

GENERAL STATUTES <sup>36</sup>  
OF THE  
STATE OF MINNESOTA

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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## CHAPTER 52.

## INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

## § 1. Inventory—Duty of returning—Neglect—Penalty.

Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights, and credits of the deceased, which have come to his possession or knowledge; but an executor who is a residuary legatee, and has given bond to pay all the debts and legacies, as provided by law, shall not be required to return an inventory: *provided that*, if no inventory shall be filed, the executor or administrator shall pay into the county treasury of the county where administration is had to reimburse said county, the highest rate specified for such purpose in section eight of chapter seven, General Statutes one thousand eight hundred and seventy-eight. (*As amended 1881, c. 67, § 1.*)

But one inventory is required. If additional property afterwards comes into the hands of the administrator, he is bound to account for it, but not to inventory it. *Hooker v. Bancroft*, 4 Pick. 50. If no property comes into the hand of executor or administrator, he is not bound to return any inventory or account. *Walker v. Hall*, 1 Pick. 20. The inventory of the administrator of a deceased partner should only refer to his interest in the partnership, without undertaking to give the items of the property belonging to the partnership. *Loomis v. Armstrong*, (Mich.) 29 N. W. Rep. 867. The administrator has nothing to do with decedent's interest in the partnership, except to see that no waste or fraud is committed in its management. *Id.*

An inventory made by an administrator is not conclusive upon him as to the assets, or their value. *Hilton v. Briggs*, (Mich.) 20 N. W. Rep. 47; *Peckham v. Hoag*, (Mich.) 23 N. W. Rep. 818.

Title of the administrator, and effect of his acts before appointment. *Wiswell v. Wiswell*, 35 Minn. 371, 29 N. W. Rep. 166. Title of administrator—Estoppel as against him. *Gilkey v. Hamilton*, 22 Mich. 283.

An administrator has no control over choses in action where the debtor resides in another state. *Bullock v. Rogers*, 16 Vt. 294.

Validity of sale of property by next of kin as against administrator. *Morton v. Preston*, 18 Mich. 60.

As to the maintenance of an action in Vermont against a non-resident, by an administrator appointed in that state, decedent having also been a non-resident, see *Abbott v. Coburn*, 28 Vt. 663. See, also, *Bullock v. Rogers*, 16 Vt. 294.

See *Wilkinson v. Estate*, 15 Minn. 167, (Gil. 127;); *Bryant v. Livermore*, 20 Minn. 320, (Gil. 275.)

## § 5. Estate—In what order chargeable with debts.

Where there are debts against an estate duly allowed, and there is no personal property in the hands of the administrator to pay such debts, it is the duty of the probate court, on a proper application by the administrator, to grant license to sell real estate for that purpose. *State v. Probate Court*, 25 Minn. 22.

## § 6. Decedent's real estate—Rights of executor, etc.

Cited, *Jordan v. Secombe*, 33 Minn. 224, 22 N. W. Rep. 383.

Rights of administrator as to real estate. *Campau v. Campau*, 25 Mich. 127; *Holbrook v. Campau*, 22 Mich. 288; *Streeter v. Paton*, 7 Mich. 341; *Marvin v. Schilling*, 12 Mich. 356; *Kline v. Moulton*, 11 Mich. 370.

An administrator has a right to the possession of the real estate of his intestate, without regard to the fact of the sufficiency of personal estate for the payment of the debts, and the order of the probate court is not necessary to enable him to maintain an action to recover such possession. *Miller v. Hoberg*, 22 Minn. 249.

Authority of administrator as to decedent's contracts for the purchase of land. *Hunt v. Thorn*, 2 Mich. 213; *Baxter v. Robinson*, 11 Mich. 520.

An administrator may lease the real property of the estate, but only for the term of the administration. *Smith v. Park*, 31 Minn. 70, 16 N. W. Rep. 490.

Redeeming lands from mortgage. *Goodrich v. Leland*, 18 Mich. 110.

An executor or administrator, who has not possession of the decedent's real estate, nor obtained a license to sell, cannot maintain an action to remove a cloud from the title. *Paine v. First Div. St. Paul, etc., R. Co.*, 14 Minn. 65, (Gil. 49.)

An administrator cannot maintain an action for trespass upon real property, committed after the death of an intestate, unless he has first asserted his right, under the statute, by taking possession of such real property. But if he takes possession, he may then maintain an action for a trespass committed thereon before he took possession, and after the death of his decedent. In such case his possession as well as his letters of administration relate back to the death of his intestate. *Noon v. Finnegan*, 29 Minn. 418, 13 N. W. Rep. 197.

An executor in another state, the will not being proved, nor letters issued in this state, although an authenticated copy of the letters and appointment in such other state be filed in the proper probate court in this state, cannot maintain an action in this state for trespass upon real estate here. *Pott v. Pennington*, 16 Minn. 509, (Gil. 460.)

See *State v. Ramsey County Probate Court*, 25 Minn. 22, 25.

### § 11. Assets—Interest of mortgages.

Cited, *Loy v. Home Ins. Co.*, 24 Minn. 319.

See *Albright v. Cobb*, 30 Mich. 355.

### § 15. Fraudulent conveyances—Action by administrator.

Where there is a deficiency of assets in the hands of an administrator, for the payment of the debts of the intestate, he may maintain claim and delivery for property transferred by his intestate in fraud of creditors, and taken from his lawful possession, and need not first bring an action to vacate such conveyance. *Bennett v. Schuster*, 24 Minn. 383.

A similar statute held not to confer the right to maintain a bill *quia timet* to clear title to intestate's real estate from a claim of dower. *Paige v. Fagan*, (Wis.) 21 N. W. Rep. 786.

If the grantee has disposed of the property by warranty deed, he must be made a party to the action brought by the administrator. *Fraser v. Passage*, (Mich.) 30 N. W. Rep. 334.

## CHAPTER 53.

### PAYMENT OF DEBTS AND LEGACIES.

This chapter and chapter 77, *infra*, are to be read together as one body of law, pertaining to the same subject-matter. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.)

This chapter seems to contemplate two classes of claims,—one, of those for which the liability is absolute and fixed, including those not yet due; the other, of those the liability for which depends upon some future contingent event. The latter are designated "contingent claims," and in this class falls a penal bond, the condition of which has not been broken. *McKeen v. Waldron*, 25 Minn. 463.

Proceedings to establish a claim need not be formally entitled. Any description which will identify them is sufficient. In *re Jefferson*, 35 Minn. 215, 28 N. W. Rep. 256. A personal tax is a debt for the purpose of proof against and payment from a decedent's estate. *Id.* And see *Comstock v. Smith*, 26 Mich. 306.

See, also, *Riley v. Mitchell*, 35 N. W. Rep. 472; In *re Brown*, 35 Minn. 307, 29 N. W. Rep. 131; *Cummings v. Halstead*, 26 Minn. 151, 1 N. W. Rep. 1052.

### § 3. Meetings of commissioners—Notice.

See *Greenwood v. Murray*, 28 Minn. 120, 123, 9 N. W. Rep. 629; *Ashley v. Eggers*, 59 Wis. 563, 18 N. W. Rep. 471; *Gardner v. Callaghan's Estate*, 61 Wis. 91, 20 N. W. Rep. 685.

### § 6. Time for presenting claims.

Where no commissioners were appointed, the failure to present the claim to commissioners for more than six years did not bar the debt. *Wilkinson v. Estate of Winne*, 15 Minn. 159, (Gil. 123.)