

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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Note. See 1881 Supp. p. 91.

§ 1. Commissioners to examine and adjust claims. When letters testamentary or of administration are granted by any probate court, the judge thereof shall appoint two or more suitable persons commissioners to receive, examine and adjust all claims and demands of all persons against the deceased, except in the following cases:

First. When it appears that there are no debts existing against such deceased person.

Second. When the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, does not exceed one hundred and fifty dollars, and is assigned for the support of the widow and children, as provided by law; in which case such assignment shall be deemed a full and final administration, and shall bar all claims against the estate.

20 M. 313.

§ 2. Whole estate assigned to children, when. Whenever any male person dies leaving issue, but no widow, or whenever any female person dies leaving issue, but no surviving husband, the probate court of the county where by law such person's estate is settled, may, in its discretion, on the return of the inventory, if the same does not exceed one hundred and fifty dollars, and the estate is intestate, assign the whole of such estate to the children of the deceased, for their own use. (See *ante*, c. 51, § 1.)

§ 3. Meetings of commissioners—appointment—notice. When such commissioners are appointed, they shall appoint convenient times and places, when and where they will meet for the purpose of examining and allowing the claims; and, within sixty days after their appointment, they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in said county, or in any other manner which the court may direct.

§ 4. **Publication of notice.** The judge of probate, in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the county in which it shall be posted, or any other mode of notifying which he deems necessary and proper.

§ 5. **Commissioner not acting, another may be appointed.** If any commissioner appointed by the probate court dies, removes out of the state, refuses, or becomes in any other way incapacitated, to perform the duties of his appointment, the court may appoint another commissioner in his place; and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

§ 6. **Time allowed for presenting claims.** The probate court shall allow such time as the circumstances of the case require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months; and the time allowed shall be stated in the commission.

§ 7. **Time extended, how long.** The probate court may extend the time allowed to creditors to present their claims; but not so that the whole time shall exceed two years from the time of appointing such commissioner.

§ 8. **Commission renewed and further time allowed, when.** On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, and before the settlement of the final account of administration of the estate, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall personally notify the parties of the time and place of hearing, and, as soon as may be, make return of their doings to the probate court.

§ 9. **Set-offs—claims barred by statute.** When a creditor against whom the deceased had claims presents a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased in offset to the claims of the creditor; and the commissioner shall ascertain and allow the balance against or in favor of the estate, as they find the same to be; but no claim barred by the statute of limitations shall be allowed by the commissioners, in favor of or against the estate, as a set-off or otherwise.

§ 10. **Commissioners to be sworn—may administer oaths.** The commissioners shall be sworn, and any one of them may administer oaths to parties and witnesses, when the same are required or proper for the investigation and trial of questions before them.

§ 11. **Report of commissioners.** At the expiration of the time limited, or as soon thereafter as the hearing of the claims presented is completed, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented, or exhibited in offset, and stating how much was allowed and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate; and shall state particularly the manner of giving notice to the claimants.

§ 12. **Powers of commissioners.** The commissioners have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which are payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

§ 13. **Debts payable at a future day—payment by executor, etc.** Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which is payable at a future day, according to the terms, and at the time, specified in the contract.

§ 14. **Claims barred if not presented to commissioners.** Every person having a claim against a deceased person proper to be allowed by the commissioners, who shall not, after the publication of notice as required herein, exhibit his claim

to the commissioners within the time limited by the court for that purpose, shall be forever barred from recovering such demand or from setting off the same in any action whatever.

^{21 M. 172, 174.}
 § 15. **No action against executor, etc., except; etc.** When commissioners are appointed, as provided in this chapter, for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except to recover the possession of real estate, or the possession of personal property, nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts. (*See post*, § 53)

§ 16. **Proceedings in actions pending against deceased.** All actions which are pending against a deceased person at the time of his death, may, if the cause of action survives, be prosecuted to final judgment; and the executor or administrator may be admitted to defend the same; and if judgment is rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

^{21 M. 172.}
 § 17. **Executor or administrator may prosecute action.** Nothing in this chapter shall be construed to prevent an executor or administrator, when he thinks it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action commenced by the deceased in his lifetime, for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

§ 18. **Proceedings in such case—set-off.** In such case the defendant may set off any claim he has against the deceased, instead of presenting it to the commissioners; and if final judgment is rendered in favor of the defendant, the same shall be certified by the court rendering it to the probate court, and the judgment shall be considered the true balance.

