GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REMEDIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIMINAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED
BY
JNO. F. KELLY,
OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:
PUBLISHED BY THE AUTHOR.
1891.

CHAPTER 50 (G. S. ch. 45).

ESTATES IN REAL PROPERTY.

INTEREST IN.

SEC. 3950. **Extent of.**— Estates in lands are divided into estates of inheritance, estates for life, estates for years, estates at will and by sufferance.

G. S. ch. 45, § 1.

SEC. 3951. **Qualities of.**— 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.

G. S. ch. 45, § 5.

SEC. 3952. **Same — Qualification.**— 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.

G. S. ch. 45, § 6.

SEC. 3953. **Fee-simple.**— 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.

G. S. ch. 45, § 2. This section appears to turn qualified fees into fee-simple, and leave conditional fees as at common law. Fees were absolute — fee-simple. Qualified (as "to Alexander, king of Scotland, and his heirs, kings of Scotland"), and conditional, as "to A. and the heirs of his body." These conditional fees were converted by 13 Ed. I. ch. 1 (A. D. 1285, known as the statute *de donis conditionalibus*, sometimes called statute Westminster II), into estates in fee-tail, and only applied to legal tenements, and existed without power of alienation for about two hundred years. In A. D. 1473, Taltarum's case arose, wherein the courts held that fee-tail could be barred (conveyed) by common recovery. As next sections abolished fee-tail, and this section preserves conditional fees, it would seem to restore the law as it stood before statute *de donis*. If the effect is to only abolish fee-tail, then the statute converts into fee-simple what the statute *de donis* converted into fee-tail; and as latter only applied to tenements, whatever is not a tenement is not affected by either statute; hence an annuity to grantee and the heirs of his body is *not* a fee-tail under statute *de donis*, nor a fee-simple under this chapter, but a fee conditional at common law. 1 Tuck. Bl. 13, 135; 1 Lomax, Dig. 32. If the effect is to abolish fee-tail or preserve conditional fees, and turn qualified fees into simple fees, then the law is as it stood prior to enactment of statute *de donis*, A. D. 1285.

SEC. 3954. **Fee-tail abolished.**— 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.

G. S. ch. 45, § 3. The statute 13 Ed. I. ch. 1, A. D. 1285, known as statute *de donis* or Westminster II, converted conditional fees into fee-tail by providing that, when the grant is to grantee and the heirs of his body, it became inalienable as long as there were heirs. In Taltarum's case, A. D. 1473, the courts decided that such estates were alienable, that is, could be barred by common recovery, and were subsequently barred by that mode of assurance. 1 Lomax, Dig. 32.

SEC. 3955. **Same — Effect of grant.**— 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.

G. S. ch. 45, § 4.

SEC. 3956. **Nominal conditions 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.

G. S. ch. 45, § 46.

NUMBER AND CONNECTION OF OWNERS.

SEC. 3957. **Severalty — Joint tenancy — In common.**— 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.

G. S. ch. 45, § 43.

SEC. 3958. **Joint tenants — Tenants in common.**— 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.

G. S. ch. 45, § 44. The purpose of this statute, like all such statutes in other states, is to abolish survivorship in joint-tenancy, unless otherwise expressly declared by the instrument creating the estate. But such statutes have not disturbed estates by entirety — where the conveyance is to husband and wife during coverture — because such tenancy is *sole*, not *joint;* neither have moieties, but as one in law, each holding the entirety; and a statute converting joint-tenancy into tenancy in common does not convert tenancy by entirety, because that tenancy is sole. In some states the statute expressly covers tenancy by entirety, and in others the courts engrafted on the statute what the legislature omitted. The learning on this subject is found in 3 Rand. 179; 5 Gratt. 63; 16 Gratt. 109. Such statutes have been held not to cover lands purchased by partners for partnership purposes with partnership funds. 10 Leigh, 406; 12 id. 264; 4 Munf. 316.

SEC. 3959. **Same.**— The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or to executors.

