1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

Edited by

William H. Mason

Assisted by

The Publisher's Editorial Staff

MASON PUBLISHING CO.

SAINT PAUL, MINNESOTA

1940

Part III. Civil Actions and Proceedings

CHAPTER 74

Probate Courts

GENERAL PROVISIONS
PROBATE COURTS GENERALLY

§§8690, 8691, 8691-1 [Repealed].

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8690, see 8992-1.
8691, see 8992-5.

ANNOTATIONS UNDER REPEALED SECTIONS

8690. Establishment, sessions; etc.

1. Jurisdiction in general.

District court has jurisdiction to determine title to homestead pending proceeding in probate court to administer estate of decedent. 171M182, 213NW736.

Claims against executor and by executor against creditor must be enforced in district court. 172M68, 214NW 895.

Probate court has no jurisdiction to determine title to real estate between heirs and strangers to proceedings. Merchants' & Farmers' State Bank v. O., 189M528, 250 NW366. See Dun. Dig. 7779.

Where alleged revocation of will is effected by four "living trusts," so called and validity and efficacy of latter are challenged by issue properly framed, probate court has jurisdiction to determine that issue in order to get at ultimate one, of which it is only court with original jurisdiction, whether will is entitled to probate. O'Connor, 191M34, 253NW18. See Dun. Dig. 7770.

Probate court has exclusive original jurisdiction of estates of deceased persons and persons under guardianship by virtue of constitutional investment. Legislature may not curtail or limit general jurisdiction thus conferred, but exercise thereof may be regulated by statute. Gilroy's Estates, 193M349, 258NW584. See Dun. Dig. 7770b.

2. Jurisdiction of estates of deceased persons.

Judgments are not subject to collateral attack and district court cannot in an independent action in equity amend a decree of distribution for mere errors in making up the final account by the administrator. 175M68, 220NW406.

Laws 1925, c. 262 (§8080-1) is cumulative and not a bar to administration by the probate court upon the estate of one absent for seven years. 175M493, 221NW 876.

Administration of an estate of a decedent is a proceeding in rem and jurisdiction is not obtained if there are no assets of decedent within the territorial jurisdiction of the probate court. 176M445, 223NW683.

Cause of action under Federal Employers' Liability Act is transitory and probate court of this state has jurisdiction to appoint special administrator to bring suit here, even though next of kin reside in another state and injury and death of employee occurred there. Peterson v. C., 187M228, 244NW823. See Dun. Dig. 6022c.

District court has no jurisdiction to enjoin administrator from selling land under license of probate court. Mundinger v. B., 188M621, 248NW47. See Dun. Dig. 7770, 7770c.

District court has no jurisdiction to require accounting of administrator concerning affairs of estate. Id.

6. Held to have jurisdiction.

Probate court has jurisdiction to render decree of distribution of homestead to establish a record title, ancillary jurisdiction to determine who are heirs to homestead, to determine limits of or what part of a larger tract of land constitutes homestead, and to sell homestead if parties consent and it is deemed advisable, even though not for payment of debt. Christianson v. O., 191M166, 253NW661. See Dun. Dig. 2725, 3585b, 3652, 4219a.

7. Held not to have jurisdiction.

While court has jurisdiction to determine title for purpose incident to administration it has no jurisdiction to *determine title as between persons interested in estate* and outsiders. Op. Atty. Gen., May 16, 1930.

8691. Judge—Election—Bond.

Vacancy to be filled by next election where appointee is appointed more than 30 days prior thereto. Op. Atty. Gen., Feb. 9, 1934.

County board cannot require county attorney or judge of probate to furnish corporate surety bonds and cannot refuse to accept, arbitrarily, a proper personal bond when tendered, but such officers must pay their own premium. Op. Atty. Gen. (121a-3), Mar. 2, 1935.

A probate judge who executed a bond "to the state" before the passage of Laws 1935, c. 72, instead of to "the county board" should now file a new bond under the new act. Op. Atty. Gen. (348a), June 3, 1935.

On going into effect of Laws 1935, c. 72, Art. II, §5, A, it is highly desirable, if not necessary, that new bonds be executed in conformity with new law. Op. Atty. Gen. (347a), June 14, 1935.

§§8692 to 8706 [Repealed].

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8692, see 8992-10.
8693, see 8992-3.
8694, see 8992-187.
8695, see 8992-187.
8696, see 8992-7.
8697, see 8992-8.
8698, see 8992-9.
8699, see 8992-14.
8700, see 8992-12.
8701, see 8992-2.
8702, see 8992-11.
8703, see 8992-11.
8704, see 8992-4.
8705, see 8992-6.
8706, see 8992-185.

ANNOTATIONS UNDER REPEALED SECTIONS

8694. Court first acquiring jurisdiction; etc.

A conflict between probate courts of two counties as to which shall exercise jurisdiction over the estate of a person deceased held a question of venue rather than jurisdiction. Martin v. M., 188M408, 247NW515. See Dun. Dig. 7773(94).

Jurisdiction of a probate court over an estate, once properly invoked, precludes subsequent exercise of jurisdiction over same matter by another probate court, unless and until first proceeding is dismissed or discontinued. Id.

