

## CHAPTER 93

## DIVISION OF LANDS AND MINERALS; MINERAL LANDS

**93.01 RESERVATION OF MINERALS AND WATER POWERS.**

**HISTORY.** 1901 c. 104 ss. 1, 2; R.L. 1905 s. 2483; 1909 c. 109 s. 1; G.S. 1913 s. 5304; G.S. 1923 s. 6395; M.S. 1927 s. 6395.

When sand and gravel exist in such substantial quantities as to possess a commercial value they are valuable minerals within the meaning of this section. 1934 OAG 755.

A deposit of marl containing carbonate of lime is to be classed as a mineral under the reservation clause relative to state lands. 1924 OAG 186.

Where state lands are taken under power of eminent domain all mineral rights must be reserved to the state. No greater rights can be acquired in the condemnation proceeding than under a sale. *Ind. School Dist. v State*, 124 M 271, 144 NW 960.

This section is not retroactive. *Hughes v Thornton*, 155 M 432, 193 NW 723.

Where a city is occupying former state land as an airport, such city has no power to acquire by condemnation proceedings title to minerals. OAG Feb. 2, 1944 (817f).

**93.02 CERTIFICATE OF SALE, PATENTS; RESERVATION.**

**HISTORY.** 1901 c. 104 ss. 4, 5; R.L. 1905 s. 2484; G.S. 1913 s. 5305; G.S. 1923 s. 6396; M.S. 1927 s. 6396.

This section is not retroactive. *Hughes v Thornton*, 155 M 432, 193 NW 723.

**93.03 PATENT UNDER LAND GRANT TO RAILROAD; RESERVATION.**

**HISTORY.** 1913 c. 6 s. 1; G.S. 1913 s. 5306; G.S. 1923 s. 6397; M.S. 1927 s. 6397.

**93.04 DISPOSITION OF MINERALS RESERVED.**

**HISTORY.** 1901 c. 104 s. 3; R.L. 1905 s. 2485; G.S. 1913 s. 5307; G.S. 1923 s. 6398; M.S. 1927 s. 6398.

Disposition of sand and gravel. 1916 OAG 507; 1934 OAG 755,

**93.05 HOLDER OF PERMIT OR LEASE.**

**HISTORY.** 1907 c. 411 ss. 1, 2; G.S. 1913 ss. 5308, 5309; G.S. 1923 ss. 6399, 6400; M.S. 1927 ss. 6399, 6400.

**93.06 RESERVATION OF MINERALS UNDER MEANDERED LAKES.**

**HISTORY.** 1909 c. 49 s. 1; G.S. 1913 s. 5310; G.S. 1923 s. 6401; M.S. 1927 s. 6401.

The division of waters into navigable and non-navigable is merely a method of dividing them into public and private; and the definition or test of navigability to be applied to inland lakes must be sufficiently broad and liberal to include all the public uses. So long as they continue capable of being put to any beneficial public use they are public waters. *Lamprey v State*, 52 M 181, 53 NW 1139, 1938 ASR 541, 18 LRA 670; *State v Korrer*, 127 M 60, 148 NW 617, 1095; LRA 1916 c. 139.

The riparian rights of the shore owner do not include the right to fill and destroy the bed of a navigable lake for the purpose of taking ore therefrom, against

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the protest of the state. *State v Korrer*, 127 M 60, 148 NW 617, 1095, LRA 1916 c. 139.

In the space between high and low water the riparian owner has a qualified right to mine ore. *State v Korrer*, 127 M 60, 148 NW 617, 1095, LRA 1916 c. 139.

The proposed drainage of one section of a public lake by one riparian owner constituted an unreasonable use of the waters thereof and may be the grounds for injunctive relief. The proposed drainage of a section of the lake by a mining company would destroy riparian rights of its cotenant. *Petraborg v Zontelli*, 217 M 536, 15 NW(2nd) 174.

See Hallam, *Rights in Soil and Minerals under Water*; 1 MLR 34; Fraser, *Title to the Soil under Public Waters*, 2 MLR 313, 429; Bade, *Title, Points and Lines in Lakes and Streams*, 24 MLR 305.

