

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

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

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real property devised, before resorting to the personal property, or to any other real property descended or devised.

§ 33. **Actions against devisees—former sections applicable.** The provisions of this chapter, with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to actions and proceedings against devisees, and they must in like manner be jointly sued.

§ 34. **Child, born after making of will, how provided for.** In cases where, by the provisions of any statute, a child born after the making of a will is entitled to succeed to a portion of the testator's real and personal property, such child shall have the same rights and remedies to compel a distribution of the personal property, and a partition of the real property, as are provided for next of kin, and for heirs, and shall in all respects be liable in the same manner, and to the same extent, to the creditors of his ancestor, in respect to the personal property delivered to him, and the real property descended to him, as is herein prescribed in relation to the next of kin, and heirs; and such child may recover of the legatees and devisees who may have received or taken any real or personal property of the testator, the share or portion thereof to which he may be entitled.

§ 35. **Last section applies to certain witnesses to wills.** The provisions of the last two sections, relative to a child born after the making of a will, apply equally to every person who, being a witness to a will, is entitled, by the provisions of any statute, to recover a portion of the real or personal property of the testator from the legatees and devisees named in such will.

CHAPTER LXXVIII.

ACTIONS ON OFFICIAL SECURITIES AND TO RECOVER FINES AND FORFEITURES.

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§ 1. **Official bonds, security to whom—obligee.** The official bond or other security of a public officer to the state, or any municipal body or corporation, whether with or without sureties, is to be construed as security to all persons severally, for the official delinquencies against which it is intended to provide, as well as to the state, body or corporation designated therein: *provided*, that when no other provision is made by law, it shall run to the state of Minnesota.

§ 2. **Who may bring action.** When a public officer, by official misconduct or neglect, forfeits his official bond, or renders his sureties liable upon an official security,

any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he is entitled by reason of the delinquency.

§ 3. **Leave to bring action.** Before an action can be brought by a plaintiff, other than the state or body politic named in the bond, leave shall be obtained of the district court, or a judge thereof, within the county where the action is triable, by the production of a copy of the bond, and an affidavit showing the delinquency; and if the delinquency is such that, if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

§ 4. **Several actions on same bond.** A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

§ 5. **Execution, how indorsed.** Upon the execution issued on a judgment recovered, upon the official security of a public officer, against him and a surety, there shall be indorsed a direction to the officer to whom the execution is delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

§ 6. **Actions for fines and forfeitures—by whom brought.** Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who, by special provisions of law, are authorized to recover them; and, whether prosecuted by public officers or by private persons, are governed by the same rules as other civil actions, except as herein otherwise prescribed.

§ 7. **Action for penalty—amount recoverable.** When an action is brought for a penalty which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon trial, the amount recovered shall be determined in proportion to the offence.

§ 8. **Same—collusive recovery not a bar to another action.** A recovery of a judgment for a penalty or forfeiture, by collusion between the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, does not prevent the recovery of the same by another person.

§ 9. **Fines, how disposed of—action by state for forfeited property.** Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where the same are incurred; and whenever any property, real or personal, is forfeited to the state, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought, by the proper officer, in the district court of any county where such property may be. (*As amended 1870, c. 73, § 1.*)

§ 10. **Prosecutions for fines, etc.—in what court—commitment of defendant.** All fines and forfeitures imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by statute, may be prosecuted for and recovered by indictment in the district court; or, when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction therefor concurrently with the district court; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offence, the offender may be committed till the same is paid, or he is otherwise discharged according to law.