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THE  
REVISED STATUTES,  
OF THE  
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE  
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

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PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

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SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

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1851

in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

SEC. 56. If more than one person shall be liable as aforesaid, and the creditor shall bring a suit in chancery against all or a part of the persons so liable, and the persons liable, shall dispute the debt, or the amount claimed, the court of chancery may order an issue to be formed, and direct that the amount may be ascertained by a jury in the district court of the county in which the estate is settled; and the court of chancery shall ascertain and determine how much each is liable to pay, and may award execution therefor.

Proceeding in chancery against persons liable.

SEC. 57. If any of the heirs, devisees, or legatees shall die without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

When estate of deceased heir, &c., liable.

SEC. 58. When any of the heirs, devisees or legatees shall pay more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same, as is provided in the case of devisees and legatees in the preceding chapter.

Contribution.

SEC. 59. If the appointment of commissioners to allow claims, shall in any case be omitted, no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees, or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may on obtaining judgment, have execution against such real or personal estate.

If appointment of commissioners omitted, claimants not prevented from suing, &c.

SEC. 60. In no other case except such as are expressly provided for in this chapter, shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment, or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payments, except in the case provided for in the preceding section.

No action to be prosecuted against executors, &c., except as provided in this chapter.

CHAPTER 58.

OF RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

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RENDERING ACCOUNTS BY EXECUTORS, &c.

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With what executor, &c., chargeable.

SEC. 1. Every executor and administrator shall be chargeable in his account, with the whole of the goods, chattels, rights and credits of the deceased, which may come to his possession; also, with all the proceeds of the real estate, which may be sold for the payment of debts and legacies, and with all the interest, profit, and income that shall in any way come to his hands, from the estate of the deceased.

To account for personal estate at appraisal.

SEC. 2. Every executor and administrator, shall account for the personal estate of the deceased, as the same shall be appraised, except as provided in the following section.

Not to profit by increase or loss by decrease or destruction, &c., without his fault.

SEC. 3. An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the personal estate; and he shall account for the excess when he shall sell any part of the personal estate for more than the appraisal; and, if he shall sell any for less than the appraisal, he shall not be responsible for the loss, if it shall appear to be beneficial to the estate to sell it.

When sale of personal estate may be ordered.

SEC. 4. The probate court, on the application of the executor or administrator may, at any time, order the personal estate to be sold at private sale, or at public auction, when it shall appear to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it shall be requested by all the heirs residing in this territory; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order be to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

Executor, &c., to account for proceeds of sale.

SEC. 5. When the executor or administrator shall sell personal estate under an order of the probate court, he shall account for the same at the price for which it shall be sold.

When not accountable for debts due deceased.

SEC. 6. No executor or administrator shall be accountable for any debts due to the deceased, if it shall appear that they remain uncollected, without his fault.

To account for income of real estate.

SEC. 7. The executor or administrator shall also be accountable for the income of the real estate, while it shall remain in his possession; and if he shall use, or occupy a part of it, he shall account for it as may be agreed upon between him and the parties interested, or adjudged by the court, with their assent; and if the parties shall not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons, to be appointed by the probate court, whose award, being accepted by such court, shall be final.

Executor, &c., accountable for loss occasioned by neglect.

SEC. 8. When an executor or administrator shall neglect, or unreasonably delay to raise money, by collecting the debts or selling the real or personal estate of the deceased, or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened, or unnecessary cost, or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

Accounts when to be rendered.

SEC. 9. Every executor or administrator shall render his account of his administration, within one year from the time of his receiving letters testamentary or of administration, unless the court shall give permission to delay, in consideration that the time for selling the estate and paying the debts, shall be extended; and he shall render such further accounts of his administration, from time to time, as shall be required

by the court, until the estate shall be wholly settled; and he may be examined on oath upon any matter relating to his account.

SEC. 10. The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services, such fees as the law provides, together with all extra expenses: *Provided*, That when the deceased shall, by his will, make some other provision for compensation to his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument, filed in the probate court, renounce all claim to the compensation provided by the will.

Compensation, &c., to executors and administrators.

SEC. 11. When no such compensation shall be provided by the will, or the executor shall renounce all claim thereto, he shall be allowed commissions upon the amount of personal estate collected and accounted for by him, and of the proceeds of real estate sold under an order of the court for the payment of debts, as follows: For the first thousand dollars, at the rate of five per cent; for all above that sum and not exceeding five thousand dollars, at the rate of two and one-half per cent; and for all above five thousand dollars, at the rate of one per cent; and the same commissions shall be allowed to administrators; and in all cases such further allowances may be made, as the judge of probate shall deem just and reasonable, for any extraordinary services, not required of an executor or administrator, in the common course of his duty.

Compensation, &c., to executors and administrators.

SEC. 12. When an executor or administrator, after being duly cited by the probate court, shall neglect to render his account, he shall be liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

Bond may be put in suit, on neglect to render account.

SEC. 13. When costs, in any case, are allowed against an executor or administrator, execution shall not issue against the estate of the deceased, in his hands therefor, but shall be awarded against him as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it shall appear that the suit or proceeding in which the cost shall be taxed, shall have been prosecuted or resisted without just cause.

Execution for costs when awarded against executor, &c.

SEC. 14. Before the administration account of any executor or administrator shall be allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same; and such notice may be given personally, to such persons as the probate court shall judge to be interested, or by public notice under the direction of the court.

Notice of examining accounts of executors and administrators.

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CHAPTER 59.

OF THE PARTITION AND DISTRIBUTION OF ESTATES.

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1. Provision for children under seven years of age.
2. After payment of debts, &c., residue to be assigned to persons entitled thereto.
3. Decree, what to specify, &c.

SECTION

4. No person entitled to share of estate until debts, &c., paid, unless bond be given.
5. When and how partition may be made.
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