§ 19. **Joint debtor dying, estate how liable.** When two or more persons are indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them dies, his estate is liable therefor, and the amount thereof may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone.

*§ 20. **Judge to perform duties of commissioners.** That the duties conferred upon commissioners, by chapter fifty-three of the General Statutes, shall be performed by the judge of probate, in all cases where the estate does not exceed in value the sum of five thousand dollars. (1870, c. 65, § 1.)

*§ 21. **To keep register of claims—order to be entered.** The judge of probate shall keep a book, to be provided by the county, in which he shall register all claims filed with him; and when he has completed the hearing of all claims presented to him, he shall enter an order in said register, under the head of each estate, embracing everything required in the report of the commissioners; and such order may be appealed from the same as from the report of commissioners. (*Id.* § 2.)

*§ 22. **Time and place to be fixed for auditing claims, etc.** The judge of probate shall, at the time for appointing commissioners, as in said chapter provided, enter an order fixing a time and place when and where he will hear, examine and allow claims against the estate of the deceased; the time allowed for creditors to present their claims, and the manner in which notice shall be given to creditors, which notice shall be given by the administrator or executor of the estate. (*Id.* § 3.)

*§ 23. **Fees of judge of probate.** The fees of the judge of probate for examining and allowing claims against an estate shall not exceed three dollars per day, nor, in the aggregate, amount to more than twelve dollars, without the approval of a judge of the district court. (*Id.* § 4.)

APPEALS FROM THE DECISIONS OF COMMISSIONERS.

§ 24. (SEC. 20.) **Appeal from report of commissioners—by whom and when.** Any executor, administrator or creditor may appeal from the decision and report of the commissioners, to the district court for the same county, if application for such appeal is made in writing, filed in the probate office within sixty days after the return of the report of the commissioners, in the following cases:

First. When such commissioners disallow any claim in favor of any creditor, or of the estate, in whole or in part, to the amount of twenty dollars.

Second. When the commissioners allow any claim, in whole or in part, to the amount of twenty dollars.

6 M. 403 (568); 9 M. 139 (149); 20 M. 442.

§ 25. (SEC. 21.) **Claimant appealing shall give bond.** If a claimant appeals, he shall, within the time aforesaid, give a bond to the adverse party, with sureties, to be approved by the judge of probate, and filed in his office, with a condition that he shall prosecute his appeal with effect, and pay all damages and costs which may be awarded against him on such appeal.

9 M. 403 (568).

§ 26. (SEC. 22.) **Appellant to file certified copy of record.** The party appealing shall procure, and file in the district court to which the appeal is taken, at or before the next term of such court after the appeal is allowed, a certified copy of the record of allowance or disallowance appealed from, and of the application for the appeal.

§ 27. (SEC. 23.) **Proceedings in district court on appeal.** When such certified copy is filed in the district court, the said court acquires jurisdiction as of actions duly commenced therein. The party having the affirmative shall file his complaint, setting forth the cause of action, but no allegations shall be permitted except such as relate or are essential to the specific matter appealed from; issues may be joined by demurrer, answer and reply as in other cases, and the cause proceed in conformity to the rules established for the conduct of civil actions, except that no execution shall be awarded against an executor or administrator for a debt or demand found due to the claimant. Either party may appeal to the supreme court as in other cases.

6 M. 403 (568)

§ 28. (SEC. 24.) **Final judgment to be certified to probate court.** The final decision and judgment, in cases so appealed, shall be certified by the district court, or supreme court, as the case may be, to the probate court; and the same proceedings shall be had thereon as if such decision had been reported by the commissioners.

§ 29. (SEC. 25.) **Claim of appellant barred, when.** If any claimant, appealing on account of the disallowance of his claim by the commissioners, fails to prosecute his appeal in the district court, such claim shall be forever barred.

§ 30. (SEC. 26.) **Allowance affirmed, when.** If the person objecting to a claim, and appealing on account of the allowance of such claim, neglects to prosecute his appeal, the district court, on motion of the adverse party, and on his producing an attested copy of the record of the probate court showing such appeal, shall affirm the allowance appealed from.

§ 31. (SEC. 27.) **Appeal by persons interested in estate.** When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate as creditor, devisee, legatee or heir, may appeal from such decision, in the same manner as the executor or administrator might have done; and the same proceedings shall be had, in the name of the executor or administrator: *provided*, that the person appealing in such case gives a bond, with sureties, to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

6 M. 403 (568).

§ 32. (SEC. 28.) **Notice of appeal by executor as claimant.** When an executor or admini-

istrator has a claim against the estate which he represents, which is disallowed by the commissioners, and he takes an appeal therefrom to the district court, notice of such appeal shall be given to all concerned, by personal service thereof, or by publication, under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before the hearing of the appeal.

