

GENERAL STATUTES ³⁶
OF THE
STATE OF MINNESOTA

IN FORCE

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 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; *Milner 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. 237; *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.

ity by acquiescence for any period of time. *Holyoke v. Haskins*, 5 Pick. 20, 9 Pick. 259. And see *Sigourney v. Sibley*, 21 Pick. 101.

When it appears that a probate court has jurisdiction of the subject of the appointment of an administrator of the estate of a person deceased, the letters of administration issued by such court are, in a collateral proceeding, conclusive evidence of the due appointment of the person therein named as administrator. *Moreland v. Lawrence*, 23 Minn. 84.

The regularity and sufficiency of the appointment of an administrator by a probate court having jurisdiction cannot be questioned in an action by the administrator against a stranger to recover a debt due intestate. *Emery v. Hildreth*, 2 Gray, 223.

Settlement without administration. *Taylor v. Phillips*, 30 Vt. 238; *Babbit v. Bowen*, 32 Vt. 437.

§ 3. Title to letters.

As to the title of the widow and next of kin, and as to their suitability to execute the trust, see *McGooch v. McGooch*, 4 Mass. 348; *Stearns v. Fiske*, 18 Pick. 24; *Stebbins v. Lathrop*, 4 Pick. 33; *Cobb v. Newcomb*, 19 Pick. 336.

Before the creditor can be appointed, the renunciation of the widow and next of kin must appear of record. *Arnold v. Sabin*, 1 Cush. 525.

If the widow and next of kin refuse administration, a creditor having a cause of action which survives against the estate is entitled to administer. *Stebbins v. Palmer*, 1 Pick. 71. Otherwise, if the cause of action does not survive. *Id.*; *Smith v. Sherman*, 4 Cush. 408.

Appointment of one not next of kin within the 30 days. *Brunson v. Burnett*, 2 Pin. 185. See *Hunt v. Holden*, 2 Mass. 168.

§ 4. Bond.

The appointment of an administrator is not void because the oath of office was taken, and the bond signed before the appointment. *Morris v. Railroad Co.*, (Iowa,) 23 N. W. Rep. 143.

Granting letters without approval of bond. *Cameron v. Cameron*, 15 Wis. 1.

A bond not signed by the administrator is not binding on the sureties. *Wood v. Washburn*, 2 Pick. 24.

See *Lanier v. Irvine*, cited in note to c. 50, § 2, *supra*.

§ 5. Special administrator.

See *Dutcher v. Culver*, cited in note to c. 49, § 15, *supra*.

§ 6. Same—Powers and duties.

See *Basset v. Shepardson*, (Mich.) 24 N. W. Rep. 182.

§ 11. Administrator with the will annexed.

These sections do not contemplate the appointment of an administrator, when there is already one whose authority has not been extinguished; but such an appointment is only error, and is valid unless corrected on appeal. *Culver v. Hardenbergh*, 33 N. W. Rep. 792.

A power without a direction given by the will to the executor to sell real estate does not devolve upon the administrator with the will annexed. *Hodgin v. Toler*, (Iowa,) 30 N. W. Rep. 1.

§ 12. Removal of administrator.

Cited, *Marvin v. Dutcher*, 26 Minn. 404, 4 N. W. Rep. 685.

Revocation of irregular letters. *Brunson v. Burnett*, 2 Pin. 185.

Sufficiency of allegation of petitioners' interest in petition for removal. *White v. Spaulding*, (Mich.) 14 N. W. Rep. 684.

As to the validity of a judicial sale made by an administrator, after his removal, in proceedings commenced before, see *Baldwin v. Allison*, 4 Minn. 25, (Gil. 11.)

See note to § 10, c. 50, *supra*.

§ 13. (Sec. 14.) Same—Execution of trust.

The probate court has the power, so long as the estate remains unadministered, in whole or in part, to appoint an administrator to succeed one who has been removed. *Wilkinson v. Estate of Winne*, 15 Minn. 159, (Gil. 123.)

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

See *Culver v. Hardenbergh*, *supra*, § 11.

§ 19. (Sec. 20.) Application for administration—Notice.

As to the sufficiency of the publication of notice under this section, see *Greenwood v. Murray*, 28 Minn. 120, 9 N. W. Rep. 629.