8695. Counties in which administration shall be had.

Martin v. M., 188M408, 247NW515; note under §8694.

Testamentary disposition of personalty is governed by laws of state in which decedent was domiciled. Kimmel's Estate, 193M233, 258NW304. See Dun. Dig. 1555, 10256g.

Restatement of conflict of laws as to domicile and Minnesota decisions compared. 15MinnLawRev668.

8696. Judge, when disqualified by interest.

Judge of probate may also act as secretary of production credit association, organized to refinance chattel mortgage loan. Op. Atty. Gen., Feb. 23, 1934.

8697. Judge of probate may act in any county; etc.

A probate judge of a county sitting in place of a judge who is ill should refer to himself as "acting judge" rather than "visiting judge." Op. Atty. Gen. (347g), Nov. 3, 1934.

8701. Incidental duties of probate court.

§9283 *applies to an order of the probate court* admitting a will to probate, and limits the time within which such order may be vacated. In re Butler's Estate, 183M 591, 237NW592. See Dun. Dig. 7784, 10255.

Petition and affidavit presented to the probate court, asking for the vacation of an order admitting a will to probate, liberally construed, prima facie showed sufficient grounds for her objections to the will. In re Butler's Estate, 183M591, 237NW592. See Dun. Dig. 7784, 10255.

Court did not abuse its discretion in denying application to vacate the order of probate court on the ground of laches and long acquiescence in the order after having actual notice thereof. In re Butler's Estate, 183M591, 237NW592. See Dun. Dig. 7784, 10255.

1. Conforming records to the fact.

Probate court, like district court, is authorized by Constitution and common law to correct at any time clerical error, to clarify ambiguities, and to make its judgments read as they were intended. Simon, 187M399, 246NW31. See Dun. Dig. 7784.

Probate court, like district court, may, within one year after notice thereof, correct its records and decrees and relieve a party from his mistake, inadvertence, surprise, or excusable neglect. Simon, 187M399, 246NW31. See Dun. Dig. 7784.

2. Vacating orders, judgments and decrees.

Real estate assigned by final decree passes out of the control of the court and is discharged from further administration, and thereafter neither the probate court nor the district court on appeal has authority to vacate the decree without notice to the persons who then hold title to such real property. 175M524, 222NW68.

The probate court has power to vacate its final decree on the ground of fraud, mistake, inadvertence or excusable neglect upon proper application seasonably made. 175M524, 222NW68.

Application to vacate decree of descent rendered by probate court on ground of mistake in both judicial dis-

cretion, and on appeal the district court exercises a like discretion. 179M315, 229NW133.

Section 9283 governs the vacation of judgments and orders of the probate court as well as those of the district courts for mistake, inadvertence and excusable neglect. Walker's Estate v. M., 183M325, 236NW485. See Dun. Dig. 7784.

Inadvertent neglect of attorneys for executors in failing to ascertain the filing of a claim and the date of hearing was excusable. Walker's Estate v. M., 183M325, 236NW485. See Dun. Dig. 7784.

In determining whether judicial discretion should relieve executor against a claim allowed as on default, it is proper to consider the statement of claim as filed and the objections or defense proposed thereto. Walker's Estate v. M., 183M325, 236NW485. See Dun. Dig. 7784.

In absence of fraud and mistake of fact, power of probate court to amend, modify, and vacate an order or decree is exhausted when time to appeal therefrom has expired. Simon, 187M399, 246NW31. See Dun. Dig. 7784.

After one year and after expiration of time for appeal, probate court could not modify or vacate its final order settling account on showing that deceased personal representative had embezzled money. Simon, 187M399, 246 NW31. See Dun. Dig. 7784(4).

In case of fraud or mistake of fact probate court has jurisdiction to vacate or set aside orders or judgments, or to correct its own clerical mistakes or misprision, even after time allowed for appeal. Simon, 187M399, 246NW31. See Dun. Dig. 7784(5).

Probate courts are courts of record and their orders and judgments are not subject to collateral attack in field entrusted to them by constitution, but a motion by a ward to expunge erroneous statements from record is not a collateral attack. Carpenter's Guardianship, 203M 477, 281NW867. See Dun. Dig. 7784.

8702. Judges of probate courts to hold annual sessions.

Probate judge is not entitled to reimbursement from the county for his expenses in attending a convention of the Probate Judge's Association. Op. Atty. Gen., Feb. 9, 1931.

County is obligated to pay actual and necessary expenses incurred by probate judge in attending assembly at capitol. Op. Atty. Gen. (347d), May 23, 1934.

8704. Certified copies.

This section does not warrant a fee for making return on appeal to district court under Mason's Stat. 1927, §8986. Op. Atty. Gen., Apr. 30, 1929.

8706. Definitions.

174M354, 219NW286; note under §9251.

Legislature may fix the age at which a delinquent child shall attain majority different from that fixed for other children. State v. Patterson, 247NW573, 188M492, 249NW 187. See Dun. Dig. 4431.

Delinquent girl committed to home school for girls is not entitled as a right to release because she is more than 18 years old. Op. Atty. Gen. (840a-5), Apr. 24, 1937.