## 93.07 DISPOSAL OF FUNDS.

HISTORY. 1889 c. 22 s. 2; G.S. 1894 s. 4077; 1895 c. 105 s. 2; 1897 c. 312; 1903 c. 225; R.L. 1905 s. 2489; 1909 c. 49 s. 3; M.S. 1927 s. 6402-1.

## 93.08 PROSPECTING FOR MINERALS UNDER WATERS OF MEANDERED LAKES AND STREAMS.

HISTORY. Ex. 1936 c. 42 ss. 1 to 4; M. Supp. ss. 6402-2 to 6402-5.

Joint consent of federal and state government is required to permit any change in the cross-section or gradient of the Minnesota river. The petitioners desired to take sand from the river bed. 1942 OAG 13, June 26, 1942 (370).

## 93.09 ASSIGNMENTS AND CONTRACTS.

HISTORY. Ex. 1936 c. 42 ss. 5, 6; M. Supp. ss. 6402-6, 6402-7.

## 93.10 RIGHT OF LESSEE TO PROSPECT FOR MINERALS.

HISTORY. Ex. 1936 c. 42 s. 7; M. Supp. s. 6402-8.

## 93.11 MINERALS MATTER OF PUBLIC INTEREST.

HISTORY. Ex. 1936 c. 42 s. 7; M. Supp. s. 6402-9.

## 93.12 FORFEITURE OF PERMITS AND LEASES.

HISTORY. Ex. 1936 c. 42 s. 9; M. Supp. s. 6402-10.

## 93.13 DRAINING OF LAKES AND LEASING OF ORE LANDS IN BEDS THEREOF.

HISTORY. 1937 c. 118 s. 1; M. Supp. s. 6402-11; 1945 c. 340 s. 1.

On riparian owner's rights to minerals in the bed, see annotations to section 93.06.

The royalty schedules set forth in Section 93.20 prior to the enactment of Laws 1941, Chapter 546, Section 5, control operations and leases under section 93.13. OAG March 15, 1945 (311i).

## 93.14 ISSUANCE OF PERMITS TO PROSPECT FOR ORES; LEASES.

HISTORY. 1921 c. 412 s. 1; G.S. 1923 s. 6403; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6403.

Leasing authority conferred on county officials by Laws 1941, Chapter 355, pertains only to the surface of the land, and does not authorize any lease with reference to minerals or other things under the surface. 1942 OAG 317, March 20, 1942 (311D-8).

**93.15 DIVISION OF LANDS INTO MINING UNITS.**

HISTORY. 1921 c. 412 s. 2; G.S. 1923 s. 6404; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6404; 1941 c. 546 s. 1; 1943 c. 233 s. 1.

**93.16 SEMIANNUAL SALE OF PERMITS; NOTICES PUBLISHED.**

HISTORY. 1921 c. 412 s. 3; G.S. 1923 s. 6405; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6405; Ex. 1933 s. 14 s. 1; 1941 c. 546 s. 2.

The conservation department must advertise the sale of permits to prospect for iron as required by Laws 1927, Chapter 389. 1934 OAG 172, April 18, 1933 (311-9).

**93.17 APPLICATION FOR PERMITS; BIDS; AWARDS.**

HISTORY. 1921 c. 412 s. 4; G.S. 1923 s. 6406; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6406; 1941 c. 546 s. 3.

**93.18 RIGHTS AND DUTIES OF PERMIT HOLDERS.**

HISTORY. 1889 c. 22 s. 3; G.S. 1894 s. 4008; 1895 c. 105 s. 2; 1897 c. 312; 1903 c. 225; R.L. 1905 s. 2489; 1921 c. 412 s. 5; G.S. 1923 s. 6407; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6407.

**93.19 LEASES TO PERMIT HOLDERS; ROYALTIES.**

HISTORY. 1921 c. 412 s. 6; G.S. 1923 s. 6408; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6408; 1941 c. 546 s. 4; 1943 c. 233 s. 2.

**93.20 FORM OF LEASE; RENTAL AND ROYALTIES.**

HISTORY. 1921 c. 412 s. 7; G.S. 1923 s. 6409; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6409; 1941 c. 546 s. 5.

