

James C. Child
35
THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

COMPILED BY
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(3.) SEC. III. (a) All judgments that may be hereafter recovered in any court of this territory, shall, from and after the rendition of the same, draw interest at the rate of twelve per cent. per annum.

CHAPTER 31.

ESTATES IN REAL PROPERTY.

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An Act regarding the nature and qualities of Estates in real property, and the alienation thereof.

✓ [Chapter 43, Revised Statutes.]

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

Enumeration of estates in lands.

(2.) SEC. II. 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.

(3.) SEC. III. 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 hold an allodial estate.

(4.) SEC. IV. Where lands, tenements, or hereditaments heretofore

Conveyances by

(a) This section is added on page 11 of the laws of 1856.

tenant in tail, to convey allodial estate in certain cases.

have been devised, granted, or otherwise conveyed by a tenant in tail, and the person or persons to whom such devise, grant, or other conveyance hath been made, his, her, or their heirs or assigns, hath or 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.

Freeholds; chattels real; chattel interests.

(5.) SEC. V. 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 sales or executions.

Estates or life of third persons, when freehold, &c.

(6.) SEC. VI. 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.

Estates in possession, and in expectancy. Definition of those estates.

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

(8.) SEC. VIII. 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.

Enumeration of estates in expectancy.

(9.) SEC. IX. Estates in expectancy are divided into:

1. Estates commencing at a future day, denominated future estates; and,
2. Reversions.

Future estates.

(10.) SEC. X. 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.

When they are remainders.

(11.) SEC. XI. 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:

Reversions.

(12.) SEC. XII. A reversion is a 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.

Vested and contingent future estates.

(13.) SEC. XIII. 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 whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

Void future estates; suspending powers of alienation.

(14.) SEC. XIV. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in 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.

How long power of alienation may be suspended.

(15.) SEC. XV. 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.

(16.) SEC. XVI. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the person to whom the first remainder is limited shall 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.

(17.) SEC. XVII. Successive estates for life shall not be limited unless to persons in being at the creation thereof; and when a remainder shall be 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.

Limitation of successive estates for life.

(18.) SEC. XVIII. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall any remainder be created upon such estate in a term for years, unless it be for the whole residue of the term.

Remainder upon certain estates for life.

(19.) SEC. XIX. When a remainder shall be created upon any such life estate, and more than two persons shall be 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.

When remainder to take effect in certain cases.

(20.) SEC. XX. A contingent remainder shall not be created on a term for years, unless the nature of the contingency upon which it is limited, be 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.

Contingent remainder on a term for years

(21.) SEC. XXI. 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.

Remainder of estate for life.

(22.) SEC. XXII. When a remainder shall be limited to take effect on the death of any person without heir 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.

Meaning of heirs and issue in certain remainders.

(23.) SEC. XXIII. All the provisions in this chapter contained relative to future estates, shall be construed to apply to limitation 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.

Limitations on chattels real.

(24.) SEC. XXIV. Subject to the rules established in the preceding section 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.

Remainders and future estates, how created.

(25.) SEC. XXV. Two or more future estates may also be created, to take effect in the alternative, so that if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Two or more future estates.

(26.) SEC. XXVI. 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.

Certain future estates not to be void.

(27.) SEC. XXVII. 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 limitation, and shall have the same effect as such a limitation would have by law.

Remainder upon a contingency.

(28.) SEC. XXVIII. When a remainder shall be limited to the heir or heirs, of the body of a person to whom a life estate in the same premises shall be given, the persons who on the termination of the life estate shall be the heir 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.

Construction of certain remainders.

(29.) SEC. XXIX. When a remainder on an estate for life, or for years, shall not be 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 the expiration by lapse of time, of such term of years.

Posthumous children entitled to take.

(30.) SEC. XXX. When a future estate shall be limited to heirs or issue, or children, posthumous children shall be entitled to take, in the same manner as if born before the death of the parents.

Birth of same when to defeat future estate.

(31.) SEC. XXXI. 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.

Expectant estate not to be defeated, &c.

(32.) SEC. XXXII. 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.

When expectant estate may be defeated.

(33.) SEC. XXXIII. The last 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 shall in the creation thereof, have provided or authorized; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

Remainder not to be defeated in certain cases.

(34.) SEC. XXXIV. 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.

Qualities of expectant estates.

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

Future profits of lands, dispositions of, how governed.

(36.) SEC. XXXVI. 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.

Accumulation of the profits of lands.

(37.) SEC. XXXVII. 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:

1. If such accumulation be 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.

2. If such accumulation be 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.

Other directions, when void in part; when wholly void.

(38.) SEC. XXXVIII. If, in either of the cases mentioned in the last preceding section, the direction for such accumulation shall be 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 accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Application of profits, &c., to support of children.

(39.) SEC. XXXIX. When such rents and profits are directed to be accumulated for the benefit of infants, entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the court of chancery, 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.

(40.) SEC. XL. When, in consequence of a valid limitation of any expectant estate, there shall be a suspense of the power of alienation, or of ownership, during the continuance of which the rents and profits shall be 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.

Who entitled to profits of land in certain cases.

(41.) SEC. XLI. 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, when created.

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

Certain expectant estates abolished.

(43.) SEC. XLIII. 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 severalty, joint tenancy, and in common.

(44.) SEC. XLIV. 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.

Certain grants to create estate in common.

(45.) SEC. XLV. The preceding section shall not apply to mortgages, nor to devises or grants, made in trust, or made to executors, or to husband and wife.

Application of last section.

(46.) SEC. XLVI. 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.

Nominal conditions annexed to grant.

CHAPTER 32.

USES AND TRUSTS.

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