8706-1. Salary of Judge of Probate in certain counties.—That from and after January 1, 1929, the compensation of the judges of the Probate Court in all counties of this state now or hereafter having a population of 240,000 or more inhabitants, shall be $7,500 per annum, which salary shall be paid in equal monthly installments out of the county treasury of such counties upon warrants of the county auditor out of any funds of the county not otherwise appropriated. (Act Mar. 28, 1929, c. 96, §1.)

Saved from repeal. See §8992-196, post.

8706-2. Salaries and clerk hire not to be affected by decrease in valuation.—Neither the salary nor allowance for clerk hire of any judge of probate shall be decreased during the term for which he was elected or appointed by reason of any decline in the population of the county or by a decrease in the valuation of the county, but such salary and clerk hire shall be paid during the balance of such term of office in the amounts authorized prior to such reduction in population, or by a decrease in valuation of the county. (Act Feb. 26, 1931, c. 30.)

Saved from repeal. See §8992-196, post.

See §997-1, Mason's Minn. Stat. 1927.

This act did not operate so as to keep salary of probate judge at old figure where probate judge resigned and other was appointed for the remainder of the term after there was a decrease in valuation. Op. Atty. Gen., Dec. 29, 1931.

8706-3. Clerks and employees of probate courts in certain counties.—In all counties of this state having, or which hereafter may have, a population of more than 250,000 and less than 350,000 inhabitants, the personnel of the probate court, other than the judge, shall consist of one clerk, two deputy clerks, one reporter and such other employees as the judge shall determine. The total amount of the salaries of such clerk, deputy clerks, reporter and employees shall be $21,600 per annum or such part thereof as may be determined by the judge. The salary of each shall be in such amount as the judge shall determine; but the salary of the clerk shall not exceed $4,100, that of one deputy clerk shall not exceed $3,500, that of the other deputy clerk shall not exceed $2,500.00, all of which salaries shall be paid out of the county treasury in monthly installments upon the certificate of the judge. (Act Apr. 24, 1935, c. 283, §1; Apr. 15, 1939, c. 280.)

Saved from repeal. See §8992-196, post.

8706-4. Laws repealed.—Laws 1915 Chapter 142, as amended by Laws 1917 Chapter 434, as amended by Laws 1919 Chapter 304, as amended by Laws 1921 Chapter 336, as amended by Laws 1923 Chapter 307, as amended by Laws 1929 Chapter 391 and all other acts or parts of acts inconsistent herewith are hereby repealed. (Act Apr. 24, 1935, c. 283, §2.)

Saved from repeal. See §8992-196, post.

8706-5. Minimum salary of Judge of Probate.—The minimum annual salary of the judge of the probate court, in all counties of this state, except as hereinafter provided, shall be the same amount as provided by law for the year 1930, regardless of any decrease in valuation, any change in population or any other factor on which such salary may have been based. (Mar. 24, 1937, c. 94, §1.)

Maximum salary of judge of probate of Todd County is fixed by §8707, but it is governed as to minimum by Laws 1937, c. 94 [§§8706-5 to 8706-10]. Op. Atty. Gen. (347i), Nov. 23, 1937.

8706-6. Salary of probate judge in certain counties.—In all counties having a population of more than 8500 inhabitants according to the federal census for 1930, where the salary of the judge of the probate court was less than $1800 for the year 1930, the minimum annual salary in any such county shall be the sum of $1800 per annum. Provided, however, that this section shall not apply to any county, which, when described by the number of full or fractional congressional townships, the 1935 assessed valuation, exclusive of money and credits and the population, according to the 1930 federal census, shall come within any of the following classifications: 19 to 21 townships, valuation $4,500,000 to $4,800,000, population 9500 to 9900 inhabitants; 29 to 31 townships, valuation $1,700,000 to $2,000,000, population 9400 to 9700 inhabitants; 20 to 22 townships, valuation $3,500,000 to $3,700,000, population 10,000 to 10,700 inhabitants. (Mar. 24, 1937, c. 94, §2; July 14, 1937, Sp. Ses., c. 42.)

In view of §1993, in determining salary of judge of probate assessed valuation should be determined by figuring Class 3b and Class 3c property at 33⅓% and 40% of full and true value. Op. Atty. Gen. (104a-9), June 12, 1937.

8706-7. Minimum salaries in certain counties.—In all counties having a population of less than 8500 but more than 5000 inhabitants according to the federal census for 1930, where the salary of the judge of the probate court was less than $1500 for the year 1930, the minimum annual salary in any such county shall be the sum of $1500 per annum. (Mar. 24, 1937, c. 94, §3.)

8706-8. Salary of Judge of Probate fixed by general law.—Except for the minimum amounts as herein provided, the salary of the judge of the probate court shall be as otherwise provided by law. (Mar. 24, 1937, c. 94, §4.)

Maximum salary of judge of probate of Todd County is fixed by §8707, but it is governed as to minimum by Laws 1937, c. 94 [§§8706-5 to 8706-10]. Op. Atty. Gen. (347i), Nov. 23, 1937.