LIMITATION OF TIME FOR PAYING DEBTS.

§ 33. (SEC. 29.) **Order limiting time for paying debts.** The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order allowing to the executor or administrator a period of time for disposing of the estate, and paying the debts and legacies of the deceased person, not exceeding, in the first instance, one year and six months.

§ 34. (SEC. 30.) **Time may be extended, how long.** The probate court may, on application of the executor or administrator, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years, unless, under the provisions of the will, in case of an executor, a larger time may be necessary: *and provided*, that after the expiration of the time finally limited, an executor or administrator shall not be disqualified from doing anything necessary to settle the estate which he might have done before, unless removed by the probate court; but this provision shall not relieve him from any liability or penalty incurred by his failure to settle the estate within the time limited. (*As amended 1873, c. 58, § 1.*)

§ 35. (SEC. 31.) **Notice of application to extend time.** When an executor or administrator makes application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary, or of administration, the probate court shall appoint a time for hearing and deciding on such application, and cause notice of such application, and of the time and place of hearing, to be given to all persons interested, by publication three weeks successively, in some newspaper designated by the court; and no such order extending the time shall be granted, unless such notice has been previously given.

§ 36. (SEC. 32.) **Time may be extended when executor dies, etc.** When an executor or administrator dies, or becomes incapable of discharging his trust, and a new administrator is appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding one year beyond the time which the court might by law allow to such original executor or administrator, upon due notice given as required in the preceding section. (*As amended 1873, c. 58, § 2.*)

DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.

§ 37. (SEC. 33.) **Debts to be paid in full, when.** If, after the report of the commissioners has been made, and the claims against the estate ascertained, it appears that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full, within the time limited or appointed for that purpose.

§ 38. (SEC. 34.) **Order of payment in case of insolvent estates.** If the assets which the executor or administrator has received, and which can be appropriated to the payment of debts, are not sufficient therefor, he shall, after paying the necessary expenses of his funeral, last sickness and administration, pay the debts against the estate in the following order:

- First.* Debts having preference by the laws of the United States.
- Second.* Public rates and taxes.

Third. Judgments entered and perfected prior to the death of the deceased, and docketed at the time of his death in the county in which he resided : *provided*, that the preference of such judgment shall only extend to assets of the estate derived from real property upon which such judgment was a lien during the lifetime of the deceased. And all judgments entered and docketed in this state, of which the executor or administrator shall have had actual notice within six months from the date of the death of the deceased.

Fourth. Debts due to other creditors. (*As amended 1878, c. 5, § 1.*)

§ 39. (SEC. 36.) **Decree for payment and distribution to be made, when.** After the return of the report of the commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts, and the distribution of the assets which have been received by the executor or administrator at the time for that purpose, among the creditors, according to the provisions of this chapter.

§ 40. (SEC. 37.) **Proceedings when decree is appealed from.** If an appeal is taken from the decision of the commissioners, and remains undetermined, the probate court may suspend the decree for the payment of debts, mentioned in the preceding section, or may order a distribution among the creditors whose claims are allowed, leaving in the hands of the executor or administrator sufficient assets to pay the claim which has been disputed and appealed.

§ 41. (SEC. 38.) **Payment of disputed claims, when settled.** When the disputed claim is finally settled, the probate court shall order the same to be paid out of the assets retained, to the same extent and in the same proportion as the claims of the other creditors.

§ 42. (SEC. 39.) **Further decree of distribution.** If the whole of the debts were not paid by the first distribution, and if the whole assets have not been distributed, or if other assets afterward come to the hands of the executor or administrator, the probate court may, from time to time, make further decree for the distribution of assets.

§ 43. (SEC. 40.) **Executor, etc., personally liable, when.** Whenever a decree is made by the probate court, for the distribution of the assets among the creditors, the executor or administrator, after the time of payment arrives, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt, to the extent of the assets in his hands applicable thereto; or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend is not paid as above mentioned.

§ 44. (SEC. 41.) **Notice of time limited for payment of debts.** When the time for paying the debts of a deceased person is finally limited, by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate is insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts, by publishing the same at least three weeks successively, in some paper to be designated by the court, or in such other manner as the court may direct.