The state mining lease is in fact a lease and not a sale of ore in place. *State v Evans*, 99 M 220, 108 NW 958; *State v Royal Mineral Ass'n*, 132 M 232, 156 NW 128, A.C. 1918 A 145; *State v Cavour Mining Co.* 143 M 271, 173 NW 415; *State v Hobart Iron Co.* 143 M 457, 172 NW 899, 175 NW 100, 176 NW 758 (after rehearing). See, *Boeing v Owsley*, 122 M 190, 142 NW 129; *Nelson v Republic Iron & Steel Co.* 240 F 285; *Minn. Loan & Trust Co. v Douglas*, 135 M 413, 161 NW 158; *VonBaumbach v Sargent Land Co.* 242 US 503, 37 Sup. Ct. 201, 61 L.Ed. 460.

**TERM OF YEARS.** The mineral lease statute does not purport to deal with agricultural lands, hence the Minnesota Constitution, Article 1, Section 15, declaring void all leases of agricultural land for a longer period than 21 years has no application. *State v Evans*, 99 M 220, 108 NW 958.

**MINIMUM ROYALTIES; APPLICATION ON ORE SUBSEQUENTLY TAKEN.** See, *State v Cavour Mining Co.* 143 M 271, 173 NW 415; *Nelson v Republic Iron & Steel Co.* 240 F 285.

**BENEFICIATION, WASHING PROCESS AS.** The washing process is a treatment of ore. The washing treatment refines and betters the crude ore by a mechanized process. By it the ore content per ton is increased. It is called the "beneficiation" of the ore. *State v Hobart Iron Co.* 143 M 457, 172 NW 899, 175 NW 100, 176 NW 758.

**RIGHT OF STATE TO COMPEL WASHING OF ORE.** 1916 OAG 509.

**TERMINATION OF LEASE BY LESSEE.** The lessee has the right to terminate the lease after it is in the ore mining and royalty paying stage by a notification in writing to that effect. Upon serving the notice the contract obligation of mining ore or of paying royalty terminates at once. And 60 days after service the lease and contract terminate absolutely. 1904 OAG 83 (construing certain provisions of Laws 1899, Chapter 22, Section 4, substantially the same as those found in section 93.20).

**CANCELATION BY THE STATE.** The lessee during the 20 days after notice may perform its covenant to pay royalties or taxes due and thereby prevent the proposed cancellation. 1916 OAG 508 (construing a cancellation provision in an earlier statutory lease form similar to that of section 93.20); and see, 1904 OAG 83.

**ATTACKS ON THE LEASE; ANNULMENT.** The leases cannot be judicially annulled unless the state is a party to the action for annulment. *Baker v Jamison*, 54 M 17, 55 NW 749.

**FOR IRREGULARITY IN ISSUING.** The plaintiff attacked the action of the commissioner in issuing certain leases to defendant as not being in conformity with the then law regulating the issuance of leases. The relief demanded was that the defendant be adjudged to hold the leases and contracts in trust for the plaintiff, and that he be declared the owner of each. The court said it was not enough for the plaintiff to show the leases should not have been granted to defendant. His right to the relief demanded depended upon the fact that had the law been properly administered the leases would have been awarded him. *Whiteman v Severance*, 46 M 495, 49 NW 255; accord, *Baker v Jamison*, 54 M 17, 55 NW 749.

**FOR OFFICIAL MISCONDUCT.** See, *Baker v Jamison*, 54 M 17, 55 NW 749.

As to system of computing royalties on iron ore. 1942 OAG 12, Feb. 16, 1942 (311-H).

### **93.201 CLASSIFICATION; ROYALTIES.**

HISTORY. 1943 c. 233 s. 3.

### **93.202 LEASES.**

HISTORY. 1943 c. 233 s. 4.

### **93.21 EXECUTION OF LEASE.**

HISTORY. 1921 c. 412 s. 8; G.S. 1923 s. 6410; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6410.

### **93.22 DISPOSAL OF MONEYS RECEIVED.**

HISTORY. 1921 c. 412 s. 9; G.S. 1923 s. 6411; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6411.