8706-9. Application of Act.—This act shall not apply to any county where the salary of the judge of the probate court is fixed by Laws 1933, Chapters 16, 76, 143, 166, 212, 284, 432 or Laws 1935, Chapter 361, or laws of the extra session of 1935-36, Chapter 27, nor to any county where such salary has

been, or may be fixed by any other law passed at the 1937 session of the Legislature. (Mar. 24, 1937, c. 94, §5.)

Probate court of Lincoln County is excluded from operation of this act. Op. Atty. Gen. (347i), May 25, 1937.

8706-10. Provisions severable.—If any part, section or provision of this act shall be found to be unconstitutional or invalid by any court of competent jurisdiction, it shall not affect the remainder of this act. (Mar. 24, 1937, c. 94, §6.)

Sec. 7 of Act Mar. 24, 1937, cited, provides that the Act shall take effect from its passage.

8707. Salaries of judges of probate in certain counties—Clerk hire.

Saved from repeal. See §8992-196, post.

SALARY AND CLERK HIRE IN PARTICULAR COUNTIES

Laws 1915, c. 142, as amended, repealed Apr. 24, 1935, c. 283, §2. See §§8706-3, 8706-4.

Laws 1929, cc. 20, 161. Repealed, 1939, c. 99, §20.

Act Apr. 14, 1937, c. 230, effective May 1, 1937, amends Laws 1925, c. 91, §6, as amended, and provides that in counties having 41 to 43 townships and 25,000 to 30,000 population, the probate judge shall receive $2,040 salary, and $900 clerk hire, all fees to be paid into the county treasury.

Counties of 38 to 42 congressional townships and assessed valuation of $8,000,000 to $12,000,000. Laws 1929, c. 37, §3, fixes salary of probate judge at $2,000, and clerk *hire as now provided by law.*

Counties with 60 to 80 congressional townships and 45,000 to 75,000 inhabitants. Act Mar. 9, 1929, c. 69, fixes salary of judge of probate at $3,000.

Counties with 60 to 80 congressional townships and population of 45,000 to 75,000. Act Mar. 9, 1929, c. 69, authorizes an allowance of not more than $1,500 per year for clerk hire.

Counties with 38 to 42 congressional townships and assessed valuation of $8,000,000 to $12,000,000. Act Mar. 22, 1929, c. 82, fixes salary of judge at $2,400, and clerk hire as now allowed by law.

Counties with assessed valuation of $4,500,000 to $6,000,000 and 28 to 29 congressional townships. Act Mar. 22, 1929, c. 83, fixes salary of judge at $1,700.

Counties with population of not less than 220,000 and not more than 330,000. Laws 1929, c. 391, authorizes total *salary appropriation of $19,500,* clerk to receive not more than $4,000, deputy not more than $2,500 and inheritance tax clerk not more than $3,000, balance for additional clerical and stenographic help.

Counties containing between 200,000 and 250,000 and having population between 12,000 and 18,000. Laws 1931, c. 20, fixes salary of judge at $2,400, and allows $400 per year for clerk hire, with increase to $1,200 on order of county board.

Counties having 22 to 25 organized towns, not including cities and villages, and population of 29,000 to 33,000. Laws 1931, c. 25, fixes salary of judge at $3,000, clerk $2,100, deputy clerk $1,500, shorthand reporter $1,200, and $200 for additional clerical and stenographic help. Payments theretofore made validated.

Counties containing 16 to 18 townships, with tax valuation of $8,000,000 to $10,000,000. Laws 1931, c. 141, fixes salary of probate judge at $2,150, with allowance for clerk hire as provided by law.

Counties with population of 29,000 to 31,000, and containing city of third class. Laws 1931, c. 142, fixes salary of judge at $2,700, and $2,700 for clerk hire, of which $1,300 shall be paid to the clerk, $1,000 to deputy clerk, and additional sum to be allowed by the county board not exceeding total of $1,500 for the clerk and $1,200 for deputy clerk.

Counties having 70 to 80 congressional townships and assessed valuation of $2,000,000 to $5,000,000. Laws 1931, c. 284, amends Laws 1921, c. 351, §1, by making the act apply to counties described above.

Act Feb. 3, 1937, c. 11, amends '21, c. 351, §1, to apply to counties with 70 to 75 townships, assessed valuation of $1,000,000 to $5,000,000, and population of 7,000 to 7,500, but makes no change in amounts of salaries.

Act Feb. 9, 1933, c. 16, provides that in counties having *81 to 85 congressional townships and 18,000 to 30,000* population, the probate judge shall receive $1,800 per year, and clerk hire as fixed by county board. Laws 1925, c. 7, repealed.

Act Mar. 19, 1937, c. 69, effective July 1, 1937, amends Laws 1933, c. 16, to make salary of members of county board $720, of auditor $2,500, and traveling expenses in the state of Minnesota.

See §§997-4a to 997-4h.

Act Mar. 9, 1933, c. 76, §9, effective Jan. 1, 1934, provides that in counties with area of 35 to 55 congressional townships, and assessed valuation of not more than $2,000,000, exclusive of moneys and credits, the probate judge shall receive $750 in addition to his fees. Salary payable monthly. Clerk hire fixed by county board.

Act Mar. 19, 1937, c. 70, §9, effective July 1, 1937, amends Laws 1933, c. 76, but makes no change.