G. S. ch. 45, § 45. The object of this, like similar statutes in other states, was to permit survivorship when the interest of others was justly demanded, such as where the land vested in fiduciaries, trustees, executors. 1 N. Y. R. S. 627; Mass. R. S. ch. 59, § 11; 1 Lomax, Dig. 477, 478. But such statutes were made to embrace joint judgments, joint contracts, and a joint grant or devise when it manifestly *appears* from the instrument that the part of the one dying should survive to the other — as a devise to A. and B. for life if they remain single. If either marry, share void. If both marry, land to be sold and proceeds divided amongst testator's children. On death of A. unmarried, B. takes whole estate; because such was the manifest intent. But under this and preceding section such intent must be expressed. The learning on this subject is in 6 Gratt. 236; 22 Gratt. 414.

TIME OF ENJOYMENT.

SEC. 3960. **Possession — Expectancy.**— Estates, as respects the time of their enjoyment, are divided into estates in possession and estates in expectancy.

G. S. ch. 45, § 7.

SEC. 3961. **Same — Defined.**— 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.

G. S. ch. 45, § 8.

SEC. 3962. **Expectant estates.**— All expectant estates, except such as are enumerated and defined in this chapter, are abolished.

G. S. ch. 45, § 42. This exception is confined to law against perpetuities — prohibiting suspension of alienation. *Post*, §§ 0000, 0000. In other respects this chapter does not abridge the common law. 1 Taunt. 613; 1 Tuck. Bl. 148. The common-law rule is that "nothing in action, entry or re-entry can be granted over" (2 Co. Litt. 85); hence conveyance by person not in possession, but having a right of entry, passed no title under common law or statute of uses (3 Call, 480); but could pass by devise — known as executory devises, and under statute of uses — as springing user. State statutes were aimed at this infirmity, and enacted that any estate could be made to commence *in futuro* by deed as well as by will (1 Lomax. Dig. 36), which embraced contingent, executory, future interests, and possibility coupled with an interest, and right of entry, mediate or immediate, vested or contingent; thus putting common-law conveyances in regard to executory limitations on the same footing as executory devises and springing uses. 1 Tuck. Com. 148. Nothing in this chapter appears to abolish this doctrine and distinction except inferentially.

SEC. 3963. **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.

G. S. ch. 45, § 41. This section, by authorizing inferentially the creation of expectant estate by grant, may abrogate the common-law rule which prohibited estates from commencing *in futuro*. "Nothing in action, entry or re-entry can be granted over." 2 Co. Litt. 85. Possession by grantor was necessary to pass title to grantee, which necessitated the particular estate for the foundation of remainders, and was required to perfect livery of seizin. 2 Co. Litt. 356. As a general rule of construction the common law is repealable by express statute only.

SEC. 3964. **Qualities of.**— Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

G. S. ch. 45, § 35. These were the qualities of expectant estates, created by will, executory limitations, executory devises, springing uses; and a statute providing that estates may be made to commence *in futuro* by deed as well as by will would confer these qualities. 1 Lomax, Dig. 36.

SEC. 3965. **Cannot be barred.**—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.

G. S. ch. 45, § 32. The common-law doctrine that "nothing in action, entry or re-entry can be granted over" (2 Co. Litt. 85), prohibited estates to commence *in futuro*, but not limitations on estates; hence, to create a remainder, a precedent estate was necessary; the subsequent estate — the remainder — being merely a limitation on the precedent estate, and not a future estate *per se;* and hence there could be no remainder without precedent estate. This statute abolished this doctrine.

SEC. 3966. **Same — Exception.**— 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.

G. S. ch. 45, § 33. 34 M. 177; 36 M. 33. This is the common-law doctrine of conditions changed to limitations, to take effect as provided in the instrument creating the remainder, but controlled by the statute against perpetuities and limitations, which are void for remoteness; the learning for which is found in 4 Sneed, 646; 5 Humph. 26, 505; 2 Head, 266; 7 Yerg. 606. This doctrine of limitation was engrafted on common law by 7 Will. IV. and 1 Vict. ch. 26, § 29.

SEC. 3967. **Division of.**— Estates in expectancy are divided into —

First. Estates commencing at a future day, denominated future estates; and,

Second. Reversions.

G. S. ch. 45, § 9.

FUTURE ESTATES.

