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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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Amended. 1 SECT. 45. The preceding section shall not apply to
2 mortgages, nor to devises or grants made in trust, or to ex-
3 ecutors.

1 SECT. 46. When any conditions, annexed to a grant, or
2 conveyance of lands, are merely nominal, and evince no in-
3 tention of actual and substantial benefit to the party to whom
4 or in whose favor they are to be performed, they may be
5 wholly disregarded; and a failure to perform the same,
6 shall in no case operate as a forfeiture of the lands conveyed
7 subject thereto.

CHAPTER XLVI.

TITLE TO REAL PROPERTY BY DESCENT.

1 SECTION. 1. When any person dies seized of any lands,
2 tenements or hereditaments, or of any right thereto, or en-
3 titled to any interest therein, in fee simple, or for the life
4 of another, not having lawfully devised the same, they shall
5 descend, subject to his debts, in the manner following:

6 *First.*—In equal shares to his children, and to the lawful
7 issue of any deceased child by right of representation; and
8 if there is no child of the intestate living at his death, his
9 estate shall descend to all his other lineal descendants; and
10 if all the said descendants are in the same degree of kindred
11 to the intestate, they shall share the estate equally; other-
12 wise they shall take according to the right of representation.

13 *Second.*—If he leaves no issue, his estate shall descend
14 to his widow during her natural life, and after her decease
15 to his father; and if he leaves no issue or widow, his estate
16 shall descend to his father.

17 *Third.*—If he leaves no issue nor father his estate shall
18 descend to his widow during her life and after her decease
19 in equal shares to his brothers and sisters and to the chil-
20 dren of any deceased brother or sister by right of represen-
21 tation; *Provided*, That if he leaves a mother she shall take
22 an equal share with his brothers and sisters.

23 *Fourth.*—If he leaves no issue, nor widow, nor father,
24 his estate shall descend in equal shares to his brothers and
25 sisters, and to the children of any deceased brother or sis-
26 ter, by right of representation: *provided*, that if he leaves a
27 mother she shall take an equal share with his brothers and
28 sisters.

29 *Fifth.*—If the intestate leaves no issue, nor widow, nor
30 father, and no brother nor sister living at his death, his

c 31
C. S. p. 411, Sect. 1.
Amended.

31 estate shall descend to his mother, to the exclusion of the
32 issue, if any, of deceased brothers and sisters.

33 *Sixth.*—If the intestate leaves no issue, nor widow, and
34 no father, mother, brother, or sister, his estate shall de-
35 scend to his next of kin in equal degree; excepting that
36 when there are two or more collateral kindred in equal de-
37 gree, but claiming through different ancestors, those who
38 claim through the nearest ancestors shall be preferred to
39 those claiming through an ancestor more remote: *provided,*
40 *however—*

41 *Seventh.*—If any person dies leaving several children, or
42 leaving one child, and the issue of one or more other chil-
43 dren, and any such surviving child dies under age, and not
44 having been married, all the estate that came to the deceas-
45 ed child by inheritance from such deceased parent, shall
46 descend in equal shares to the other children of the same
47 parent, and to the issue of any such other children who
48 have died, by right of representation.

C. S. p. 411, Sect. 1.
Amended.

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49 *Eighth.*—If, at the death of such child who dies under
50 age, and not having been married, all the other children of
51 his said parent are also dead, and any of them has left issue,
52 the estate that came to said child by inheritance from his
53 said parent shall descend to all the issue of other children
54 of the same parent, and if all the said issue are in the same
55 degree of kindred to said child, they shall share the said
56 estate equally; otherwise they shall take according to the
57 right of representation.

58 *Ninth.*—If the intestate leaves a widow and no kindred,
59 his estate shall descend to such widow.

60 *Tenth.*—If the intestate leaves no widow nor kindred,
61 his estate shall escheat to the people of this state.

1 SECT. 2. Every illegitimate child shall be considered as
2 an heir of the person who shall, in writing, signed in the
3 presence of a competent witness, acknowledge himself to
4 be the father of such child, and shall, in all cases, be con-
5 sidered as an heir of his mother, and shall inherit his or her
6 estate, in whole or in part, as the case may be, in the same
7 manner as if he had been born in lawful wedlock; but he
8 shall not be allowed to claim, as representing his father or
9 mother, any part of the estate of his or her kindred, either
10 lineal or collateral, unless before his death his parents in-
11 termarry and have other children, and his father, after such
12 marriage, acknowledges him as aforesaid, or adopts him
13 into his family, in which case such child and all the legiti-
14 mate children shall be considered as brothers and sisters,
15 and on the death of either of them intestate and without
16 issue, the other shall inherit his estate, and he theirs, as
17 hereinbefore provided, in like manner as if all the children
18 had been legitimate, saving to the father and mother re-

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19 spectively their rights in the estates of all the said children,
20 as provided hereinbefore, in like manner as if all had been
21 legitimate.