See §§997-4a to 997-4h.

Act Mar. 20, 1933, c. 96, provides that in counties having 55,000 to 70,000 population, and 35 to 45 congressional townships, the county board may fix the salary of the probate judge at not to exceed $3,500, and require fees to be paid into general fund.

Laws 1933, c. 96, §3-1, added. Laws 1935, c. 23. Effective Jan. 1, 1935

Act Jan. 15, 1936, Sp. Ses. 1935-36, c. 27, amends Laws 1933, c. 96.

See §§997-4a to 997-4h.

Act Apr. 1, 1933, c. 143 amends Laws 1929, c. 69, §1, to provide that probate judge shall receive $2,500 per annum.

See §§997-4a to 997-4h.

Act Apr. 8, 1933, c. 178, amends Laws 1929, c. 83, to provide that in counties having assessed valuation of $3,500,000 to $4,500,000, and area of 28 or 29 congressional townships, the probate judge shall receive $1,500 per annum.

Act Apr. 11, 1933, c. 212, effective May 1, 1933, authorizes county board in counties having 50 to 70 congressional townships and assessed valuation, exclusive of moneys and credits, of less than $1,500,000, to fix salaries of county officers and require their fees to be paid into the county treasury.

Act Apr. 13, 1933, c. 219, §1, provides that in counties having assessed valuation of not more than $6,000,000 and population of not more than 12,500 the county board shall fix the salaries of subordinate county employees. This section seems to be invalid as not expressed in the title of the act. Section 2 authorizes the county board, in counties having assessed valuation, excluding moneys and credits, of $2,500,000 to $3,000,000, population of 9,000 to 10,000, and area of 29 to 31 congressional townships, to fix the salaries of all subordinate county employees.

Laws 1933, c. 219, does not apply to Clearwater County and §1 thereof is not within title of act. Op. Atty. Gen. (104a-3), Feb. 5, 1935.

Act Apr. 15, 1933, c. 281, provides that in counties having 100 or more congressional townships and assessed valuation, including moneys and credits, of $4,000,000 to $6,000,000 the probate judge shall receive $1,400 per annum, and clerk hire to be fixed by the county board.

See §§997-4a to 997-4h.

Act Mar. 23, 1937, c. 91, repeals Laws 1933, c. 281, and provides that in counties having 100 to 105 townships and population of 12,000 to 16,000 the 1931 salary rate shall apply, regardless of decrease in valuation or change in population or other factor. Salary to be governed by general law, except as to minimum fixed. County board to fix clerk hire.

Act Apr. 15, 1933, c. 284, §7, amending Laws 1921, c. 437, Laws 1927, c. 225, and Laws 1931, c. 192, provides that in counties having 44 or 45 townships and assessed valuation, exclusive of money and credits, of $9,000,000 to $12,000,000, the judge of probate shall receive $1,965 per year and fees for certified copies, with maximum of $2,880, and clerk hire of $1,020 per year.

Act Apr. 12, 1937, c. 193, amends Laws 1921, c. 437, as amended, and provides that in counties having 44 to 45 townships, assessed value of $8,000,000 to $14,000,000, and population of 25,500 to 26,000, the probate judge's salary shall be $2,520 and fees for certified copies, and $1,200 clerk hire if actually paid or due.

Act Apr. 26, 1937, c. 491, amends Laws 1921, c. 437, as amended, to make salary of the probate judge $2,520 and clerk hire $1,200.

See §§997-4a to 997-4h.

Act Apr. 21, 1933, c. 432, §4, effective May 1, 1933, amends §6 of Laws 1925, c. 91, by making the salary of the probate judge $1,908 per year, with not exceeding $780 for clerk hire, fees to belong to county.

See §§997-4a to 997-4h.

Laws 1935, c. 191. Counties having city of second class and 19 to 21 townships and population from 34,000 to 40,000 and valuation from $25,000,000 to $30,000,000, judge of probate shall receive $3,000 per year and clerk shall receive from $1,080 to $1,500 per year.

Laws 1935, c. 223. Counties having population of 6,000 to 6,800 and more than 16 townships, probate judge to receive $1,200 per year plus $50 for each $1,000,000 assessed valuation.

Laws 1935, c. 283. Salaries of employees in probate courts in counties having population of 220,000 to 330,000, shall be $21,000. Laws repealed.

Laws 1935, c. 373. Counties having population in excess of 400,000 may appoint court reporter and additional clerk for probate court.

Laws 1935, c. 381. Counties having 30 to 36 townships and area of less than 670,000 acres and valuation of $10,000,000 to $20,000,000 and population of 22,000 to 30,000, probate judge shall receive $2,250 per year.

Act Jan. 13, 1936, c. 16, Sp. Ses. 1935-36, provides that in counties with 15 to 17 townships and assessed value of $4,000,000 to $5,000,000, probate judge shall receive $1550 per annum and clerk hire.

Act Jan. 18, 1936, Sp. Ses. 1935-36, c. 37, provides that in counties having not less than 48 townships, 1,000,000 to 1,500,000 acres, 15000 to 30000 census and assessed valuation of $5,000,000 to $25,000,000, salary of probate judge shall be fixed at $2000 to $2500 and clerk hire at $600 to $900, and ratifies salaries theretofore fixed in certain of said counties.

