

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 50.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

§ 1. Letters testamentary.

Non-residence of person named as executor. *Cutler v. Howard*, 9 Wis. 309; *Humes v. Cox*, 1 Pin. 551.

An executor has no authority under a will without a judgment or decree approving or allowing the will. *Tucker v. Starks*, *Brayt.* 99.

See *Mumford v. Hall*, cited in note to c. 49, § 13, subd. 2, *supra*.

§ 2. Bond.

This section must be construed in connection with c. 55, §§ 3, 5. *Berkey v. Judd*, 31 Minn. 275, 17 N. W. Rep. 618.

Validity of acts before giving bond. *Probate Court v. Niles*, 32 Vt. 775; *Clark v. Tabor*, 22 Vt. 595.

An administrator's bond, which, after reciting the issue of letters of administration upon all and singular the estate of the decedent, is conditioned that the administrator "shall well, truly, and faithfully administer upon said estate," sufficiently complies with the provisions respecting the condition of an administrator's bond. *Lanier v. Irvine*, 21 Minn. 447.

Liability of executors upon their joint bond. *Sparhawk v. Buell*, 9 Vt. 41; *Marsh v. Harrington*, 13 Vt. 150. Liability on their joint and several bond. *Brazer v. Clark*, 5 Pick. 96; *Towne v. Ammidown*, 20 Pick. 535; *Ames v. Armstrong*, 106 Mass. 15. And see *Newcomb v. Williams*, 9 Metc. 525.

Liability of surety for property coming into the hands of the executor before execution of the bond. *Choate v. Arrington*, 116 Mass. 552. Liability of sureties on the general bond for the proceeds of a sale of real estate where a special bond has been given. *Robinson v. Millard*, 133 Mass. 236. Liability of sureties for debt owing to decedent from the executor. *Stevens v. Gaylord*, 11 Mass. 269; *Winship v. Bass*, 12 Mass. 198.

BREACH OF BOND. Defending an action at the request of heirs and legatees, in which the plaintiff prevails. *Brazer v. Clark*, 5 Pick. 96. Neglect to apply for leave to sell real estate. *Freeman v. Anderson*, 11 Mass. 190. Sale of real estate for the payment of debts and legacies improperly procured by the executor. *Chapin v. Waters*, 110 Mass. 195. Neglect to raise an annuity fund, as directed by the will. *Prescott v. Pitts*, 9 Mass. 376, 9 Pick. 406. Failure to invest, as directed by the will. *Hall v. Cushing*, 9 Pick. 395. Failure to pay debts or legacies before decree for payment. *Bank of Orange Co. v. Kidder*, 20 Vt. 519; *Probate Court v. Van Duzer*, 13 Vt. 135; *Boyden v. Ward*, 33 Vt. 638; *Probate Court v. Kimball*, 42 Vt. 320. Failure to appropriate to the payment of a legacy to one of the owners of real estate money paid by such owner to prevent the sale of the real estate for the payment of debts and legacies. *Fay v. Taylor*, 2 Gray, 154. Failure to return inventory, or to account. *Johannes v. Youngs*, 45 Wis. 445; *Golder v. Littlejohn*, 30 Wis. 344. Neglect to account within the time limited by law. *Coney v. Williams*, 9 Mass. 114. Neglect to account in absence of assets. *Walker v. Hall*, 1 Pick. 20. Neglect to account for gratuity to heirs. *Hooker v. Bancroft*, 4 Pick. 50. Neglect of administrator *de bonis non* to return an inventory or render account. *Wilson v. Keeler*, 2 D. Chip. 16; *Matthews v. Page*, *Brayt.* 106. And see *Probate Court v. Chapin*, 31 Vt. 373; *Probate Court v. Slason*, 23 Vt. 306. Refusal to comply with a void decree. *Hancock v. Hubbard*, 19 Pick. 167; *Dawes v. Head*, 3 Pick. 123.

Sufficiency of the complaint in an action on an administrator's bond for non-payment of debts. *Probate Court v. Saxton*, 17 Vt. 623.

See *Mumford v. Hall*, cited in note to c. 49, § 13, subd. 2, *supra*.

§ 4. (Sec. 3.) Bond, when executor is residuary legatee.

As to effect of such bond, see *Stebbins v. Smith*, 4 Pick. 97; *Jones v. Richardson*, 5 Metc. 247; *Colwell v. Alger*, 5 Gray, 67.

Liability upon such bond for costs awarded to contestants of the will. *Will of Cole*, 52 Wis. 591, 9 N. W. Rep. 664.

§ 8. (Sec. 7.) Administrator with the will annexed.

Bond, see *In re Fisher*, 15 Wis. 511.

