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THE GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 1

CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787, THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

ST. PAUL, MINN.

WEST PUBLISHING CO.

1894

CHAPTER 45.

ESTATES IN REAL PROPERTY.

§ 4362. Estates in lands, how divided.

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

(G. S. 1866, c. 45, § 1; G. S. 1878, c. 45, § 1.)

This classification does not exclude estates from year to year. Hunter v. Frost, 47 Minn. 1, 49 N. W. Rep. 327.

§ 4363. Estates in 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. 1866, c. 45, § 2; G. S. 1878, c. 45, § 2.)

§ 4364. Estates tail changed to allodium.

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. 1866, c. 45, § 3; G. S. 1878, c. 45, § 3.)

§ 4365. Conveyance, etc., by tenants in tail.

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. 1866, c. 45, § 4; G. S. 1878, c. 45, § 4.)

§ 4366. Freeholds—Chattels real—Chattel interests.

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. 1866, c. 45, § 5; G. S. 1878, c. 45, § 5.)

§ 4367. Estate for life of third person.

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. 1866, c. 45, § 6; G. S. 1878, c. 45, § 6.)

§ 4368. Estates in possession and in expectancy.

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

(G. S. 1866, c. 45, § 7; G. S. 1878, c. 45, § 7.)

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§ 4369. Definition of such estates.

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. 1866, c. 45, § 8; G. S. 1878, c. 45, § 8.)

§ 4370. Estates in expectancy, how divided.

Estates in expectancy are divided into—

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

Second. Reversions.

(G. S. 1866, c. 45, § 9; G. S. 1878, c. 45, § 9.)

§ 4371. Future estates 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. 1866, c. 45, § 10; G. S. 1878, c. 45, § 10.)

The common-law rule that a freehold estate to commence in the future cannot be created by deed without the intervention of a precedent estate is abolished. Sabledowsky v. Arbuckle, 50 Minn. 475, 52 N. W. Rep. 920.

§ 4372. Remainders defined.

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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. 1866, c. 45, § 11; G. S. 1878, c. 45, § 11.)

See Sabledowsky v. Arbuckle, cited in note to § 4371.

§ 4373. 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. 1866, c. 45, § 12; G. S. 1878, c. 45, § 12.)

See King v. Remington, 36 Minn. 15, 33, 29 N. W. Rep. 352; Atwater v. Manchester Sav. Bank, 45 Minn. 341, 344, 48 N. W. Rep. 187.

§ 4374. Future estates 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. 1866, c. 45, § 13; G. S. 1878, c. 45, § 13.)

Cited, In re Oertle, 34 Minn. 177, 24 N. W. Rep. 924; Armstrong v. Armstrong, 54 Minn. 248, 55 N. W. Rep. 971.

§ 4375. Suspension of power of alienation.

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. 1866, c. 45, § 14; G. S. 1878, c. 45, § 14.)

See Simpson v. Cook, 24 Minn. 180, 183; In re Tower's Estate, cited in note to § 4376.

§ 4376. Absolute power of alienation may be suspended, how long.

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.

(G. S. 1866, c. 45, § 15; G. S. 1878, c. 45, § 15.)

The absolute power of alienation of real estate may be suspended during the minority of the grantee, indicated in the instrument creating the suspension, and in such case

the suspension will cease with his death before coming to majority. Simpson v. Cook, 24 Minn. 180.

As to personal property the common-law rule prevails, and a trust therein may continue for one or more lives in being at the death of a testator, and 21 years and a fraction. In re Tower's Estate, 49 Minn. 371, 52 N. W. Rep. 27.

Where a trust embraces personal and real property, and does not offend against the rule as to perpetuities in respect to the personalty, and an unconditional power of sale is given to the trustees as to the land, and the converted fund is subject to a valid trust, the power of alienation is not suspended and the trust is valid. Id.

§ 4377. Contingent remainder in fee, how created.

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. 1866, c. 45, § 16; G. S. 1878, c. 45, § 16.)

§ 4378. Successive estates for life, how limited.

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. 1866, c. 45, § 17; G. S. 1878, c. 45, § 17.)

§ 4379. Remainder on 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. 1866, c. 45, § 18; G. S. 1878, c. 45, § 18.)

§ 4380. When such remainder shall take 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. 1866, c. 45, § 19; G. S. 1878, c. 45, § 19.)

§ 4381. Contingent remainder 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. 1866, c. 45, § 20; G. S. 1878, c. 45, § 20.)

§ 4382. Remainder for life or 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. 1866, c. 45, § 21; G. S. 1878, c. 45, § 21.)

§ 4383. Terms "heirs" and "issue" defined.

