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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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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.

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Provision for children under seven years of age.

SEC. 1. Before any partition or division of any estate among the heirs, devisees, or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased, under seven years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose; except where some provision shall have been made by will for their support.

After payment of debts, &c., residue to be assigned to persons entitled thereto.

SEC. 2. After the payment of the debts, funeral charges and expenses, of administration, and after the allowances made for the expenses of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower, and of her share in the personal estate, or when sufficient effects shall be reserved, in the hands of the executor or administrator, for the above purposes, the probate court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same.

Decree, what to specify, &c.

SEC. 3. In such decree, the court shall name the persons, and the proportions or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same.

No person entitled to share of estate until debts, &c., paid, unless bond be given.

SEC. 4. Such decree may be made on the application of the executor or administrator, or of any person interested; but no heir, devisee, or legatee shall be entitled to a decree for his share, until payment of the debts and allowances and expenses, mentioned in the preceding section, shall have been made or provided for, unless he shall give a bond to the judge of probate, with such surety or sureties as the court may direct, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

When and how partition may be made.

SEC. 5. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, shall be in common and undivided, and the respective shares shall not be separated and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose, by the probate court, who shall be duly sworn to the faithful discharge of their duties, before the judge of probate or a justice of the peace, and the judge of probate shall issue a warrant to them for that purpose.

Proceedings when real estate lies in different counties.

SEC. 6. If the real estate shall lie in different counties, the probate court may, if it shall be judged proper, appoint different commissioners for each county, and in such case the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall unless otherwise directed by the probate court, make divisions of such real estate, wherever situated within this territory.

SEC. 7. Such partition and distribution may be ordered on the pe-

tion of any of the persons interested; but before any partition shall be ordered as directed in this chapter, notice shall be given to all persons interested, who reside in this territory, or their guardians, and to the agents, attorneys, or guardians, if there be any in this territory, of such as reside out of the territory, either personally or by public notice, as the probate court shall direct.

Notice of application for partition.

SEC. 8. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be set to the persons holding the same in the same manner as they otherwise should have been to such heirs or devisees.

Partition when shares have been conveyed.

SEC. 9. The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished; unless any two or more of the parties interested shall consent to have their shares set out so as to be held by them in common and undivided.

Shares, how set out.

SEC. 10. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it; always preferring the males to the females, and among children, preferring the elder to the younger; *Provided*, The party so accepting the whole, shall pay to the other parties interested, their just proportion of the true value thereof, or shall secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the probate court and sworn for that purpose.

When estate cannot be divided, court may assign the whole to one of parties.

SEC. 11. When any tract of land, message, or tenement, shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section: *Provided*, The party accepting it shall pay or secure to one or more of the others, such sums as the commissioners shall award, to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

When tract of greater value than either party's share and cannot be divided, may be set off to one of parties.

SEC. 12. When partition of real estate among heirs, or devisees shall be required, or dower is to be assigned to a widow in the same, and such real estate shall be in common, and undivided, with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common; and such division so made and established by the probate court, shall be binding on all the persons interested.

When estate of deceased lies in common to be first severed.

SEC. 13. Before any partition shall be made, or any estate divided, as provided in this chapter, guardians shall be appointed for all minors and insane persons, interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as shall reside out of the territory; and notice of the appointment of such agents shall be given to the commissioners in their warrants; and notice shall be given to all the persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Guardians to be appointed for minors, &c., and agents for non-residents.

SEC. 14. The commissioners shall make report of their proceedings to the probate court in writing, and the court may for sufficient reasons, set aside such report and commit the same to the same commissioners, or appoint others; and the report when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof

Report of commissioners and proceedings thereon.

attested by the judge of probate under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

When partition may be dispensed with.

SEC. 15. When the probate court shall make a decree assigning the residue of any estate, to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall be decreed, or some of them, shall request that such partition be made.

Questions relating to advancement, how determined.

SEC. 16. All questions as to advancements made, or alleged to be made by the deceased, to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the probate court, or in case of appeal, of the circuit or supreme court, shall be binding on all persons interested in the estate.

Appeal.

SEC. 17. Any person aggrieved by any order, decree, or denial of a probate court in pursuance of the provisions of this chapter, may appeal therefrom, as provided in other cases.

Partition when conclusive.

SEC. 18. The partition when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

When executor, &c., may pay expenses of partition.

SEC. 19. If at the time of the partition or distribution of any estate, as provided in this chapter, the executor or administrator shall have retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it shall appear to the court just and equitable, and not inconsistent with the intention of the testator.

When expenses to be paid by parties interested.

SEC. 20. But if there are no effects in the hands of the executor or administrator, which may be lawfully applied to that purpose, the expenses and charges of the partition being ascertained by the probate court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and the proportion shall be settled and allowed by the probate court; and if any one shall neglect to pay the sum assessed on him by the court, an execution may be issued therefor against him, by such court, in favor of the person entitled to the same.

When partition of reversion may be made.

SEC. 21. When the term of a widow, entitled to dower, or other life estate, in the lands of a deceased person, shall expire, the reversion may be assigned to the person entitled to the same, and partition thereof be made in the manner prescribed in this chapter, in relation to other estates of deceased persons.

When court may appoint agent to take charge of estate for non-resident.

SEC. 22. When any estate shall be assigned by decree of the court, or be distributed by commissioners, as provided in this chapter, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person, in the partition and distribution.

Agent to give bond, and court may allow for his services, &c.

SEC. 23. Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he shall be authorized to receive the same, and the court appointing such agent, may allow a reasonable sum out of the profits of the estate, for his services and expenses.