

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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SEC. 8. If judgment is rendered for the plaintiff in any action upon such bond for any breach thereof in not performing any order or decree of the judge of probate, as mentioned in the fifth section of this chapter, execution shall be awarded for the full value of all the estate of the deceased, or ward, that has come to the hands of such executor, administrator or guardian, and for which he has not satisfactorily accounted, and for all such damages as have been occasioned by his neglect or mal-administration.

Execution, how awarded.

SEC. 9. All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there is any, or to such person other than the defendant therein, as shall then be the rightful executor, administrator or guardian, and such moneys shall be disposed of according to law.

Moneys collected on execution, how disposed of.

SEC. 10. Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator or guardian, in behalf of those he represents, in the same manner as by persons living and of full age; and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.

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SECTION 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 has been made by will for their support.

Children under seven years of age to have allowance.

Lands may be sold to raise money to support children—when.

SEC. 2. If, in case of intestate estates, after the payment of debts and charges of administration, there is no personal estate, or not enough remaining in the hands of the administrator to maintain the minor children under seven years of age, as now provided by law, the probate court may, upon application of such administrator, and with the assent in writing, of all the heirs, by themselves or guardians, residing in this state, authorize and empower such administrator, to sell at public auction, or private sale, as he may find necessary, so much of the lands of such estate, as will raise a sum of money sufficient for the support of such minor children, till they arrive at the age of seven years, which sum of money so raised shall, under the order of the probate court, be retained in the hands of such administrator for the purpose aforesaid, and partition of the residue of such estate may be made in the same manner as now provided by law.

Sale, how made.

SEC. 3. In making such sale of lands as is by this chapter authorized, the administrator shall be sworn to the faithful discharge of his trust, and the rules and regulations, so far as applicable, relative to the sale of real estate by executors and administrators now by law established, shall be observed.

After payment of debts, &c., court to assign residue of estate—how.

SEC. 4. 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 are 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; and in such decree, the court shall name the persons, and the proportions or parts to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same.

Decree in such case made—when.

SEC. 5. Such decree may be made on the application of the executor or administrator, or of any person interested; but no heir, devisee, or legatee is entitled to a decree for his share, until payment of the debts and allowances and expenses, mentioned in the preceding section, is made or provided for, unless he gives a bond to the judge of probate, with such sureties as the court directs, 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.

Partition may be made—when.

SEC. 6. When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not 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, and the judge of probate shall issue a warrant to them for that purpose.

Proceedings when real estate lies in different counties.

SEC. 7. If the real estate lies in different counties, the probate court may 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 state.

Partition may be ordered—when.

SEC. 8. Such partition and distribution may be ordered on the petition of any of the persons interested; but before any partition is ordered as directed in this chapter, notice shall be given to all persons interested,

who reside in this state, or their guardians, and to the agents, attorneys or guardians, if there are any in this state, of such as reside out of the state, either personally or by public notice, as the probate court shall direct.

SEC. 9. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees 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 would have been to such heirs or devisees.

Partition when shares have been conveyed.

SEC. 10. 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 consent to have their shares set out so as to be held by them in common and undivided.

Shares, how set out.

SEC. 11. When any such real estate can not 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, pays to the other parties interested, their just proportion of the true value thereof, or secures the same to their satisfaction; 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 the parties.

SEC. 12. When any tract of land, messuage, or tenement, is 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 pays or secures to one or more of the others, such sums as the commissioners 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 are paid to the parties entitled to the same, or secured to their satisfaction.

When tract of land is of greater value than either party's share, and cannot be divided, court may assign the whole to one of the parties.

SEC. 13. When partition of real estate among heirs, or devisees is required, or dower is to be assigned to a widow in the same, and such real estate lies 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 is binding on all persons interested.

Estate to be divided in certain cases.

SEC. 14. Before any partition is 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 reside out of the state; and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they will proceed to make partition.

Guardians to be appointed for minors, and agents for non-residents—notice to be given.

SEC. 15. 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 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.

Report of commissioners and proceedings thereon.

When partition may be dispensed with.

SEC. 16. When the probate court makes 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 is decreed, or some of them, request that such partition be made.

Probate court to determine questions relating to advancements, and give decree. Effect of final decree.

SEC. 17. 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 the warrant to the commissioners; and the final decree of the probate court, or in case of appeal, of the district or supreme court, shall be binding on all persons interested in the estate.

Any person aggrieved may appeal.

SEC. 18. 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 conclusive—when.

SEC. 19. 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.

Expenses of partition or distribution, how paid.

SEC. 20. If at the time of the partition or distribution of any estate, as provided in this chapter, the executor or administrator has 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 appears to the court just and equitable, and not inconsistent with the intention of the testator.

Parties interested to pay expenses—when.

SEC. 21. 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 neglects to pay the sum assessed on him by the court, an execution may be issued thereof against him by such court, in favor of the person entitled to the same.

Partition of reversion made—when.

SEC. 22. When the term of a widow entitled to dower or other life estate in the lands of a deceased person expires, the reversion may be assigned to the person entitled to the same, and the partition thereof be made in the manner prescribed in this chapter in relation to other estates of deceased persons.

Court may appoint agent of absent person—when.

SEC. 23. When any estate is assigned by decree of the court, or distributed by commissioners, as provided in this chapter, to any person residing out of this state, and having no agent therein, and it is 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.

SEC. 24. 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 is authorized to receive the same, and the court appointing such agent may examine and allow his account, on application made by him or any person interested, and may allow a reasonable sum out of the estate for his services and expenses.

Court to allow account and expenses.