§ 45. (SEC. 42.) **Neglecting to demand debt or dividend within two years.** If, after notice, as is provided in the preceding section, any creditor neglects to demand from the executor or administrator, his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts, or, if the notice is given after such time, within two years from the last publication, the claim of such creditor shall be forever barred.

CONTINGENT CLAIMS.

§ 46. (SEC. 43.) **Contingent claims, how presented and paid.** If any person is liable as security for the deceased, or has any other contingent claim against his estate which cannot be proved as a debt before the commissioners, or allowed by them, the same

§ 38 a. See slip.

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§ 38a. (SEC. 35.) Preference between debts of same class. No preference shall be given in the payment of any debt, over other debts of the same class, except those specified in the third class; nor shall a debt due and payable be entitled to preference over debts not due; nor shall the commencement of an action for the recovery of any debt, or the obtaining a judgment thereon against the executor or administrator, entitle such debt to any preference over others of the same class.

may be presented, with the proper proof, to the commissioners, who shall set forth the claim and proof in their report; and said court may order the executor or administrator to retain in his hands sufficient to pay such contingent claim when the same becomes absolute; or, if the estate is insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

§ 47. (SEC. 44.) **Contingent claim, becoming absolute, may be presented, etc.** If such contingent claim becomes absolute, and is presented to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had made their report; and the persons interested shall have the same right of appeal as in other cases.

§ 48. (SEC. 45.) **Contingent claim entitled to payment, when.** When such contingent claim is allowed, as mentioned in the preceding section, or established on appeal, the creditor is entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator is sufficient for that purpose; but if the claim is not finally established, or if the assets retained in the hands of the executor or administrator are not wholly exhausted in the payment of such claims, such assets, or the residue, shall be disposed of by order of the probate court, to the person entitled to the same, according to law.

§ 49. (SEC. 46.) **Contingent claim may be presented to probate court, when.** If the claim of any person accrues or becomes absolute at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same, at any time within one year after it accrues or becomes absolute; and if established in the manner provided in this chapter, the executor or administrator shall pay it if he has sufficient assets for that purpose, or such part as he has assets to pay; and if real or personal estate afterward comes to his possession, he shall pay such claim, or such part as he has assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

§ 50. (SEC. 47.) **Creditor may recover of heirs, etc., when.** When a claim is presented within one year from the time it accrues, and is established, as mentioned in the preceding section, and the executor or administrator has not sufficient assets to pay the whole of such claim, the creditor may recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees or legatees, who have received sufficient real or personal property from the estate.

ACTIONS AGAINST EXECUTORS, ETC.

§ 51. (SEC. 48.) **Defence of plene administravit.** If any action is commenced against an executor or administrator, on such claim as is mentioned in the preceding forty-sixth section, and for the payment of which sufficient assets have not been retained, the executor or administrator may plead that he has fully administered the estate which has come to his possession or knowledge; and if it is found that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, judgment shall be rendered in his favor; but if it is found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as is equal to the amount of assets in his hands.

§ 52. (SEC. 49.) **Actions where no commissioners have been appointed.** If the appointment of commissioners to allow claims in any case is 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 a 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.

15 M. 159; 20 M. 313

§ 53. (SEC. 50.) No action to be brought against executor, etc., except etc. 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 payment of debts: *provided*, that nothing in this chapter contained shall be construed to prevent an action against an executor or administrator to foreclose a mortgage given by a mortgagor deceased. (*As amended 1878, c. 11, § 1.*)

21 M. 172, 174.

CHAPTER LIV.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

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§ 1. **With what executor, etc., is chargeable.** Every executor and administrator is chargeable, in his account, with the whole of the goods, chattels, rights and credits of the deceased which come to his possession; also with all the proceeds of the real estate which is sold for the payment of debts and legacies; and with all the interest, profit and income that in any way comes to his hands from the estate of the deceased.

§ 2. **To account for personal estate.** Every executor and administrator shall account for the personal estate of the deceased, as the same is appraised, except as provided in the following section.

§ 3. **Not to make profit or suffer loss.** 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 sells any part of the personal estate for more than the appraisal; and if he sells any for less than the appraisal, he is not responsible for the loss, if it appears to be beneficial to the estate to sell it.

§ 4. **Sale of personal estate.** 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 appears 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 is requested by all the heirs residing in this state; 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 is to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

19 M. 221.