. 32. 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.

Expectant estate not defeated or barred.

SEC. 33. 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.

Construction of last section

SEC. 34. 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.

Remainder valid, when.

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

Qualities of expectant estates.

SEC. 36. 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.

Dispositions of rents and profits, how governed.

SEC. 37. 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:

Accumulation of rents and profits may be directed by will or deed.

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. 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 accu-

Directions void in part—void wholly, when.

mulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Application of rents and profits, to support of infants.

SEC. 39. 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.

Who entitled to rents and profits in certain cases.

SEC. 40. 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.

Expectant estates, when created.

SEC. 41. 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

Expectant estates, except as defined herein, abolished. Division of estates.

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

SEC. 43. 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.

Estates in common, when created.

SEC. 44. 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.

Application of last section

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

Nominal conditions annexed to a grant, may be disregarded.

SEC. 46. 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.

*1871-112 as to conveyance by
adm'r. Ex. & Guardians*