

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 84 (G. S. ch. 77).

ACTIONS BY OR AGAINST EXECUTORS, ADMINISTRATORS AND HEIRS.

Sections.
 5577-5582. General provisions.
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Sections.
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GENERAL PROVISIONS.

SEC. 5577. **What causes of action survive.**—A cause of action arising out of an injury to the person dies with the person of either party, except as provided in the next section. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former, and against the personal representatives of the latter.

G. S. ch. 77, § 1. 14 M. 145; 15 M. 159; 33 M. 224; 28 M. 5; 25 M. 468; 38 M. 184.

SEC. 5578. **Death by wrongful act.**—When death is caused by the wrongful act or omission of any party or corporation, the personal representatives of the deceased may maintain an action, if he might have maintained an action had he lived, for an injury caused by the same act or omission,* by which the death was caused; but the action shall be commenced within two years after the act or omission by which the death was caused. The damages thereon cannot exceed ten thousand dollars, and the amount recovered is to be for the exclusive benefit of the widow and next of kin, to be distributed to them in the same proportions as the personal property of the deceased person.

G. S. ch. 77, § 2, as amended 1889, ch. 109. Approved March 1st. Amendment inserted at * "by which death was caused," and increased the amount from five to ten thousand dollars. 8 M. 97; 12 M. 530; 32 M. 519; 30 M. 386; 30 M. 463; 28 M. 104; 28 M. 371; 26 M. 500; 35 M. 194.

SEC. 5579. **Foreign administrator or executor.**—Any administrator or executor, duly appointed in any other state or country, may commence and prosecute any action in any court of this state, in his capacity of executor or administrator, in like manner and under like restrictions as a resident may do: *provided*, that before commencing any action, an authenticated copy of his appointment as such executor or administrator is filed in the probate court of the county in which such action is to be commenced.

G. S. ch. 77, § 6. 23 M. 304; 35 M. 192.

SEC. 5580. **Executor de son tort.**—No person is liable to an action, as executor of his own wrong, for having taken, received or interfered with the property of a deceased person; but is responsible to the executor, as general or special administrator of such deceased person, for the value of all property so taken or received, and for all damages caused by his acts to the estate of the deceased.

G. S. ch. 77, § 5. 29 M. 421.

SEC. 5581. **When judgment not evidence of assets.**—When a judgment is taken against an administrator or executor, upon failure to answer, it is not to be deemed evidence of assets in his hands, unless it appears that the complaint alleged assets, and was personally served on him.

G. S. ch. 77, § 3.

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SECS. 5582-5588.] ACTIONS BY OR AGAINST EXECUTORS, ETC.

SEC. 5582. **When judgment not a lien.**—The real property which belonged to a deceased person is not bound or in any way affected by a judgment against his executors or administrators, nor liable to be sold by virtue of an execution issued upon such judgment.

G. S. ch. 77, § 4.

LIABILITY OF NEXT OF KIN.

SEC. 5583. **For debts of deceased.**—The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received out of such estate, or so much thereof as may be necessary to satisfy his debt; the action may be against all the next of kin jointly, or against any one or more of them.

G. S. ch. 77, § 7.

SEC. 5584. **Amount—Apportionment.**—In such action, the plaintiff may recover the value of all the assets received by all the defendants in the action, if necessary to satisfy his demand; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction can be made from such amount, on account of there being other relatives to whom assets have also been delivered.

G. S. ch. 77, § 8.

SEC. 5585. **Contribution.**—Any one of the next of kin against whom a recovery is had, pursuant to the last section, may maintain an action against all the other relatives of the testator to whom any such assets have been paid, jointly, or any one or more of them, for a just and equal contribution, and may recover of each defendant such amount as bears the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bears to the value of all the assets delivered to all the relations of the deceased.

G. S. ch. 77, § 9.

LIABILITY OF LEGATEES.

SEC. 5586. **For debts of testator.**—Legatees are liable to an action by a creditor of the testator, to recover the value of a legacy received by them. The action may be brought against all, or any one or more of the legatees. In such action, the plaintiff cannot recover unless he shows:

First. That no assets were delivered; by the executor or administrator of the deceased, to his heirs or next of kin; or,

Second. That the value of such assets has been recovered by some other creditor; or,

Third. That such assets are not sufficient to satisfy the demands of the plaintiff; and in the last case he can recover only the deficiency.