See *Cheever v. Converse*, 35 Minn. 179, 23 N. W. Rep. 217.

§ 10. (Sec. 9.) Removal of executor.

As to grounds of removal of executors and administrators, see *Drake v. Green*, 10 Allen, 124; *Winship v. Bass*, 12 Mass. 198; *Newcomb v. Williams*, 9 Metc. 525; *Thayer v. Homer*, 11 Metc. 104; *Richards v. Sweetland*, 6 Cush. 324; *Andrews v. Tucker*, 7 Pick. 250; *Hussey v. Coffin*, 1 Allen, 354; *Troy Bank v. Stanton*, 116 Mass. 435; *Estate of Pike*, 45 Wis. 391.

§ 11. (Sec. 10.) Death or removal of executor.

Title to letters *de bonis non*. *Russell v. Hoar*, 3 Metc. 187.

CHAPTER 51.

ADMINISTRATION AND DISTRIBUTION OF THE
ESTATES OF INTESTATES.***§ 1. Personal estate—Distribution.**

Cited, *In re Gotzian*, 34 Minn. 166, 24 N. W. Rep. 920; *Desnoyer v. Jordan*, 30 Minn. 81, 14 N. W. Rep. 259.

Even if the legislature intended, (which it did not,) by this section, to give rights contrary to the provisions of antenuptial contracts then existing, the statute would, to that extent, by reason of the constitutional inhibition against laws impairing the obligations of contracts, be inoperative. *Desnoyer v. Jordan*, 27 Minn. 299, 7 N. W. Rep. 140.

A widow is entitled only to a distributive share of such personal estate of her husband as was not lawfully disposed of by his last will. *In re Rausch*, 35 Minn. 291, 28 N. W. Rep. 920.

Allowance to widow without the previous authority of the court. *Sawyer v. Sawyer*, 28 Vt. 245. See, as to widow's allowance, *Phelps v. Phelps*, 16 Vt. 73; *Sawyer v. Sawyer*, 28 Vt. 245; *Johnson v. Johnson*, 41 Vt. 467; *Thayer v. Thayer*, 14 Vt. 120; *Holmes v. Bridgman*, 37 Vt. 38; *Frost v. Frost*, 40 Vt. 625; *Hackley v. Muskegon Circuit Judge*, (Mich.) 25 N. W. Rep. 462; *In re Henry*, (Wis.) 27 N. W. Rep. 351; *In re Dennis*, (Iowa,) 24 N. W. Rep. 746; *Tomlinson v. Nelson*, 49 Wis. 679, 6 N. W. Rep. 366; *Application of Wilber*, 52 Wis. 295, 9 N. W. Rep. 162; *Wilber v. Wilber*, Id. 298, 9 N. W. Rep. 163; *Miller v. Stepper*, 32 Mich. 194.

Title of next of kin before administration and distribution. *Cullen v. O'Hara*, 4 Mich. 132.

§ 2. Probate court—Jurisdiction.

Interpretation of the word "inhabitant." *Harvard College v. Gore*, 5 Pick. 377; *Holyoke v. Haskins*, 5 Pick. 20. And see 9 Mass. 543.

The place of the intestate's domicile at the time of his death, and not the place of his death, determines which is the principal administration. *Price v. Mace*, 47 Wis. 23, 1 N. W. Rep. 336.

A debt due deceased from a citizen of the state is estate to be administered so as to authorize the issue of letters here. *Ex parte Picquet*, 5 Pick. 65. And this, where the debtor removes into the state after the creditor's death. *Pinney v. McGregory*, 102 Mass. 186. And see, further, as to administration upon estates of non-residents, *Bowdoin v. Holland*, 10 Cush. 17; *Harrington v. Browne*, 5 Pick. 519; *Crosby v. Leavitt*, 4 Allen, 410.

Jurisdiction must appear affirmatively on the face of the petition. *Shipman v. Butterfield*, (Mich.) 11 N. W. Rep. 283.

Sufficiency of petition to give the probate court jurisdiction, see *In re Sargent*, (Wis.) 22 N. W. Rep. 131.

As to letters granted by a judge of probate of a county of which decedent was not an inhabitant, whether void or voidable, see *Cutts v. Haskins*, 9 Mass. 543; *Holyoke v. Haskins*, 5 Pick. 20.

Administration granted by a judge of probate, who is interested as creditor, see *Ex parte Cottle*, 5 Pick. 483, 9 Pick. 287; *Sigourney v. Sibley*, 21 Pick. 101, 22 Pick. 507.

A grant of administration originally void, and not merely voidable, acquires no valid-

* Distribution of estate of adopted child, and inheritance by adopted child, see *post*, c. 124, §§ 32a.