GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 26. Removal of trustee.

Any person interested in the execution of an express trust to sell property and pay debts may bring an action on behalf of himself and the others interested as he is, to enforce execution of the trust, or remove the trustee. Goncelier v. Foret, 4 Minn. 13, (Gil. 1.) A simple contract creditor may bring such an action. Id. Where, in such a case, the debts were $3,500, and the property sufficient to pay them, a creditor, whose claim is less than $100, may bring the action in behalf of himself and the others in the district court. Id.

And see Clark v. Stanton, 24 Minn. 244.

§ 27. District court—Powers.

This power of removal and new appointment may be exercised whenever it becomes necessary, in order "to insure a faithful performance of the trust and a speedy close of the same by final decree of settlement and distribution." Clark v. Stanton, 24 Minn. 244.

CHAPTER 45.

ESTATES IN REAL PROPERTY.*

§ 12. Reversions defined.

See King v. Remington, 36 Minn. 15, 33, 29 N. W. Rep. 352.

§ 13. Future estates—Vested or contingent.

Cited, In re Oertle, 34 Minn. 177, 24 N. W. Rep. 924.

§ 14. Suspension of power of alienation.

See Simpson v. Cook, 24 Minn. 180, 183.

§ 15. Power of alienation—Suspension.

The absolute power of alienation of real estate may be supended during the minority of the grantee, indicated in the instrument creating the suspension, and in such case the suspension will cease with his death before coming to majority. Simpson v. Cook, 24 Minn. 180.

§ 33. Expectant estates—Defeat.

Cited, In re Oertle, 34 Minn. 177, 24 N. W. Rep. 924.

CHAPTER 46.

TITLE TO REAL PROPERTY BY DESCENT.

§ 2. Homestead.

The surviving husband or wife shall also be entitled to hold for the term of his or her natural life, free from any testamentary or other disposition thereof, to which such survivor shall not have assented in writing, and free from all claims on account of the debts of the deceased, the homestead of such de-

* For restrictions upon the power of aliens and corporations to own real property, see *post*, c. 75, *§ 41a, etc.

ceased, as such homestead is or may be defined in the statutes relating to homestead exemptions. (1876, *c.* 37, § 2, *as amended* 1883, *c.* 58, § 1; 1887, *c.* 52.)

Parties in contemplation of marriage may by contract, equitable and fairly made, fix the rights which each shall have in the property of the other during life, or which the survivor shall have in the property of the other after his or her decease, and so exclude the operation of the law in respect of fixing such rights. Desnoyer v. Jordan, 27 Minn. 295, 7 N. W. Rep. 140.

Under this section the estate or interest of the surviving husband or wife in the exempt homestead is not subject to be divested by the will of the deceased owner; following Eaton v. Robbins, 29 Minn. 329, 13 N. W. Rep. 143; Holbrook v. Wightman, 31 Minn. 168, 17 N. W. Rep. 280.

*§ 3. Descents.

Such surviving husband or wife shall also be entitled to and shall hold in fee-simple, or by such inferior tenure as the deceased was at any time during coverture seized or possessed thereof, one equal, undivided one-third of all other lands of which the deceased was at any time during coverture seized or possessed, free from any testamentary or other disposition thereof to which such survivor shall not have assented in writing, but subject, in its just proportion with the other real estate, to the payment of such debts of the deceased as are not paid from the personal estate. The residue of such real estate, or, if there be no surviving husband or wife of such intestate, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

First. In equal shares to his children, and to the lawful issue of any deceased child, by right of representation.

Second. If there be no child, and no lawful issue of any deceased child, of the intestate living at his death, his estate shall descend to his father.

Third. If the intestate leaves no issue nor father, his estate shall descend, one equal one-third to his mother, and the residue in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right of representation.

Fourth. If the intestate leaves no issue nor father, and no brother nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of the deceased brothers and sisters.

Fifth. If the intestate leaves no issue, nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right of representation.

Sixth. If the intestate leaves no issue, and no father, mother, brother, or sister, his estate shall descend to his next of kin, in equal degree; excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those claiming through an ancestor more remote: *provided, however,—*

Seventh. If any person dies, leaving several children, or leaving one child, and the issue of one or more other children, any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

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

Ninth. If the intestate leaves a surviving husband or wife, and no kindred, his or her estate shall descend to such survivor.