### **93.23 POSSESSION OF PREMISES, WHEN.**

HISTORY. 1921 c. 412 s. 10; G.S. 1923 s. 6412; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6412.

If any one holding a mineral lease should undertake to use the land for purposes inconsistent with the terms of the contract the state would undoubtedly have the power to repossess itself of the land. 1906 OAG 224.

### **93.24 MINING OF ORES OTHER THAN IRON.**

HISTORY. 1921 c. 412 s. 11; G.S. 1923 s. 6413; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6413; 1941 c. 329.

### **93.25 PERMITS TO PROSPECT FOR ORES OTHER THAN IRON; LEASES; RENTS; ROYALTIES.**

HISTORY. 1921 c. 412 s. 12; G.S. 1923 s. 6414; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6414.

### **93.26 PERMITS AND LEASES TO BE RECORDED.**

HISTORY. 1921 c. 412 s. 13; G.S. 1923 s. 6415; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6415.

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## **93.27 ASSIGNMENTS, AGREEMENTS, OR CONTRACTS AFFECTING PERMITS OR LEASES; RECORDS.**

HISTORY. 1921 c. 412 s. 14; G.S. 1923 s. 6416; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 s. 6416; 1941 c. 546 s. 6.

STATUTE OF FRAUDS. Contracts with reference to iron ore in place are within the statute of frauds. State v Evans, 99 M 220, 108 NW 958.

SIGNATURE BY ONLY ONE PARTY THERETO. An earlier statute, General Statutes 1913, Section 5317, (since repealed), dealing with the assignment of permits and leases and requiring, as section 93.27 now does, that the assignment be signed by both parties, was said not to be a statute of frauds, nor intended to make invalid between the parties contracts relative to the species of property evidenced by a state mining lease, when the contracts have been executed conformably to the requirements of contracts relative to real property. Gregory Co. v Shapiro, 125 M 81, 145 NW 791, (enforcing an agreement in the form of a written option signed by only the vendor and delivered by him to the vendee).

STATUTE OF FRAUDS; SUPPLYING DESCRIPTION OF LANDS BY REFERENCE TO ANOTHER WRITING. See, Gregory Co. v Shapiro, 125 M 81, 145 NW 791.

## **93.28 APPROVAL OF INSTRUMENTS; FEES.**

HISTORY. 1921 c. 412 s. 15; G.S. 1923 s. 6417; 1925 c. 395; 1927 c. 389 s. 1; M.S. 1927 c. 6417; 1941 c. 546 s. 7.

## **93.283 EXPLORATION FOR NEW IRON ORE DEPOSITS.**

HISTORY. 1943 c. 277.

## **93.285 STOCKPILED IRON ORE.**

HISTORY. 1945 c. 342.

## **93.29 LIABILITY UNDER CERTAIN MINERAL LEASES CANCELED.**

HISTORY. 1919 v. 501 s. 1; G.S. 1923 s. 6419; M.S. 1927 s. 6419.

## **93.30 PAYMENT OF LEASE MONEY BY COOWNER IN CASE OF DEFAULT.**

HISTORY. 1915 c. 303 s. 1; G.S. 1923 s. 6420; M.S. 1927 s. 6420.

## **93.31 COOWNER TO SHARE IN BENEFIT OF ORIGINAL OWNER.**

HISTORY. 1915 c. 303 s. 2; G.S. 1923 s. 6421; M.S. 1927 s. 6421.

## **93.32 SUFFICIENCY OF NOTICE.**

HISTORY. 1915 c. 303 s. 3; G.S. 1923 s. 6422; M.S. 1927 s. 6422.

## **93.33 SURFACE OF LAND MAY BE LEASED.**

HISTORY. 1919 c. 213 ss. 1, 2; G.S. 1923 ss. 6423, 6424; M.S. 1927 ss. 6423, 6424.

## **93.335 LANDS OR MINERALS AND MINERAL RIGHTS BECOMING PROPERTY OF STATE UNDER TAX LAWS.**

HISTORY. 1943 c. 287.

