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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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3 of such heir in a civil action her damages for withholding  
 4 such dower, from the time of the death of her husband to  
 5 the time of the alienation by the heir, not exceeding six  
 6 years in the whole; and the amount which she is entitled  
 7 to recover from such heir shall be deducted from the amount  
 8 she would otherwise be entitled to recover from his grantee,  
 9 and any amount recovered as damages from such grantee,  
 10 shall be deducted from the sum she would otherwise be en-  
 11 titled to recover from such heir.

1 SECT. 28. When the widow accepts an assignment of dower  
 2 in satisfaction of her claim upon all the lands of her hus-  
 3 band, it shall be a bar to any further claim of dower against  
 4 the heir of such husband, or any grantee of such heir, or  
 5 any grantee of such husband, unless such widow is lawfully  
 6 evicted of the lands so assigned to her as aforesaid.

1 SECT. 29. When a widow, not having a right to dower,  
 2 during the infancy of the heirs of her husband, or any of  
 3 them, or of any person entitled to the lands, recovers dow-  
 4 er by the default or collusion of the guardian of such infant  
 5 heir, or other person, such heir, or other person so entitled,  
 6 shall not be prejudiced thereby; but when he comes of full  
 7 age, he shall have an action against such widow to recover  
 8 the lands so wrongfully awarded for dower.

## ESTATES BY THE CURTESY.

1 SECT. 30. When any man and his wife are seized in her  
 2 right, and when a married woman is seized to her sole and  
 3 separate use free from the control of her husband, of any  
 4 estate of inheritance in lands, the husband shall, on the  
 5 death of his wife, hold the lands for his life, as tenant there-  
 6 of by the curtesy: *provided*, that if the wife, at her death,  
 7 leaves issue by any former husband, to whom the estate  
 8 might descend, such issue shall take the same, discharged  
 9 from the right of the surviving husband to hold the same as  
 10 tenant by the curtesy.

c 36  
 C. S. p. 410, Sect. 30.  
 Amended.

## CHAPTER XLIX.

## PROBATE COURTS.

1 SECTION 1. There is established in each organized coun-  
 2 ty in this state, a probate court, which shall have and use a  
 3 seal.

c 58  
 C. S. p. 430, Sect. 1.  
 Amended.

1 SECT. 2. The several probate courts have exclusive ju-  
 2 risdiction, in the first instance, in their respective counties, C. S. p. 489, Sect. 2.  
 3 to take the proof of wills. Amended. c 58

4 *First.*—When the testator at or immediately before his  
 5 death, was an inhabitant of the county, in whatever place  
 6 he dies;

7 *Second.*—When the testator not being an inhabitant of  
 8 this state dies in the county, leaving assets therein;

9 *Third.*—When the testator not being an inhabitant of  
 10 this state dies out of the state, leaving assets in the county;

11 *Fourth.*—When the testator not being a resident of  
 12 this state dies out of the state, not leaving assets therein,  
 13 but when assets thereafter come into the county;

14 *Fifth.*—When real property devised by the testator is  
 15 situated in the county, and no other probate court has  
 16 gained jurisdiction under either of the preceding subdivi-  
 17 sions of this section.

1 SECT. 3. The probate court has jurisdiction also :

2 *First.*—To take proof of a will relating to real property  
 3 situated in the county, when the testator dies out of this C. S. p. 489, Sect. 3.  
 4 state, not being an inhabitant thereof, and not leaving as- Amended.  
 5 sets therein;

6 *Second.*—To grant and revoke letters testamentary and  
 7 of administration;

8 *Third.*—To direct and control the conduct, and settle the  
 9 accounts of executors and administrators;

10 *Fourth.*—To enforce the payment of debts and legacies  
 11 and the distribution of the estates of intestates;

12 *Fifth.*—To order the sale, and dispose of the real pro-  
 13 perty of deceased persons;

14 *Sixth.*—To appoint and remove guardians, to direct and  
 15 control their conduct and to settle their accounts;

16 *Seventh.*—To take the care and custody of the person  
 17 and estate of an insane person or spendthrift, residing in  
 18 the county;

19 *Eighth.*—To direct the admeasurement of dower;

20 *Ninth.*—To exercise the powers and duties conferred up-  
 21 on it by law.

