TITLE XX.

Real Property, and the Nature and Qualities of Estates Therein.

CHAPTER 230.

NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND RESTRICTIONS ON ALIENATION.

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

230.02 Estate 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 absolute or an absolute fee.

Where a trust was passive in its entirety so that legal title in fee simple to the premises vested in the beneficiaries, subject only to the contingent power of sale in the trustee, a provision against alienation for 20 years unless all beneficiaries consented would be repugnant and void. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

230.03 Estate in fee tail. In all cases where any person or persons would if this act 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.

230.04 Effect of conveyances by tenant in tail. Where lands, tenements or hereditaments heretofore 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 other conveyance was made to the day of passing this act, 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, legal and effectual, 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.

230.05 Estates, how denominated. 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.

An estate for years in land is a chattel real and is personal property which, on the death of the owner, descends to his administrator or executor and not to his heirs at law. Janura v. Fencl, 261 W 179, 52 NW (2d) 144.

230.06 Estates for life of third person. An estate for the life of a third person, whether limited to heirs or otherwise, is deemed a freehold only during the life of the owner thereof, but after his death it is deemed a chattel real which is an asset in the hands of his personal representative.

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

230.08 Estates in possession and in expectancy. 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.

230.09 Estates in expectancy. Estates in expectancy are divided into:
(1) Estates commencing at a future day, denominated future estates; and
(2) Reversions.

230.10 Future estate. 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.

230.11 Remainders. 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.

230.12 Reversions. 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.

The doctrine, that what was formerly known in the law as a "right of entry for condition broken" and now denominated a "power of termination" is a mere right or claim to regain an interest or estate in land on the happening of a condition subsequent, is not accepted by the supreme court as expressing the doctrine fixed in the law of Wisconsin. The common-law rule that possibility of reversion for condition broken cannot be assigned, and that it is extinguished when conveyed, is no longer consistent with the legal thought on the subject. State ex rel. State Historical Society v. Carroll, 261 W 6, 51 NW (2d) 723.

230.13 Vested and contingent estates. Future estates are either vested or contingent. They are vested when there is a person in being who would have an immediate right, by virtue of it, 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.

A provision for an alternative remainder to heirs contingent on whether the life beneficiary is survived by issue may well indicate an intent to postpone determination of the class of persons who are to take as heirs until the happening of the contingency which converts such a contingent remainder into a vested one, particularly where the occurrence of the contingency would be likely to occur a long time in the future, with the further likelihood that the contingency might never occur, since in such cases there obviously would be no intent on the part of the testator that any persons alive at the time of the death of the testator would benefit from the contingent gift over. Will of Latimer, 266 W 158, 63 NW (2d) 65.

The general rule is that when a will provides for a limitation over to the "heirs" of the testator or of some other person already deceased following a life estate, the determination of the class of persons who qualify as such heirs is to be made as of the date of the death of the testator unless an intent to have such determination made as of the death of the life tenant is found from additional language or circumstances. An incongruity is present if a gift over to heirs following a life estate to the sole heir at law of the testator is to be construed as requiring heirship to be determined as of the date of the death of the testator; in such case, the fact that the life beneficiary is the sole heir of the testator at the date of the death of the testator tends to establish that the testator intended the heirs to be ascertained as of the death of the life beneficiary. Will of Latimer, 266 W 158, 63 NW (2d) 65.

230.14 Suspension of power of alienation. 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. Limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property; provided, however, that this limitation upon interests in personal property shall not apply to any instrument which shall have taken effect prior to July, 1925.

The legislature in amending this section in 1925, by adding from the New York statute on alienation the words "Limitations of future or contingent interests in personal property are subject to the rules prescribed in relation to future estates in real property," but not adding a portion forbidding restraint on the absolute ownership of property, did not import into the Wisconsin law such omitted portion of the New York law, but directed Wisconsin courts to apply to future or contingent interests in personal property the prevailing Wisconsin rules applicable to such estates in real property, which are that 230.14 and 230.15 prohibit only the suspension of power to alienate and not the suspension of absolute ownership, and that if a trustee has power to sell, which he may exercise within the time specified by 230.15, the trust is not void under our statutes even though the trust in the converted fund is perpetual. Will of Walker, 258 W 65, 45 NW (2d) 94.

230.15 Limit of suspension. The absolute power of alienation shall not be suspended by any limitation or condition whatever for a longer period than during the continuance of a life or lives in being at the creation of the estate and thirty years thereafter,

except when real estate is given, granted or devised to a charitable use or to literary or charitable corporations which shall have been organized under the laws of this state, for their sole use and benefit, or to any cemetery corporation, society or association, nor shall this section apply to gifts, grants, devises or bequests absolute, limited or in trust, for the advancement of medical science, to a state society of physicians and surgeons incorporated under the laws of this state.