1 SECT. 3. If any illegitimate child dies intestate, with-
2 out lawful issue, his estate shall descend to his mother; or
3 in case of her decease, to her heirs at law.

1 SECT. 4. The degrees of kindred shall be computed
2 according to the rules of the civil law; and kindred of the
3 half-blood shall inherit equally with those of the whole
4 blood in the same degree, unless the inheritance comes to
5 the intestate by descent, devise, or gift of some one of his
6 ancestors, in which case all those who are not of the blood
7 of such ancestor shall be excluded from such inheritance.

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C. S. D. 411, Sect. 1.
Amended.

1 SECT. 5. Any estate, real or personal, given by the in-
2 testate in his life-time, as an advancement to any child or
3 other lineal descendant, shall be considered as a part of the
4 estate of the intestate, so far as it regards the division and
5 distribution thereof among his issue, and shall be taken by
6 such child or other descendant towards his share of the es-
7 tate of the intestate.

1 SECT. 6. If the amount of such advancement exceeds
2 the share of the heir so advanced, he shall be excluded from
3 any further portion in the division and distribution of the
4 estate, but he shall not be required to refund any part of
5 such advancement, and if the amount so received is less
6 than his share, he shall be entitled to as much more as will
7 give him his full share of the estate of the deceased.

1 SECT. 7. If such advancement is made in real estate,
2 the value thereof shall, for the purposes mentioned in the
3 preceding section, be considered a part of the real estate to
4 be divided; and if it is in personal estate, it shall be con-
5 sidered as a part of the personal estate; and if, in either
6 case, it exceeds the share of real or personal estate respect-
7 ively, that would have come to the heir so advanced, he
8 shall not refund any part of it, but shall receive so much
9 less out of the other part of the estate as will make his
10 whole share equal to those of the other heirs who are in the
11 same degree with him.

1 SECT. 8. Gifts and grants shall be deemed to have been
2 made in advancement only when they are expressed in the gift
3 or grant to be so made, or if charged in writing by the intes-
4 tate as an advancement, or acknowledged in writing as such,
5 by the child or other descendant.

1 SECT. 9. If the value of the estate so advanced is ex-
 2 pressed in the conveyance, or in the charge thereof made
 3 by the intestate, or in the acknowledgment of the party re-
 4 ceiving it, it shall be considered as of that value in the di-
 5 vision and distribution of the estate; otherwise it shall be
 6 estimated according to its value when given, as nearly as
 7 the same can be ascertained.

1 SECT. 10. If any child or other lineal descendant so ad-
 2 vanced dies before the intestate leaving issue, the advance-
 3 ment shall be taken into consideration in the division and
 4 distribution of the estate, and the amount thereof shall be
 5 allowed accordingly by the representatives of the heirs so
 6 advanced in like manner, as if the advancement had been
 7 made directly to them.

1 SECT. 11. Nothing in this chapter shall affect the title
 2 of a husband as tenant by the curtesy, nor that of a widow
 3 as tenant in dower; nor shall the same affect any limitation
 4 of an estate, by deed or will.

1 SECT. 12. Inheritance or succession, "by right of rep-
 2 resentation," takes place when the descendants of any de-
 3 ceased heir take the same share or right in the estate of
 4 another person, that their parent would have taken if living.
 5 Posthumous children are considered as living at the death
 6 of their parents.

CHAPTER XLVII.

WILLS.

1 SECTION 1. Every person of full age and sound mind,
 2 being seized in his own right of any lands, or entitled to
 3 any interest therein descendable, to his heirs, may devise
 4 and dispose of the same by his last will and testament in
 5 writing; and all such estate not disposed of by will, shall
 6 descend as the estate of an intestate, being chargeable in
 7 both cases with the payment of all debts; and any married
 8 woman may devise and dispose of any real or personal pro-
 9 perty held by her, or to which she is entitled in her own
 10 right, by her last will and testament in writing, and may
 11 alter or revoke the same in like manner as if she was un-
 12 married.

C. S. P. 425, Sect. 1.
 Amended.

1 SECT. 2. Every devise of land in any will hereafter
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