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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. 1866, c. 45, § 22; G. S. 1878, c. 45, § 22.)

§ 4384. 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. 1866, c. 45, § 23; G. S. 1878, c. 45, § 23.)

§ 4385. Future estates, etc., how created.

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.

(G. S. 1866, c. 45, § 24; G. S. 1878, c. 45, § 24.)

A will construed as a devise in fee, with a conditional limitation to the issue of the devisee in case of his death within 10 years of the decease of the devisor. Whiting v. Whiting, 42 Minn. 548, 44 N. W. Rep. 1030.

See Sabledowsky v. Arbuckle, 50 Minn. 475, 52 N. W. Rep. 920.

§ 4386. Two or more future estates in 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. 1866, c. 45, § 25; G. S. 1878, c. 45, § 25.)

§ 4387. Future estates—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. 1866, c. 45, § 26; G. S. 1878, c. 45, § 26.)

§ 4388. Remainder construed as 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. 1866, c. 45, § 27; G. S. 1878, c. 45, § 27.)

§ 4389. Rule in Shelley's Case abolished.

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. 1866, c. 45, § 28; G. S. 1878, c. 45, § 28.)

See Whiting v. Whiting, 42 Minn. 548, 550, 44 N. W. Rep. 1030.

§ 4390. Construction of certain remainders.

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. 1866, c. 45, § 29; G. S. 1878, c. 45, § 29.)

§ 4391. Posthumous children entitled to take.

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. 1866, c. 45, § 30; G. S. 1878, c. 45, § 30.)

§ 4392. Birth of child defeats future estate, when.

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. 1866, c. 45, § 31; G. S. 1878, c. 45, § 31.)

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§ 4393. Expectant estates protected from owner of precedent estate.

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. 1866, c. 45, § 32; G. S. 1878, c. 45, § 32.)

§ 4394. Construction of last section.

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. 1866, c. 45, § 33; G. S. 1878, c. 45, § 33.)

Cited, In re Oertle, 34 Minn. 177, 24 N. W. Rep. 924; Atwater v. Manchester Sav. Bank, 45 Minn. 341, 344, 48 N. W. Rep. 187.

§ 4395. Premature determination of precedent estate.

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. 1866, c. 45, § 34; G. S. 1878, c. 45, § 34.)

§ 4396. Qualities of expectant estates.

Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

(G. S. 1866, c. 45, § 35; G. S. 1878, c. 45, § 35.)

§ 4397. Dispositions of rents and profits, 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. 1866, c. 45, § 36; G. S. 1878, c. 45, § 36.)

§ 4398. Accumulation of rents and profits.

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. 1866, c. 45, § 37; G. S. 1878, c. 45, § 37.)

§ 4399. Same—Directions void in part—Void wholly.

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. 1866, c. 45, § 38; G. S. 1878, c. 45, § 38.)

§ 4400. Application of rents and profits 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. 1866, c. 45, § 39; G. S. 1878, c. 45, § 39.)

§ 4401. Who entitled to rents and profits not disposed of.

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 continu-

ance 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. 1866, c. 45, § 40; G. S. 1878, c. 45, § 40.)

§ 4402. 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.

(G. S. 1866, c. 45, § 41; G. S. 1878, c. 45, § 41.)

§ 4403. Expectant estates abolished, except, etc.

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

(G. S. 1866, c. 45, § 42; G. S. 1878, c. 45, § 42.)

§ 4404. 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.

(G. S. 1866, c. 45, § 43; G. S. 1878, c. 45, § 43.)

See Wilson v. Wilson, 43 Minn. 398, 45 N. W. Rep. 710.

§ 4405. 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.

(G. S. 1866, c. 45, § 44; G. S. 1878, c. 45, § 44.)

Upon a grant or devise to husband and wife, they take as tenants in common, unless expressly declared to be joint tenants. Wilson v. Wilson, 43 Minn. 398, 45 N. W. Rep. 710; McAlister v. Osborne, 43 Minn. 401, 45 N. W. Rep. 711.

§ 4406. Application of last section.

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

(G. S. 1866, c. 45, § 45; G. S. 1878, c. 45, § 45.)

See Wilson v. Wilson, 43 Minn. 398, 45 N. W. Rep. 710.

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§ 4407. 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.

(G. S. 1866, c. 45, § 46; G. S. 1878, c. 45, § 46.)

In a conveyance in fee, a condition that intoxicating liquor should not be sold as a beverage is valid on its face, and cannot be declared to be "merely nominal." Sioux City & St. P. R. Co. v Singer, 49 Minn. 301, 51 N. W. Rep. 905; Same v. Davis, 49 Minn. 308, 51 N. W. Rep. 907.