## **93.34 UNLAWFUL TO MINE UNDER PUBLIC WATERS.**

HISTORY. 1915 c. 78 ss. 1 to 3; G.S. 1923 ss. 6425 to 6427; M.S. 1927 ss. 6425 to 6427.

**93.351 SALE OF PERMITS TO PROSPECT FOR IRON ORE.**

HISTORY. 1943 c. 208 s. 1.

**93.352 APPLICATIONS FOR PERMITS.**

HISTORY. 1943 c. 208 s. 2.

**93.353 RIGHTS OF PERMITTEES.**

HISTORY. 1943 c. 208 s. 3.

**93.354 LEASES TO PERMITTEES; ROYALTIES.**

HISTORY. 1943 c. 208 s. 4.

On right of riparian owner to ore in lake beds see annotations to section 93.06.

**93.355 PAYMENTS ON LEASES.**

HISTORY. 1943 c. 208 s. 5.

**93.356 MONEYS PAID INTO PERMANENT SCHOOL FUND.**

HISTORY. 1943 c. 208 s. 6.

**93.357 APPROVAL OF LEASES.**

HISTORY. 1943 c. 208 s. 7.

**93.37 AGREEMENTS FOR WEIGHING ORE.**

HISTORY. 1921 c. 148 s. 1; G.S. 1923 s. 6431; M.S. 1927 s. 6431.

**93.38 EXPENSE PAID BY LESSEE.**

HISTORY. 1921 c. 148 s. 2; G.S. 1923 s. 6432; M.S. 1927 s. 6432.

**93.39 NOT TO MODIFY EXISTING CONTRACTS.**

HISTORY. 1921 c. 148 s. 3; G.S. 1923 s. 6433; M.S. 1927 s. 6433.

## GENERAL ANNOTATIONS TO CHAPTER

**CONSTITUTIONALITY; WORK OF INTERNAL IMPROVEMENT.** There is no constitutional limitation upon the power of the legislature to provide for the exploration by the state of its own lands for iron ore, and for the opening of mines in case ore be found thereon. Such action by the state would not constitute a work of internal improvement within the meaning of the constitutional prohibition. *State v Evans*, 99 M 220, 108 NW 958.

**PRIVATELY-OWNED MINERAL RIGHTS; CONVEYANCES AFFECTING.** The owner may convey his land and retain the mineral rights therein. *Hughes v Thornton*, 155 M 432, 193 NW 723.

The owner of land may segregate and retain the ownership of minerals and ores from the rest of the land by a conveyance of the land with an exception as to minerals and ores, and a reservation of the right to enter upon the portion conveyed for the purpose of exploring for and mining the minerals and ores. *Carlson v Minn. Land & Colonization Co.* 113 M 361, 129 NW 768; also, *State v Evans*, 99 M 220, 108 NW 958.

The statute which reserves for the state all the minerals in its lands is an express recognition and declaration of the validity of such exceptions and reservations. *Buck v Walker*, 115 M 239, 132 NW 205, A. C. 1912 D 882.

Exceptions in a grant of ores and minerals and reservations in favor of the grantor of the right to enter, explore for and remove the same are not contrary to

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public policy, do not restrict the grantee's power of alienation, or his use and enjoyment nor create a perpetuity in violation of law. *Buck v Walker*, 115 M 239, 132 NW 205, A.C. 1912 D 882.

A deed contained a provision to the effect that if the grantor should injure the property of the grantee in exploring for or removing minerals, he should pay him damages or at his option demand a conveyance back of such portion of the land as he should designate at a price not exceeding so much per acre. Held, that provision is not void for uncertainty; nor does it create a perpetuity in violation of our statute. *Buck v Walker*, 115 M 239, 132 NW 205, A. C. 1912 D 882.

If, though the grant excepts ores and minerals, there are in fact no ores or minerals in the land the grantee owns an absolute fee title and may bring an action to remove the cloud from his title created by the exception and reservation. *Buck v Walker*, 115 M 239, 132 NW 205, A.C. 1912 D 882.

**TAXATION OF SEPARATE MINERAL INTEREST.** Mineral interests in real estate owned separately from the interests in the surface are land, taxable as such, and should be taxed separately from the surface interests. *Washburn v Gregory Co.* 125 M 491, 147 NW 706, LRA 1916 D 304; 1916 OAG 82.

