THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY

GEORGE B. YOUNG.

EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,

CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF THE LEGISLATIVE SESSION OF 1883.

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

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.

§ 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.

§ 42. **Expectant estates abolished, except, etc.** All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

§ 43. **Several and joint estates, etc.** 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.

§ 44. **Estates in common and joint estates.** 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.

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

§ 46. **Nominal conditions 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.

*§ 2. See 1883 Sup't, p. 70.

CHAPTER XLVI.

TITLE TO REAL PROPERTY BY DESCENT.

*§ 1. **Descent of lands not devised.*** When any person dies seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee-simple or for the life of another, not having lawfully devised the same, they shall descend in the following manner: (*1876, c. 37, § 1.*)

*§ 2. **Right of surviving husband or wife in homestead.** The surviving husband or wife shall also be entitled to hold for the term of his or her natural life, free from all claims on account of the debts of the deceased, the homestead of such deceased, as such homestead is or may be defined in the statutes relating to homestead exemptions. (*Id. § 2.*)

**An act relating to title to real property by descent.* Approved March 2, 1876. (Laws 1876, c. 37.)

*§ 3. **Descent of other lands—surviving husband or wife—children, etc.** Such surviving husband or wife shall also be entitled to and shall hold in fee-simple, or by such inferior tenure as the deceased was at any time during coverture seized or possessed thereof, one equal, undivided one-third of all other lands of which the deceased was at any time during coverture seized or possessed, free from any testamentary or other disposition thereof to which such survivor shall not have assented in writing, but subject, in its just proportion with the other real estate, to the payment of such debts of the deceased as are not paid from the personal estate. The residue of such real estate, or, if there be no surviving husband or wife of such intestate, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

First.—In equal shares to his children, and to the lawful issue of any deceased child, by right of representation.

Second.—If there be no child, and no lawful issue of any deceased child of the intestate living at his death, his estate shall descend to his father.

Third.—If the intestate leaves no issue nor father, his estate shall descend, one equal one-third to his mother, and the residue in equal shares to his brothers and sisters.

Fourth.—If the intestate leaves no issue nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of the deceased brothers and sisters.

Fifth.—If the intestate leaves no issue, nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right of representation.

Sixth.—If the intestate leaves no issue, and no father, mother, brother or sister, his estate shall descend to his next of kin, in equal degree; excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those claiming through an ancestor more remote: *provided, however*—

Seventh.—If any person dies leaving several children, or leaving one child and the issue of one or more other children, any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

Eighth.—If at the death of such child who dies under age, and not having been married, all the other children of his said parent are also dead, and any of them has left issue, the estate that came to said child by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall have the said estate equally; otherwise, they shall take according to the right of representation.

Ninth.—If the intestate leaves a surviving husband or wife, and no kindred, his or her estate shall descend to such survivor.

Tenth.—If the intestate leaves no husband or wife, or kindred, his or her estate shall escheat to the state: *provided*, that no debt or claim against any deceased person, which had not become a lien upon his real estate before his death, shall continue to be a lien upon any such real estate after the lapse of three years from the date of such death. (*1876, c. 37, § 3.*)

15 M. 512.

*§ 4. **Effect of desertion by husband or wife.** If, at the time of the death of a married man or married woman, the surviving husband or widow shall have wilfully and without just cause deserted and lived separate and apart from said deceased person for the space of one year immediately prior to such decease, such sur-

vivor shall not be entitled to any estate whatever in any of the lands of such deceased. (*1875, c. 40, § 4.*)

§ 5. (SEC. 2.) **Illegitimate child, when considered an heir.** Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, acknowledge himself to be the father of such child, and shall, in all cases, be considered as an heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents intermarry and have other children, and his father, after such marriage, acknowledges him as aforesaid, or adopts him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the other shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided hereinbefore, in like manner as if all had been legitimate.

§ 6. (SEC. 3.) **Estate of illegitimate child.** If any illegitimate child dies intestate, without lawful issue, his estate shall descend to his mother; or in case of her decease, to her heirs at law.

§ 7. (SEC. 4.) **Degrees of kindred, how computed—half-blood.** The degrees of kindred shall be computed according to the rules of the civil law; and kindred of the half-blood shall inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

§ 8. (SEC. 5.) **Advancement, how considered.** Any estate, real or personal, given by the intestate, in his lifetime, as an advancement to any child or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

§ 9. (SEC. 6.) **Advancement in excess of share, etc.** If the amount of such advancement exceeds the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received is less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

§ 10. (SEC. 7.) **Advancement, when included in estate, etc.** If such advancement is made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it is in personal estate, it shall be considered as a part of the personal estate; and if, in either case, it exceeds the share of real or personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

§ 11. (SEC. 8.) **Advancement to be expressed as such in gift, etc.** Gifts and grants shall be deemed to have been made in advancement only when they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such, by the child or other descendant.

§ 12. (SEC. 9.) **Value of advancement, how fixed.** If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the party receiving it, it shall be considered as

of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given, as nearly as the same can be ascertained.

§ 13. (SEC. 10.) **Advancement—death of child, etc., before the intestate.** If any child or other lineal descendant so advanced dies before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

§ 14. (SEC. 11.) **Construction of this chapter.** Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of an estate, by deed or will. See *ante*, §§ *3 and 4*.

§ 15. (SEC. 12.) **Right of representation—posthumous children.** Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken, if living. Posthumous children are considered as living at the death of their parents.

CHAPTER XLVII.

WILLS.

§ 1. **Who may devise lands—estate not disposed of—married women.** Every person of full age and sound mind, being seized in his own right of any lands, or entitled to any interest therein descendible to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by will shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same, in like manner as if she was unmarried. (*As amended 1869, c. 61, § 1.*)

§ 2. **Devise passes all testator's estate, when.** Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that the devisor intended to convey a less estate.

§ 3. **Devise passes after-acquired lands, when.** Any estate, right or interest in lands, acquired by the testator after making his will, shall pass thereby in like man-