A will left the remainder of the testatrix's estate, consisting of cash, bonds and stocks, and a farm not occupied as the family home but rented to tenant farmers, in trust until such time as the youngest of the testatrix's great nephews and nieces should be 50 years old, and directed that the "interest" be divided among them every year. The will is construed as meaning "income" in using the word "interest," and as giving to the trustees by implication a discretionary power of sale, as to the real estate as well as to the personal property in the trust estate; because of such power of sale, the absolute power of alienation is not suspended as to either, and there is no violation of 230.14 or 230.15 as to either, although the trust itself may endure longer than lives in being at the creation of the estate plus 30 years. Will of Walker, 258 W 65, 45 NW (2d) 94.

230.22 Meaning of "without heirs" or "without issue." When a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

230.23 Limitations on 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.

230.24 Commencing in futuro. 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.

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

230.26 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.

230.27 Abridging precedent estate. 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.

230.28 Rule in Shelley's Case abolished. When a remainder shall be limited to the heirs 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 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.

230.29 Remainders abridging first estate. 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.

230.30 Rights of posthumous children. 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.

230.31 Effect of birth of, on future estates. A future estate depending on the contingency of the death of any persons without heirs or issue or children shall be defeated by the birth of a posthumous child of such person capable of taking by descent.

230.32 Expectant estates not defeated. 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.

230.33 When, may be defeated. Section 230.32 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.

230.34 Premature determination of precedent estate. No remainder valid in its creation shall be defeated by the determination of the precedent estate before the happen-

ing 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.

230.35 Qualities of expectant estates. Expectant estates are descendible, devisable and alienable in the same manner as estates in possession.

230.36 Rents and profits. Disposition 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 land.

230.37 Accumulation of profits of lands. 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 terminate 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.

(3) For the sole benefit of a literary or charitable corporation which shall have been organized under the laws of this state, but such accumulation must terminate upon the expiration of twenty-one years from the time when the same shall be directed to commence.

230.38 Directions for accumulation void, when. If in either of the cases mentioned in section 230.37 the direction for such accumulation shall be for a longer time than is therein prescribed or than during the minority of the persons intended to be benefited thereby it shall be void as to such additional time, and all directions for the accumulations of rents and profits of real estate, except such as are herein allowed, shall be void.

230.39 Application of profits to support of children. 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 circuit 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.

230.40 Rents, right of owner of next estate. When, in consequence of a valid limitation of an expectant estate, there shall be a suspension of the power of alienation or of the 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.

230.41 Expectant estate, 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.

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

230.43 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 these statutes.

230.44 Estates in common. All grants and devises of land made to two or more persons, except as provided in section 230.45, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.

A land contract naming the purchasers as "R— N— and wife, C— N—, and joint tenants," created a joint tenancy in the purchasers, although C. was not in fact the wife of R. when the contract was made, and hence on the death of C. the property belonged to R. as the surviving joint tenant, and C.'s brother had no claim to an interest therein as C.'s sole heir at law. Neitge v. Severson, 256 W 628, 42 NW (2d) 149.

230.45 Joint tenancies. (1) Section 230.44 shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

(2) Any deed, transfer or assignment of real or personal property from husband to wife or from wife to husband which conveys an interest in the grantor's lands or personal property and by its terms evinces an intent on the part of the grantor to create a joint tenancy between grantor and grantee shall be held and construed to create such joint

tenancy, and any husband and wife who are grantor and grantee in any such deed, transfer or assignment heretofore given shall hold the property described in such deed, transfer or assignment as joint tenants.

(3) Any deed to 2 or more grantees, including any deed in which the grantor is also one of the grantees, which, by the method of describing such grantees or by the language of the granting or habendum clause therein evinces an intent to create a joint tenancy in grantees shall be held and construed to create such joint tenancy.

Where a husband and wife held real and personal property in joint tenancy, and the husband murdered the wife, the husband's right to have an estate of inheritance on the death of his co-tenant became inoperative at the moment of the death which he had caused, and no enlarged estate, in trust or otherwise, vested in him but, instead, the status of the slain wife as joint tenant continued in her administrator and heirs, so that, when the husband died by suicide and his life interest in the property ended, her joint tenancy became her estate of inheritance in the entire property, and her administrator took the personal property and her heirs took the realty, and the husband's administrator and heirs took nothing. The foregoing rule is not an interference with the statutes of descent, and does not work attainder or corruption of blood and forfeiture of estate in violation of the state and federal constitutions. (Sec. 12, art. I, Wis. Const.; sec. 9, art. I, U. S. Const.) Estate of King, 261 W 266, 52 NW (2d) 885.