The tax proceedings described the property by its government description without mentioning a mineral interest owned separately from the surface. Held, the judgment in the tax proceedings did not affect the mineral estate because that estate was not described in the proceedings, and the tax certificate based on those proceedings did not cover such mineral interest. *Washburn v Gregory Co.* 125 M 491, 147 NW 706, LRA 1916 D 304.

Deeds conveying mineral rights may be recorded with the register of deeds although the taxes against the surface owner have not been paid where the surface and mineral rights are separated and held by different persons. 1916 OAG 82.

**PRIVATELY-OWNED MINERAL RIGHTS; LEASES OF.** In these cases the instruments involved were construed as leases of mineral rights rather than sales of ore in place. *Boeing v Owsley*, 122 M 190, 142 NW 129; *Nelson v Republic Iron & Steel Co.* 240 F 285; *Minn. Loan & Trust Co. v Douglas*, 135 M 413, 161 NW 158; *Von Baumbach v Sargent Land Co.* 242 US 503, 37 Sup. Ct. 201, 61 L.Ed. 460.

Mining leases very frequently include, in addition to the covenant to pay for what mineral may be actually mined, a covenant that the lessee shall mine at least a specified amount each year, and if he fails to do so, he shall pay a sum equal to the royalty on such minimum amount. Such a covenant is generally not construed as being one to pay royalty whether ore exists or not, but as one to pay royalty, if ore exists, whether it is mined or not. *Diamond Iron Min. Co. v Buckeye Iron Min. Co.* 70 M 500, 73 NW 507.

**LESSOR'S RIGHT TO SURFACE.** Except in so far as necessary to the lessee's mining operations, the lessor, the fee owner of the land, retained under the mining lease in question the right of possession of the surface of the land and may maintain an action against any third person entering into the possession thereof without right or authority. *Howell v Cuyuna Northern Ry. Co.* 127 M 480, 149 NW 942.

**LESSOR-MORTGAGOR'S RIGHTS TO RENTS AND ROYALTIES.** Under the statutes of Minnesota a mortgagor of land is entitled to the full usufruct of the mortgaged land until his rights therein are barred by foreclosure of the mortgage and expiration of the period of redemption. This applies to rents and royalties accruing under a mining lease. This right cannot be contracted away by a stipulation in the mortgage or contemporaneous with it. *Orr v Bennett*, 135 M 443, 161 NW 165, 4 ALR 396. See, *State v Evans*, 99 M 220, 108 NW 958.

**SUBLEASING; FOR WHAT PURPOSE ALLOWED.** In *Howell v Cuyuna Northern Ry. Co.* 127 M 480, 149 NW 942, the court, construing an instrument as an ordinary mining lease, said that the lessee could not, though the lease contains a clause permitting a sublease, sublet the premises for agricultural or for any other purpose not connected with and having some relation to the mining operations.

**RENTS, ROYALTIES, DIVIDENDS, NATURE OF.** Unaccrued rents on mining leases are real estate; they are not taxed under our tax laws as personal

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property, and are not to be listed or taxed as "credits." *State v Royal Mineral Assn.* 132 M 232, 156 NW 128, A.C. 1918 A 145.

Dividends from stock in mining corporations constitute income from personal property. *Congdon v Congdon*, 160 M 343, 200 NW 76.

The mining leases involved were not equivalent to sales of property, and the moneys paid by the lessees to the corporations owning the land were not converted capital, but rents or royalties and as such were income subject to the corporation tax law. *VonBaumbach v Sargent Land Co.* 242 US 503, 37 Sup. Ct. 201, 61 L.Ed. 460.

Royalties or income derived from mining leases, wherever found or attempted to be made use of in the creation of trusts, are rents and profits of real estate. *Minn. Loan & Trust Co. v Douglas.* 135 M 413, 161 NW 158. Commented on in 1 MLR 377.

Royalties from mining leases are to be considered as rents and profits from real estate in the distribution and descent of property. *Boeing v Owsley*, 122 M 190, 142 NW 129.