Act Jan. 18, 1936, Sp. Ses. 1935-36, c. 56, provides that in counties having second class city, population of 34000 to 40000, assessed value of $25,000,000 to $30,000,000, the

salary of the probate judge shall be $3000, and clerk $1080 to $1500. Repealing Laws 1935, c. 191.

Act Jan. 24, 1936, Sp. Ses. 1935-36, c. 79, provides that in counties having 19 to 21 townships, population of 34,000 to 40,000, and assessed valuation of $28,000,000 to $35,000,000, the probate judge shall receive $3000 and the clerk $1200 to $1500.

Act Mar. 2, 1937, c. 54, amends Laws 1935-36, Sp. Ses., c. 79, §1, by making it applicable to counties with population of 34,000 to 45,000, and assessed value of $28,000,000 to $45,000,000.

Act July 14, 1937, Sp. Ses., c. 22, amends Act Jan. 18, 1935-36, Sp. Ses., c. 79, to make it apply to counties having 34,000 to 45,000 inhabitants and $28,000,000 to $45,000,000 assessed valuation.

Act Jan. 30, 1937, c. 7, provides that in counties with 16 to 18 townships, area of 500 to 600 square miles, assessed valuation of $8,000,000 to $11,000,000, and population of 17,000 to 19,000, the probate judge shall receive a salary of $2,400 and fees as provided by law.

Act Feb. 17, 1937, c. 33, provides that in counties with area of 970 to 1,000 square miles, and population of 20,000 to 27,000, the probate judge shall receive $2,500 and such clerk hire allowance as may be fixed by the county board.

Act Feb. 18, 1937, c. 34, provides that in counties having population of 20,000 to 22,000, assessed value of $7,000,000 to $10,000,000, and total acreage of 550,000 to 552,000, the probate judge shall receive $2,500 and clerk hire allowed by county board not exceeding $1,500.

Act Feb. 24, 1937, c. 36, provides that in counties having area of 490 to 510 square miles and population of 18,000 to 25,000, the probate judge shall receive $2,500 and clerk hire to be fixed by the probate judge not to exceed $1,300.

Act Feb. 24, 1937, c. 37, provides that in counties having an area of 372,000 to 373,000 acres and 18 to 20 townships, the probate judge shall receive $2,400, and clerk hire of $800 per year, and such further sum not exceeding $400 in any one year to be determined and paid as provided by law.

Act July 14, 1937, Sp. Ses., c. 44, §1, amends Act Feb. 24, 1937, c. 37, §1, by providing that the acreage named shall be exclusive of any lake or water area, and that the assessed valuation, exclusive of moneys and credits, shall be $10,000,000 or more.

Section 2 of such act also amends Act Apr. 2, 1937, c. 133, §1, by excluding such water areas, by providing for population of 12,500 or over, and assessed valuation, exclusive of moneys and credits, of $5,000,000 or over.

Section 3 of such act also amends Act Apr. 2, 1937, c. 134, §1, by making a similar change, with population of 18,000 or over, and assessed valuation, exclusive of moneys and credits, of $6,000,000 or over.

Laws 1937, c. 70, §9. Amended. Laws 1939, c. 286.

Act Apr. 2, 1937, c. 133, provides that in counties containing 425,000 to 427,000 acres, and 18 to 20 townships, the probate judge shall receive a salary of $2,400, and for clerk hire $750 and further sum not exceeding $450 per year.

Act Apr. 2, 1937, c. 134, provides that in counties containing 400,000 to 402,000 acres, and 18 to 20 townships, the probate judge shall receive $2,400, and $750, and further sum not exceeding $450 per year for clerk hire.

Act Apr. 6, 1937, c. 148, provides that in counties containing 22 to 25 townships, population of 33,500 to 37,000, the probate judge shall receive $1,800 for clerk hire.

Act Apr. 8, 1937, c. 182, provides that in counties having 13,500 to 15,000 inhabitants, assessed valuation of $6,000,000 to $7,000,000, and 20 to 22 townships, the probate judge shall receive $2,000 per year.

Act Apr. 12, 1937, c. 202, provides that in counties having 21,500 to 22,000, 19 to 21 townships, and 718 to 720 square miles, the probate judge shall receive $1,200 per year for clerk hire.

Act Apr. 14, 1937, c. 217, effective May 1, 1937, provides that in counties having area of 380 to 400 square miles, more than 37,000 platted lots, and population of over 29,000, the probate judge's salary shall be $2,800. Effective May 1, 1937. This act is amended Apr. 21, 1937, c. 341, to change the figures "29,000" to "20,000."

Laws 1937, c. 230. Repealed, 1939, c. 99, §20.

Act Apr. 19, 1937, c. 283, §1, provides that in counties having 20 to 22 townships, 10,000 to 10,700 inhabitants, and assessed valuation, exclusive of moneys and credits, of $3,500,000 to $3,700,000, the salary of the probate judge shall be $1,800, as a minimum, maximum to be governed by existing law.