The whole amount which the plaintiff can recover shall be apportioned among all the legatees of the testator, in proportion to the amount of their legacies respectively, and his proportion can only be recovered of each legatee.

G. S. ch. 77, § 10. 38 M. 149.

SEC. 5587. **Apportionment.**—If an action is brought against several next of kin jointly, or against several legatees jointly, for assets delivered to them, and a recovery had against them, the costs of such action shall be apportioned among the several defendants, in proportion to the amount of the damages recovered against each of them.

G. S. ch. 77, § 11.

SEC. 5588. **Judgment—Discharge.**—In case of a judgment against several next of kin of a testator, or against several legatees, the payment

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or satisfaction of the amount recovered against any one of the defendants, discharges such defendant, and exonerates him and his property from the judgment.

G. S. ch. 77, § 12.

LIABILITY OF HEIRS AND DEVISEES.

SEC. 5589. **For debts of ancestor.**—Heirs and devisees are liable to an action by a creditor of a deceased person, to recover the debt, to the extent of the value of any real property inherited by, or devised to them; if such action is against the heirs, all the heirs who are liable shall be made parties to the action.

G. S. ch. 77, § 13. 20 M. 313.

SEC. 5590. **When heirs not liable.**—But the heirs are not liable for the debt, unless it appears that the personal assets of the deceased were not sufficient to discharge it, or that, after due proceedings before the probate court, the creditor is unable to collect the debt from the personal representatives of the deceased, or from his next of kin, or legatee; if the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, as mentioned in the last section, the heirs of such deceased person are liable for the residue.

G. S. ch. 77, § 14. 20 M. 313.

SEC. 5591. **Limitation.**—But the last section does not affect the liability of heirs for a debt of their ancestors, where such debt was by his will expressly charged exclusively on the real property descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended, before resorting to the personal property.

G. S. ch. 77, § 15.

SEC. 5592. **Lien — Levy.**—If it appears that the real property so descended was not alienated by the heir at the time of the commencement of the action, or if the heir confesses the claims, and shows what real property has descended to him, the court shall order that the debt of the plaintiff, or the proportion thereof which he is entitled to recover, be levied of the real property so descended, and not otherwise; and every judgment rendered in such action has preference, as a lien on the real property so descended, to any judgment obtained against such heir personally, for a debt on demand in his own right.

G. S. ch. 77, § 27.

SEC. 5593. **When personally liable.**—When it appears in the action, that, before the commencement thereof, the heir has alienated the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so alienated, and judgment may be rendered therefor, and execution awarded, as in actions for his own debts. But no real property alienated in good faith by an heir, before action commenced against him, is liable to execution, or in any manner affected by a judgment against him.

G. S. ch. 77, § 28.

SEC. 5594. **When devisees not liable.**—Devisees made liable, by the foregoing provisions of this chapter, to the creditor of their testator, are not so liable, unless it appears that his personal assets, and the real property of the testator descended to his heirs, were insufficient to discharge the debt; or unless it appears that, after due proceedings before the probate court, the creditor has been unable to recover the debt, or any part thereof, from the personal representatives of the testator, or from his next of kin or legatees, or from his heirs.

G. S. ch. 77, § 30.

SEC. 5595. **Same — Liable for deficiency.**—In either of the cases specified in the last section, the amount of the deficiency of the personal assets, and

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SECS. 5596-5603.] ACTIONS BY OR AGAINST EXECUTORS, ETC.

of the real property descended, to satisfy the debt of the plaintiff, and the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees and heirs, may be recovered of the devisees of such testator, to the extent of the real property devised to them respectively.

G. S. ch. 77, § 31.

SEC. 5596. **Same — Limitation.**— But the last two sections do not affect the liability of devisees for a debt of their testator, where such debt was, by his will, expressly charged exclusively upon the real property devised, or by the terms of the will made payable exclusively by such devisee, or made payable out of the real property devised, before resorting to the personal property, or to any other real property descended or devised.