Tenth. If the intestate leaves no husband or wife, or kindred, his or her estate shall escheat to the state. (1876, *c.* 37, § 3, *as amended* 1885, *c.* 118, *and c.* 19.)

The act of 1875 divested lands of the wife's contingent right of dower; and the act of 1876, substituting the words "one-third of all other land of which deceased was at any time during coverture seized or possessed" for the words "one-third of all other lands of which the deceased died seized," did not affect previous grants in which the wife did not join. The rights of grantees became vested by the act of 1875, and could not be thereafter divested. Morrison v. Rice. 35 Minn. 436, 29 N. W. Rep. 168. See Cairncross v. McGrann, 33 N. W Rep. 548.

No devise by the husband, not so assented to by the wife, could of itself interrupt this law of descent. The estate so created is, however, subject to the application and ordinary effect of the equitable doctrine of election or of estoppel. When a testator by will bequeaths to his wife something to which she has no right, except by force of the will, and by the same instrument disposes of all his lands in which she is by law entitled to dower, or to an estate of inheritance, it being apparent the testator intended the bequest to be in lieu of her legal estate, and the devise being valid except for the legal right of the wife in the property, a case for an election arises on the part of the widow as to whether she will take under the will or against it. If she elects to take the bequest, she will be held to have confirmed the devise, and to have relinquished her legal estate. Washburn v. Van Steenwyk, 32 Minn. 336, 20 N. W. Rep. 324.

SUBD. 10. The provision limiting the period that a debt shall remain a lien on property of a deceased person to three years, was not retroactive in its operation. State v. Probate Court of Ramsey Co., 25 Minn. 22; followed, Dawson v Girard Life Ins. Co., 27 Minn. 414, 8 N. W. Rep. 142.

Nor was it unconstitutional. In re Ackerman, 33 Minn. 54, 21 N. W. Rep. 852.

That a debt is barred by a failure to present it for allowance to commissioners to audit claims against the estate of the debtor, does not affect the right to foreclose a mortgage given to secure it. Jones v. Tainter, 15 Minn. 512, (Gil. 423.)

Chapter 18, Laws 1879, (*post*, *c.* 57, § 38,) operated to repeal § 3, *c.* 37, Laws 1876, so far as the latter limited the time within which the real estate of a deceased person might be sold for the payment of his debts. Culver v. Hardenbergh, 33 N. W. Rep. 792.

The repeal of the proviso to subd. 10 does not affect a case in which it had previously taken effect, and real estate devised to testator's wife, after all his lawful debts were paid, is not liable to be sold for payment of debts after the lapse of three years from the date of his death. Gates v. Shugrue, 35 Minn. 392, 29 N. W. Rep. 57.

See Desnoyer v. Jordan, 27 Minn. 295, 298, 7 N. W. Rep. 140; Campbell v. Holt, 115 U. S. 620, 6 Sup. Ct. Rep. 209; Richards v. Chace, 2 Gray, 383.

§ 5. (Sec. 2.) Illegitimate children—Inheritance by.

Cited, McArthur v. Craigie, 22 Minn. 353.

§ 7. (Sec. 4.) Degrees of kindred—Half blood.

When resort is to be had to computation—Inheritance by kindred of the half blood. Rowley v. Stray, 32 Mich. 70.

CHAPTER 47.

WILLS.

§ 1. Power to devise lands.

Cited, Washburn v. Van Steenwyk, 32 Minn. 336, 20 N. W. Rep. 324.

TESTAMENTARY CAPACITY. See Fraser v. Jennison, (Mich.) 3 N. W. Rep. 882; In re Stewart, (Wis.) 22 N. W. Rep. 392; Freeman v. Easley, (Ill.) 7 N. E. Rep. 656; Lamb v. Lamb, (Ind.) 5 N. E. Rep. 171; American Bible Society v. Price, (Ill.) 5 N. E. Rep. 126; Estate of Dalrymple, (Cal.) 7 Pac. Rep. 906; Delaney v. City, (Kan.) 9 Pac. Rep. 271; Estate of Lang, (Cal.) 2 Pac. Rep. 491; Hoban v. Piquette, (Mich.) 17 N. W. Rep. 797; Rice v. Rice, (Mich.) 15 N. W. Rep. 545, 19 N. W. Rep. 132; In re Ames' Will, (Iowa,)