Act Apr. 19, 1937, c. 283, §2, provides that in counties having 29 to 31 townships, population of 9,400 to 9,700, and assessed value, exclusive of money and credits, of $1,700,000 to $2,000,000, the minimum salary of the probate judge shall be $1,500, maximum to be governed by existing law.

Laws 1937, c. 54. Amended, Laws 1939, c. 273.

Laws 1937, c. 54, Sp. Ses. Repealed, 1939, c. 99, §20.

Act Mar. 31, 1939, c. 99, fixes the salary and expenses of judges of probate, and their clerks, in counties having 41 to 43 congressional townships, assessed valuation, exclusive of money and credits, of $6,000,000.00 to $12,000,000.00, and population of 25,000 to 30,000, and repeals Laws 1921, c. 437; Laws 1925, c. 91; Laws 1929, cc. 20, 161; Laws 1933, c. 432; Laws 1937, c. 230; Laws 1937, Sp. Ses., c. 54.

Act Apr. 1, 1939, c. 131, provides that in counties having a population of 24,000 to 25,000, assessed valuation, including moneys and credits, of not less than $14,000,000 for 1938, and 23 to 25 congressional townships, the probate judge's salary shall be $2400.

Apr. 14, 1939, c. 247, salary of deputy is by its description applicable only to Jackson County.

Act Apr. 15, 1939, c. 273, amending '37, c. 54, §2, is by its description applicable only to Winona County.

Act Apr. 15, 1939, c. 274, amending '33, c. 166, §§6, 11, 13, is by its description applicable only to Cass County.

Act Apr. 17, 1939, c. 286, amending '37, c. 70, §9, is by its description applicable only to Lake of the Woods County.

Act Apr. 17, 1939, c. 296, and repealing '35, c. 191, is by its description applicable only to Olmsted County.

Counties containing a city of the second class and having 18 to 21 townships shall pay probate judge $3,000 and clerks $1,500. Laws 1939, c. 296.

The amendment by Laws 1927, c. 402, did not affect the amendment by Laws 1927, c. 63, and both must be given effect. Op. Atty. Gen., Jan. 17, 1929.

Laws 1931, c. 30, Mason's Minn. Stat. 1931 Supp. §8706-2 did not operate to keep salary at old figure where probate judge resigned and a new judge was appointed for the remainder of his term. Op. Atty. Gen., Dec. 29, 1931.

Fees provided for may be retained by judges of probate in counties which come within provision of this section. Op. Atty. Gen., Apr. 13, 1932.

Moneys and credits are to be considered part of assessed valuation in determining salary of probate judge. Op. Atty. Gen., Apr. 13, 1932.

Legislature possesses right to change salaries of county officers at any time. Op. Atty. Gen., Feb. 21, 1933.

Probate judge is neither required to nor authorized to make charge for acknowledgments when they relate and pertain to his office as such, but if charge is made, fee should be turned into county. Op. Atty. Gen., June 22, 1933.

Probate judge performing marriage ceremonies is not required to turn over fee to county. Id.

Probate judge is obligated to account to county for fees received for taking acknowledgments only where such services are part of duties with respect to matters pending before him. Op. Atty. Gen., July 24, 1933.

Fraction of million assessed valuation should be treated as a million in computing compensation. Op. Atty. Gen., Aug. 1, 1933.

County officers whose terms expire on first Monday of January are entitled to compensation for days of service rendered in month of January up to time that their successors qualify and take office. Op. Atty. Gen. (104a-9), Dec. 1, 1934.

Clerks and employees in probate court are to be compensated pursuant to Laws 1935, c. 72, §13, compensation to be fixed by judge. Op. Atty. Gen. (348b), July 26, 1935.

Power of fixing salary for clerk hire in office of probate court is vested in judge of probate. Op. Atty. Gen. (347b), Oct. 17, 1935.

Maximum salary of judge of probate of Todd County is fixed by §8707, but it is governed as to minimum by Laws 1937, c. 94 [§§8706-5 to 8706-10]. Op. Atty. Gen. (347i), Nov. 23, 1937.

Allowance of fifteen cents per folio for all records made by probate judge is only fee that judge is entitled to receive under §8664, and county is only required to pay money where parents of child do not have sufficient means, and such fees are payable upon a certificate of the judge and need not be presented to and audited by county board. Op. Atty. Gen. (346c), Feb. 11, 1938.

Salary of probate judge may be reduced by legislative act during term. Op. Atty. Gen. (347i). March 10, 1939.

Clerk hire in county governed by Laws 1937, c. 34, is to be fixed by judge of probate with approval of county commissioners. Op. Atty. Gen. (347B), Feb. 28, 1939.

Clerk hire is to be fixed by judge of probate within extreme statutory limitations, and no action by county board is required. Op. Atty. Gen. (348a), Feb. 17, 1939.

Under Laws 1915, c. 63, value of automobiles in Itasca County should properly be added to assessed valuation of all property in determining salary, and any fraction of one million dollars must be ignored entirely in the computation. Op. Atty. Gen. (347i), March 31, 1939.

PROBATE PRACTICE

§§8708 to 8710 [Repealed].

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8708, see 8992-186.
8709, see 8992-188.
8710, see 8992-188.