SEC. 3968. **Defined.**— 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.

G. S. ch. 45, § 10. Excluding the provision dispensing with a precedent estate, this is the common-law remainder defined by Co. Litt. 143, to be the remnant of an estate in lands or tenements expectant on a particular estate created together with the same at same time. 4 Kent, Com. 189. "Expectant on a particular estate" is dispensed with under this statute. Fearne on Rem. 5; Lewis on Perp. 72; Tudor, L. Cas. Conv. 360, 769. At common law the particular estate was necessary upon which to erect the remainder, and this remainder was vested or contingent—in both cases the precedent estate existed; but under this statute there can be the common-law remainder and also an estate unknown at common law, namely, an estate to commence in the future without a preceding estate to support it.

SEC. 3969. **Vested or contingent.**— 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.

G. S. ch. 45, § 13. 34 M. 177. This is the law of vested and contingent remainders, but covering the statutory future estate. Fearne on Rem. 5; 4 Kent, Com. 189. *Vested*, where a present interest passes, but to be enjoyed in the future; *contingent*, where the estate is to take effect on an event or condition which may or may not happen — uncertain; and are divided into four classes: 1, where remainder depends on contingent determination of precedent estate; 2, where contingency is independent of determination of precedent estate; 3, where the condition is certain in event, but determination of particular estate may happen before it; 4, where the person to whom the remainder is limited is not ascertained or not in being. Fearne on Rem. 5. Under this section the common-law remainder, which has a preceding estate to support it, and the statutory future estate, which has no precedent estate to support it, may be vested or contingent. 4 Kent, Com. 189.

SEC. 3970. **Same — In future estates.**— 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.

G. S. ch. 45, § 31. This seems a modification of § 3978, *post*, so as to recognize the full limitations placed upon the common law by 7 Will. IV. and 1 Vict. ch. 26, § 29, that dying without heir or issue or children meant issue living at such death or born within ten months thereafter, and not an indefinite failure. See 4 Sneed, 646; 5 Humph. 26, 505.

SEC. 3971. **Posthumous children.**— 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.

G. S. ch. 45, § 30. Posthumous children were always recognized at common law, "when a future estate" was "limited to heirs, issue or children;" in other words, posthumous children take and receive as if in being. 4 Kent, Com. 206.

SEC. 3972. **May be in the alternative.**— 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.

G. S. ch. 45, § 25. This was the common law of executory devises and springing uses (1 Tuck. Com. 148; 1 Lomax, 36), and as to this particular, this statute permits the creation of this estate by deed or any common-law assurance, to same extent as was formerly done by devise and under the statute of uses. As under this chapter a precedent estate is not necessary to support a freehold limited *in futuro*, there seems to be no reason why a future freehold may not be limited upon the contingency of a previous fee, determinable within the period allowed by law as well as upon any other contingency. 1 Lomax, 36; 1 Tuck. Com. 148.

SEC. 3973. **In freeholds and chattels real.**— Subject to the rules established in the preceding sections[1] 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.

G. S. ch. 45, § 24. This section evidently means the limitations contained in the whole chapter, because the provisions which followed this section are as important as those which

preceded it. At common law remainders were based upon "an estate for life or lesser estate." Fearne on Rem. 5; 4 Kent, Com. 189. Hence chattel interests and term of years could not be limited in remainder, but could be the precedent estate for the limitation over. It is otherwise in residuary bequests and devises and under the statute of uses. 2 Kent, Com. 352; 3 Meriv. 194; 2 Lomax, Ex. & Ad. 71, 138; 2 Leigh, 389. The effect of this section is to confer on common-law assurances the power of creating executory limitations in those interests, the learning of which is in Smith v. Chapman, 1 H. & M. 240. Specific chattels bequeathed for life *quæ ipso usu consumuntur* with limitation over was at common law a gift of the property. 2 Kent, Com. 352; 2 Paige, 122. But in devises and residuary bequests such remainders were upheld. 2 Paige, 122, 133; 1 Ch. Rep. 110; 3 P. Wms. 334; 1 Atk. 471; 2 Atk. 82; 1 Bro. C. C. 274. [1]This refers to §§ 3950-3955, 3960, 3961, 3967-3969, 3974-3982, 3985, 3986, 3990.