1 SECT. 4. The jurisdiction acquired by any probate court  
 2 over a matter or proceeding is exclusive of that of any other C. S. p. 489, Sect. 4.  
 3 probate court, except when otherwise provided by law, and  
 4 when a guardian is appointed, or any other proceeding is  
 5 commenced in the probate court of a particular county, all  
 6 further proceedings in respect to the same, shall be con-  
 7 tinued in that court.

1 SECT. 5. The probate court of each county shall be  
 2 held by the judge of probate, but if the judge is an execu-

C 58  
c 27  
C. S. p. 489, Sect. 5 &  
1864—p. 76, Sect.  
1, combined &  
amended.

3 tor, administrator or guardian, in respect to an estate or  
4 person, which would otherwise come within his jurisdiction,  
5 or is interested in said estate, or in any property claimed  
6 thereby, or is of kin to said person, or any one interested  
7 in such estate or property in such degree as would exclude  
8 him as a juror in an action in which any of said persons are  
9 parties, the judge of probate of an adjoining county shall  
10 have and exercise jurisdiction as in other cases.

C 58  
C. S. p. 489, Sect. 6  
& Sect. 8, p. 490,  
combined.

1 SECT. 6. The judge of probate shall keep his office open  
2 at reasonable hours, suitable and convenient for the trans-  
3 action of business, and for the deposit and safe keeping of  
4 the public books and papers under his charge. He shall  
5 keep his office at the county seat, and on the first Monday  
6 of each month hold a probate court therein, or at such other  
7 place in the county as he may appoint. He shall also pro-  
8 vide suitable cases for the books and papers of his office,  
9 the expense of which is a county charge; they belong to  
10 the county, and shall be delivered by the judge of probate  
11 to his successor in office, who has power to complete all  
12 unfinished business.

PROCEEDINGS IN PROBATE COURT.

C. S. p. 490, Sect. 7.  
Amended.

1 SECT. 7. There are no proceedings in probate courts,  
2 but the proceedings shall conform to the statute, and may  
3 be instituted upon the application of a party, verbal or  
4 written, which when verbal shall be entered in the minutes  
5 of the court, and when written, shall be filed. The judge  
6 of probate has the same power to examine witnesses and  
7 parties on oath, to compel their attendance, to preserve or-  
8 der during any proceedings before him, and punish con-  
9 tempts as a district judge possesses under the provisions of  
10 law. He may exercise his powers, except when other-  
11 wise provided by law, by means of—  
12 *First.*—A citation to a party.  
13 *Second.*—An affidavit, deposition, examination, or state-  
14 ment under oath of a party or witness, or other legal and  
15 competent evidence.  
16 *Third.*—A subpoena or attachment.  
17 *Fourth.*—Orders, judgments and decrees.  
18 *Fifth.*—An execution, warrant, or other process to en-  
19 force them.

C. S. p. 490, Sect. 9.  
Amended.

1 SECT. 8. He shall keep;  
2 *First.*—A register, in which shall be entered a memoran-  
3 dum of all official business transacted by him, or in his office,  
4 appertaining to the estate of each person deceased, under the  
5 name of such person; that pertaining to the general guar-  
6 dian of an infant, under the name of such infant; that per-  
7 taining to an insane person or spendthrift, under his name.

8 *Second.*—A record of wills, in which he shall record all  
9 wills proven before him, with the certificate of probate  
10 thereof; and of all wills proven elsewhere upon which let-  
11 ters of administration are issued by him.

12 *Third.*—A record of appointment of administrators and  
13 executors, general guardians of infants, guardians of insane  
14 persons and spendthrifts, of the appointment of admeasurers  
15 of dower, with all orders relating to the same, and the ad-  
16 measurers' reports.