No statutes of descent are involved in the devolution of property held in joint tenancy, since the devolution of such property is an incident of joint tenancy, and the property does not pass to the survivor by inheritance nor according to any laws of descent. Estate of King, 261 W 266, 52 NW (2d) 885.

Where the contractual obligations arising out of the auction sale were solely between the plaintiff and the defendant, and did not include the defendant's wife, who was a joint tenant with the defendant in the greater part of the property for which the plaintiff had bid at the sale, the trial court, as against a contention that the defendant's wife was a necessary party in the plaintiff's action for specific performance, properly handled the matter by entering a judgment requiring the defendant to tender proper conveyances if able to do so, and retaining jurisdiction to abate the price, conformably to what was conveyed, or to allow damages for the breach of the contract, if the defendant could not perform. Zuhak v. Rose, 264 W 286, 58 NW (2d) 693.

Postal savings certificates and certificates of preferred stock purchased with funds in a joint bank account of husband and wife, half of which certificates were issued in the name of the husband and half in the name of the wife, were not held in joint tenancy; and their declarations in the respective wills, that they held their entire estate in joint tenancy, did not create a joint tenancy in such certificates at common law, since the 4 unities necessary to create a joint tenancy were not present; nor did such declarations create a joint tenancy under this section, since the wills did not constitute a "deed, transfer or assignment"; hence the certificates in the individual name of the wife, and constituting her separate property, became a part of her estate on her death. Estate of Gabler, 265 W 126, 60 NW (2d) 720, 61 NW (2d) 823.

230.455 Liens not to defeat right of survivorship. No real estate mortgage, chattel mortgage, conditional sales contract, lien effected pursuant to s. 45.37 (3m), ch. 49 and ch. 289 upon the joint tenancy interest of a joint tenant to any joint tenancy shall defeat the right of survivorship in such joint tenancy, but the joint tenancy interest of such joint tenant to which upon his death the surviving joint tenant succeeds shall be subject to such real estate mortgage, chattel mortgage, conditional sales contract, lien effected pursuant to s. 45.37 (3m), ch. 49 and ch. 289.

History: 1951 c. 727; 1955 c. 251.

230.46 Nominal conditions disregarded. When any conditions annexed to a grant or conveyance of land 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.

230.47 Certificate of the termination of life estate and survivorship. (1) Whenever a person has died or shall hereafter die who was during his or her lifetime entitled to an estate for life in any real estate in this state or whenever one joint tenant in any real estate has died or may hereafter die leaving surviving his co-tenant, upon application by duly verified petition of any person interested in such real estate to the county court of the residence of the deceased (or if the deceased was a nonresident, of the county where the real estate is situated), the county judge may issue and shall deliver to the petitioner a certificate, under the seal of the county court, setting forth the fact of the death of such life tenant, or of such joint tenant, and the termination of such life estate, or the right of survivorship of any joint tenant and other facts essential to a determination of the rights of the parties interested, which certificate, or a duplicate or a certified copy thereof, when recorded in the office of the register of deeds of the county in which such real estate is situated shall be prima facie evidence of the facts therein recited.

(2) An administrator or executor shall include in his inventory the interest which the decedent owned as such joint tenant or life tenant before his death. The county court shall adjudicate in the final judgment or order for assignment regarding the termination of such joint tenancy or life estate and regarding such other facts as are essential to a full and final determination of the rights of the parties interested.

History: Sup. Ct. Order, 262 W v; 1953 c. 540.

Note: See 1952 comment of Judicial Council under 327.28.

See note to 253.29, citing 43 Atty. Gen. 177.

230.48 Termination of joint tenancy in personalty. (1) Upon the death of one or more or all joint tenants in any real estate mortgage or in any real estate mortgage note, bank account, stock, bond, chose in action or other personal property, any surviving cotenant or any person interested in such real estate mortgage or real estate mortgage note, bank account, stock, bond, chose in action or other personal property may petition the county court of the county where decedent resided during his lifetime or if the deceased was a nonresident, of the county where the property is located for a certificate of the termination of such tenancy and of his survivorship. Upon such application the same proceedings shall be had, and a similar certificate issued as is provided in s. 230.47 and with like effect.

(2) An administrator or executor shall include in his inventory the interest which the decedent owned as such joint tenant in any real estate mortgage note, bank account, stock, bond, chose in action or other personal property before his death. The county court shall adjudicate in the final judgment or order for assignment regarding the termination of such joint tenancy and regarding such other facts as are essential to a full determination of the rights of the parties interested.

History: 1953 c. 540.