SEC. 3974. **Limitations of chattels real.**— 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.

G. S. ch. 45, § 23. The effect of this section is to place chattels real on the same footing with freeholds with respect to remainders and statutory future estates, thus abrogating the common-law rule which prohibited remainders in chattels real, and adopting the doctrine of devises and uses. 2 Kent, Com. 352; 2 Paige, 122; 3 Meriv. 194; 10 Leigh, 628.

SEC. 3975. **When void.**— Every future estate is void in its creation, which suspends 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.

G. S. ch. 45, § 14. 24 M. 183. This and §§ 3976, 3985 contain the statute against perpetuities, the effect of which is that an estate can be made to continue without power of alienation for period of two lives in being and the years required for the happening of the condition mentioned in § 3985. 1 Tuck. Com. 155. The last sentence of this section would seem to exclude posthumous children, but when construed with §§ 3970, 3971, such children are not excluded in the instances named.

SEC. 3976. **Same.**— 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.[1]

G. S. ch. 45, § 15. [1]Sec. 3985, *post.*

SEC. 3977. **Remainders — Term.**— 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.

G. S. ch. 45, § 11. This is the common-law remainder (Co. Litt. 143; 4 Kent, Com. 189; Fearne on Rem. 5), and are vested or contingent. The difference between this estate and the statutory future estate authorized by § 3968 is that the former requires, as at common law, a precedent estate to support it, and the latter does not. 4 Kent, Com. 189.

SEC. 3978. **Same — Heirs — Issue — Defined.**— 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.

G. S. ch. 45, § 22. This would seem to abrogate, and §§ 3970, 3971 to allow, the common-law rule which recognized infant *en ventre sa mere.* 4 Kent, Com. 206. The usual statutory infringement is that such conditions shall be construed a limitation to take effect upon death without issue living at time of death, *or bars within ten months thereafter,* unless the intention be otherwise plainly declared on the face of the deed or will; following the 7 Will. IV. and 1 Vict. ch. 26, § 29, the learning of which is found in 22 Gratt. 224; 1 Call, 294; 6 Munf. 187; 8 Gratt. 346. Section 3970 provides that such a limitation in "a future estate" will be defeated by the birth of a posthumous child capable of inheriting; and as a remainder is by § 3977 a future estate, these two sections are to be construed together.

SEC. 3979. **Same — On term of years.**— 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.

G. S. ch. 45, § 21. An estate for years with limitation over for life allowed at common law (Fearne on Rem. 5; Tud. L. Cas. Conv. 360), but not limited to person in being at creation of estate; hence this is limitation on common law, but seems not to apply to posthumous chil-

dren in the instances provided in §§ 3970, 3971. The provision of this section is not to be confounded with § 3973, *ante*, providing that "an estate for life may be created in a term of years, and a remainder limited thereon," because there the life estate is created *in*, and here it is created *on*, the term of years.

SEC. 3980. **Same — On two successive life estates.**— 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.

G. S. ch. 45, § 17. The limitation "to persons in being" infringes common-law rule. 1 Tuck. Com. 148. Construing this section with sections 3975, 3976, 3970, 3971, 3985, against perpetuities, and in favor of posthumous children, the time may be enlarged. Keeping within the statute against perpetuities, it would seem that the last clause of this section would authorize to A. for life, to B. for life with remainder in fee over, which could tie up an estate for several generations. Fearne on Rem. 5; Tud. L. Cas. Conv. 360.

SEC. 3981. **Same — An estate for life of another.**— 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.

G. S. ch. 45, § 18.

SEC. 3982. **Same — Effect.**— 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.

G. S. ch. 45, § 19.

SEC. 3983. **Same — When not limited on a contingency.**— 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.

G. S. ch. 45, § 29. If there is no contingency the remainder takes effect upon the determination of the precedent estate. If there is a contingency the remainder takes effect upon the happening of the contingency. This is the common law. Fearne on Rem. 5; 4 Kent, Com. 189.