1 SECT. 9. He shall cause to be entered in the register,  
2 mentioned in the first subdivision of the preceding section, C. S. p. 490, Sect. 10. e 58  
3 a summary balance sheet of the accounts of administrators,  
4 guardians and trustees before him, with his orders and judg-  
5 ments relating to the same, a memorandum of execution  
6 issued thereon, with a note of satisfaction when satisfied;  
7 also, all orders relating to the sale of real estate, to the dis-  
8 tribution of the proceeds thereof, and all orders made by  
9 him in the discharge of his official duties.

1 SECT. 10. Each of such books shall have an index re- C. S. p. 490, Sect. 11.  
2 ferring to the entries in alphabetical order, under the name  
3 of the person to whose estate or business they relate, and  
4 indicating the page of the book where the entry is made.

1 SECT. 11. A judge of probate cannot be counsel or at- C. S. p. 491, Sect. 13.  
2 torney in any civil action for or against any executor, ad-  
3 ministrator, guardian, or minor trustee, or other person  
4 over whom or whose accounts he would by law have juris-  
5 diction, whether such action relates to the business of the  
6 estate or not.

1 SECT. 12. Costs to the extent of the fees and disburse- C. S. p. 491, Sect. 14.  
2 ments paid or incurred may be awarded in favor of one Amended.  
3 party against another, to be paid out of the estate or fund  
4 in any proceeding contested adversely before the judge of  
5 probate.

1 SECT. 13. Orders for the payment of money may be C. S. p. 491, Sect. 15.  
2 enforced in the same manner as judgments for the payment Amended.  
3 of money in the district court; but all process shall be  
4 issued by the judge of probate.

#### APPEALS FROM PROBATE COURTS.

1 SECT. 14. An appeal may be taken to the district court  
2 from a judgment or order in a probate court in the follow- C. S. p. 494, Sect. 43.  
3 ing cases: Amended.

4 *First.*—An order admitting a will to record or probate,  
5 or refusing the same.

6 *Second.*—An order appointing an administrator, execu-  
7 tor, or guardian, or removing him, or refusing to make  
8 such appointment or removal.

9 *Third.*—An order directing real property to be sold,  
10 mortgaged or leased, or confirming the same.

11 *Fourth.*—An order or judgment by which a debt, claim,  
12 legacy, or distributive share is allowed, or payment thereof  
13 directed, or such allowance or direction refused, when the  
14 amount in controversy exceeds fifteen dollars.

15 *Fifth.*—Judgment upon an accounting by an executor,  
16 administrator or guardian, including an intermediate order  
17 involving the merits and necessarily affecting the judgment.

c 58  
C. S. p. 494, Sect. 44.

1 SECT. 15. The appeal can only be taken by a party ag-  
2 grieved, who appeared and moved for, or opposed the or-  
3 der or judgment appealed from, or who being entitled to  
4 being heard thereon, had not due notice or opportunity to  
5 be heard, the latter fact to be shown by affidavit and filed  
6 and served with the notice.

C. S. p. 494, Sects. 45  
& 46, combined.

1 SECT. 16. The appeal may be taken upon questions of  
2 fact or law, or both, by the service of a notice on the ad-  
3 verse party, stating the appeal from the order or judgment,  
4 or some specified part thereof, and by filing a copy of the  
5 said notice in the office of the judge of probate, together  
6 with a recognizance entered into by the party appealing,  
7 with one or more sureties, to be approved by the judge  
8 of probate, conditioned that the party will prosecute his  
9 appeal with due diligence to a final determination, and pay  
10 all costs adjudged against him in the district court; which  
11 appeal shall be taken within sixty days after notice of the  
12 order or judgment appealed from.

## CHAPTER L.

### LETTERS TESTAMENTARY, AND OTHER PROCEED- INGS ON THE PROBATE OF A WILL.

c 41  
C. S. p. 431, Sect. 1.

1 SECTION 1. When a will is duly proved and allowed,  
2 the probate court shall issue letters testamentary thereon  
3 to the executor named therein, if he is legally competent,  
4 and accepts the trust and gives bond as required by law.

1 SECT. 2. Every executor, before entering upon the ex-  
2 ecution of his trust, and before letters testamentary are is-  
3 sued, shall give bond to the judge of probate in such rea-