G. S. ch. 77, § 32.

SEC. 5597. **Devisees.**— 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.

G. S. ch. 77, § 33.

SEC. 5598. **Apportionment.**— In actions brought against several heirs jointly, or several devisees jointly, the amount which the plaintiff recovers shall be apportioned among all the heirs of the ancestor, or among all the devisees of the testator, in proportion to the value of the real property descended or devised; and such proportion can only be recovered of each heir or legatee.

G. S. ch. 77, § 29.

SEC. 5599. **Same.**— When the heirs, devisees or legatees have received real or personal estate, and are liable for any debts under the provisions of law, they shall be liable in proportion to the estate they may have respectively received; and a creditor shall have a right to recover his claim against a part or all of such heirs, devisees or legatees, to the amount of the estate they have respectively received; but no action shall be maintained, unless commenced within one year from the time the claim is allowed or established.

G. S. ch. 77, § 16. 20 M. 313.

SEC. 5600. **Same — In case of death.**— If any of the heirs, devisees or legatees dies without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable, if living.

G. S. ch. 77, § 20.

SEC. 5601. **Contribution.**— If, by the will of the deceased, any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves [only] according to the will.

G. S. ch. 77, § 17.

SEC. 5602. **Same.**— When any of the heirs, devisees or legatees pays more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same.

G. S. ch. 77, § 21.

SEC. 5603. **New parties.**— If all the persons liable for the payment of any such debt shall not be included in the action as defendants, the action shall not thereby be in any way dismissed or barred; but the court before which it is pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

G. S. ch. 77, § 18.

SEC. 5604. **When debt disputed.**— If more than one person is liable as aforesaid, and the creditor brings an action against all or a part of the persons so liable, and the persons liable dispute the debt or the amount claimed, the district court may order an issue to be formed, and direct that the amount may be ascertained by a jury; and said court shall ascertain and determine how much each is liable to pay, and may award execution therefor.

G. S. ch. 77, § 19. '20 M. 313.

CHILD BORN AFTER WILL MADE.

SEC. 5605. **Liability and provision.**— 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.

G. S. ch. 77, § 34.

OTHER PERSONS.

SEC. 5606. **Sections applicable.**— The provisions of the last two sections,¹ 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.

G. S. ch. 77, § 35. ¹Secs. 5597, 5605.

PREFERENCE IN PAYMENT.

SEC. 5607. **When.**— In cases where the next of kin, legatees, heirs and devisees are liable for the debts of their ancestors, as herein provided, they shall give preference in the payment of the same, and are liable therefor, in the following order:

- First. Debts entitled to a preference under the laws of the United States;
- Second. Judgments against the ancestor or testator, according to the priority thereof, respectively;
- Third. Debts due to other creditors.

G. S. ch. 77, § 22.

SEC. 5608. **When not.**— No preference can be given by any next of kin, legatee, heir or devisee, to one debt over another of the same class, except one specified in the second subdivision of the last section; nor is a debt, due and payable, entitled to a preference over a debt not due; nor does the commencement of an action against any next of kin, legatee, heir or devisee, for the recovery of a debt, entitle it to preference over others of the same class.

G. S. ch. 77, § 23.

SEC. 5609. **Defense of.**— The next of kin, legatees, heirs and devisees may show that there are debts of a prior class, unsatisfied; or that there are unpaid debts of the same class with that on which the action is brought; and if it appears that the value of the personal property delivered to them, or of the real estate descended or devised to them, does not exceed the debts of a prior class, judgment shall be rendered in their favor.

G. S. ch. 77, § 24.

SEC. 5610. **Same.**— If the personal property delivered to such next of kin or legatee, or if the real estate descended or devised to such heir and devisee, exceeds the amount of debts which are entitled to a preference over the debt for which the action is brought, judgment shall be rendered against them only for such a sum as bears a just proportion to the other debts of the same class with that on which the action is brought.

G. S. ch. 77, § 25.

SEC. 5611. **Same — Payment.**— If a debt of a class prior to that on which the action is brought, or of the same class, is paid by any next of kin, legatees, heirs or devisees, they may prove such payment; and the amount of the debt so paid shall be estimated, in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the last two sections.

G. S. ch. 77, § 26.