SEC. 3984. **Same — Life-estate — Remainder to heirs.**— 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.

G. S. ch. 45, § 28. This statute abolished the rule in Shelly's case, which is that in any instrument, if a freehold be limited to the ancestor for life, and the inheritance to his heirs, either mediately or immediately, the ancestor takes the whole estate; if limited to the heirs of his body he takes a fee-tail; if to his heirs, a fee-simple (1 Rep. 93; 4 Kent, Com. 206), because the word heirs is a limitation and carries an estate of inheritance. Hence under this statute, when an estate is given by deed or will to any person for life and after his death to his heirs or the heirs of his body, such conveyance vests a life-estate in such person only, and the remainder in fee-simple in his heirs. In Shelly's case the word heirs was held to be a limitation, not of purchase; and this statute enacts that heirs is a term of purchase and not a limitation.

SEC. 3985. **Contingent remainders — Fee upon a fee.**— 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.

G. S. ch. 45, § 16. Section 3976, *ante*, seems to refer to this section as an enlargement of the period suspending alienation. As this only permits a grant to A. in fee, but if he die under

age of twenty-one, then to B. in fee, it is difficult to see how this affects the power of alienation. Confining a remainder to a fee upon a fee conditional may abrogate the doctrine of remainders in fee in trust conditional, and remainder over after remainder in fee, as to A. for life, remainder to B. in fee in trust for sons of A. conditional, remainder to A. in tail male, remainder to B. in fee; the learning for which is in Ray v. Garnett, 2 Wash. 9; 1 Lomax, Dig. 31.

SEC. 3986. **Same — On term of years.**— 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.

G. S. ch. 45, § 20. This is the law against perpetuities applied to contingent remainders on a term for years, though §§ 3975, 3976, would seem to cover this as well as all other cases. Lewis on Perp. 72; Tudor's L. C. on Conv. 360.

SEC. 3987. **Same — Improbable contingency.**— 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.

G. S. ch. 45, § 26. At common law the contingency upon which the remainder was limited must not be improbable (Fearne on Rem. 10; 4 Kent, Com. 190); hence this section changes this common-law rule.

SEC. 3988. **Same — When conditional limitation.**— 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 limitation would have by law.

G. S. ch. 45, § 27. This may be an attempt to regulate a fee conditional at common law (1 Tuck. Com. 13, 155), so as to complete the provisions of § 3973, *ante*, or the conditional limitations under the statute *de donis*. At common law, a remainder based upon a contingency which would abridge or determine the preceding estate, and vest the contingent remainder, was not a conditional limitation, but the conditions upon which a fee conditional depended was (1 Lomax, Dig. 26; Fearne on Rem. 5); hence the statute may let in some of the learning under the statute *de donis conditionalibus*.

SEC. 3989. **Same — Failure of contingency.**— 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.

G. S. ch. 45, § 34. At common law the precedent estate and the contingency must co-exist, and could not operate independently, because a remainder was a remnant of the particular estate and could not exist without it. Co. Litt. 143; 4 Kent, Com. 189. This statute dispenses with this requirement, but it is difficult to see the operation.

SEC. 3990. **Reversions — Defined.**— 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.

G. S. ch. 45, § 12. 36 M. 33. This is the common. Co. Litt. 145.

RENTS AND PROFITS.

SEC. 3991. **How governed.**— 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.

G. S. ch. 45, § 36.

SEC. 3992. **Who entitled when not disposed of.**— When, in consequence of a valid limitation of an expectant estate, there is a suspense [suspension] 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.

G. S. ch. 45, § 40.

SEC. 3993. **Accumulation of.**— 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:

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.

G. S. ch. 45, § 37.

SEC. 3994. **Same.**— 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 accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

G. S. ch. 45, § 38. This and preceding section would seem to cover the hiatus left in converting estates tail into fee-simple, namely, that such statute only converted into fee-simple what the statute *de donis* converted into fee-tail, to wit: tenements; hence, an annuity to grantee and heirs of his body was not fee-tail under statute *de donis*, nor fee-simple under statute converting fee-tail into fee-simple, but a fee conditional at common law. 1 Tuck. Com. 155. But this section is aimed at the accumulation of rents, the same statute against perpetuities of the *corpus*, and not against conditional fees.

SEC. 3995. **Application to support of infants.**— 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.

G. S. ch. 45, § 39.

RESTRICTION OF OWNERSHIP TO CITIZENS.

SEC. 3996. **Restriction.**— That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States, or of some state or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein in this state, except such as may be acquired by devise or inheritance, or in good faith in the ordinary course of justice in collection of debts hereafter created, or such as may be held as security for indebtedness heretofore or hereafter created.

Exceptions.— *Provided*, that the prohibition of this section shall not apply in cases where the right to hold lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights shall continue to exist so long as such treaties are in force.

Provided, further, that the provisions of this section shall not apply to actual settlers upon farms of not more than one hundred and sixty acres of land.*

Provided, further, that the provisions of this act shall not be construed to prevent any person or persons not citizens of the United States, or corporations not created by or under the laws of the United States, or of some state or territory thereof, from holding or acquiring lots or parcels of land not exceeding six lots of fifty feet frontage by three hundred feet in depth each, or in lieu thereof, a parcel or tract of land of equal size, within and forming a part of the platted portion of any incorporated city in this state, and lands hereto-

fore acquired by or deeded to any such person, persons or corporations, may be owned and held the same as though acquired by or deeded to citizens of the United States.*

Provided, further, that the provisions of this act shall not apply to lands in Anoka county, Minnesota.

1887, ch. 204, § 1, as amended 1889, ch. 113, § 1 (April 22); 1889, ch. 117 (April 24); 1889, ch. 129 (March 7). Above * is acts 1887, except that it also provided that this law shall not apply to lands acquired by due process of law. Between * * is acts 1889, ch. 113 and ch. 129. The last proviso is acts 1889, ch. 117. Acts 1887, ch. 204, entitled "An act to restrict the ownership of real estate in the state of Minnesota to American citizens and those who have lawfully declared their intentions to become such and so forth, and to limit the quantity of land which corporations may acquire, hold and own." Approved March 2, 1887. In force from and after July 1, 1887.

SEC. 3997. **On corporations.**— That no corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States, shall hereafter acquire, or shall hold or own any real estate hereafter acquired in this state.

1887, ch. 204, § 2, as amended 1889, ch. 113. Not changed.

SEC. 3998. **Same.**— That no corporation other than those organized for the construction or operation of railways, canals or turnpikes, shall acquire, hold or own, over five thousand acres of land, so hereafter acquired in this state; and no railroad, canal or turnpike corporation shall hereafter acquire, hold or own lands so hereafter acquired in this state other than as may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted to it by act of congress or of the legislature of this state.

1887, ch. 204, § 3, as amended 1889, ch. 113, § 3. Not changed.

SEC. 3999. **Forfeiture.**— That all property acquired, held or owned in violation of the provisions of this act shall be forfeited to this state, and it shall be the duty of the attorney general of the state to enforce every such forfeiture by due process of law.*

Limitation.— *Provided*, however, that no such forfeiture shall be made unless the action to enforce such forfeiture shall be brought within three years after such real estate has been acquired by such alien or corporation, and

Provided, further, that no title to real estate standing in the name of a citizen of the United States, or any one who has declared his intention of becoming such a citizen, shall be liable to forfeiture by reason of the alienage of any former owner or person interested therein.

Provided, further, that none of the provisions of this act shall be construed to apply to lands acquired, held or obtained by process of law in the collection of debts or by any procedure for the enforcement of any lien or claim thereon, whether created by mortgage or otherwise.

1887, ch. 204, § 4, as amended 1889, ch. 113, § 4. Amendment below

HORTICULTURAL SOCIETY.

SEC. 4000. **Empowered to hold land.**— The objects of the Minnesota state horticultural society, an incorporation duly incorporated under the general laws of this state, being to improve the condition of horticulture, rural adornment and landscape gardening, it shall be allowed for these purposes to take, hold and convey real and personal property, the former not exceeding in value five thousand dollars.

1873, ch. 36, § 1. Approved February 27, 1873.