ANNOTATIONS UNDER REPEALED SECTIONS

8708. Proceedings, how begun.

Probate court acquired jurisdiction even though the person making petition was not a person interested in the estate; the petition upon its face stating that she was. 174M28, 218NW235.

An order appointing a guardian made by probate court without petition in a matter within its jurisdiction was void and of no effect, and such was true of a petition which did not contain prima facie facts bringing person within class subject to guardianship. Carpenter's Guardianship, 203M477, 281NW867. See Dun. Dig. 7777.

8709. Notice of hearing when required.
Real estate assigned by final decree passes out of the control and is discharged from further administration, and thereafter neither the probate court nor the district court on appeal has authority to vacate the decree without notice to the persons who then hold title to such real property. 175M524, 222NW68.
General jurisdiction of probate court attaches at once upon presentation to it of a proper petition by some person entitled to take such action. Notice and opportunity to be heard is a matter of legislative favor and not essential to jurisdiction and power of court to administer estate. Gilroy's Estate, 193M349, 258NW584. See Dun. Dig. 1641, 7783e.

8710-1. Certain probate proceedings legalized.—That any hearing or proceeding heretofore had or held in any probate court in this state, under the provisions of the probate code relating to the probating of a will, the appointment of an executor or administrator, or the issuance of a final decree, where the notice of such hearing or proceeding was published the requisite number of times in a legal and proper newspaper, but such hearing or proceeding was prematurely held, and no action or proceeding has heretofore been instituted to set aside or invalidate the action of the probate court in such hearing or proceeding, is hereby legalized, validated and given the same force and effect as if proper notice thereof had been given and such hearing or proceeding has been held at the proper time; provided, that nothing herein contained shall be construed to apply to any action or proceeding heretofore brought or which shall be brought within one year from the passage of this act to test the validity of any such probate hearing or proceeding, or in which a defense alleging the invalidity thereof has been interposed; or to any action heretofore brought or which shall be brought within one year from the date of the passage of this act involving any right, title or estate in lands situate within this state derived under said will. (Act Apr. 21, 1933, c. 394.)
Saved from repeal. See §8992-196.

§§8711 to 8717, 8717–1 to 8717–19, 8718 to 8720 [Repealed].
Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:
8711, see 8992-15.
8712, see 8992-188.
8716, see 8992-6.
8717-1, see 8992-22.
8717-2, see 8992-22.
8717-3, see 8992-22.
8717-4, see 8992-23.
8717-5, see 8992-23.
8717-6, see 8992-24.
8717-7 to 8717-19, see 8992-16 to 8992-19.
8718, see 8992-31.
8719, see 8992-27.
8720, see 8992-29.

ANNOTATIONS UNDER REPEALED SECTIONS

8714. Will of alien—Notice.
When a naturalized citizen dies within this state leaving property therein, it is not necessary to serve a notice of the time and place of hearing upon the consular representative of the county of his birth. Nilsson, 174M28, 218NW235.

8716. Notice of filing orders.
The notice required by this section does not affect the time for appeal. Anderson, 180M570, 231NW218.

8717-11. Trial and hearing by referee; etc.
This section automatically makes the decision of the referee that of the court, and appealable as such. Parcker's Estate, 183M191, 236NW206. See Dun. Dig. 7786.

8719. Homestead.
Carey v. B., 194M127, 260NW320; note under 8722.
A devise of homestead by will, duly consented to in writing by spouse, conveys homestead free from claims of general creditors, unless will expressly makes homestead subject to payment of debts. Overvold v. N., 186 M359, 243NW439. See Dun. Dig. 4211.
A general provision in a will directing executor to pay all testator's just debts does not make such debts a charge upon homestead where estate disposed of by will consists both of homestead and other real and personal property. Overvold v. N., 186M359, 243NW439. See Dun. Dig. 4211.
Where surviving spouse, at time will was executed, duly consented in writing to disposition of homestead as made in will, such consent validates disposition made, and it is immaterial then whether or not will makes any provision for such spouse. Overvold v. N., 186M359, 243NW439. See Dun. Dig. 10206a.
Where woman dies without issue and leaving a surviving spouse and will devising most of her property to brothers and sisters, and spouse renounces will, surviving spouse is entitled to be appointed administrator with will annexed or to select appointee, brothers and sisters not being "next to kin." Long v. C., 194M238, 260NW314. See Dun. Dig. 3561a.
Where a testator imposed a legacy as a charge upon real estate part of which was a homestead, it was improper for probate court to license a sale of entire tract either to pay debts or expenses of administration or legacies. Following In re Anderson's Estate, 202Minn 513, 279NW266, 116ALR82, the proper method of procedure is to devise homestead subject to lien. Schultz' Estate, 203M565, 282NW471. See Dun. Dig. 3615a.

8720. Distribution and descent of property.
Carey v. B., 194M127, 260NW320; note under 8722.

¼. In general.
A new note given to sole heir of payee in old note, whose estate was not probated, was supported by a good consideration, where new note had effect of extending time of payment for several years, and heir forebore his legal right to qualify himself as administrator and to immediately bring action on old note. Onsrud v. P., 261 NW(Wis)541.

½. Priority of death.
Evidence held to justify special verdict to effect wife survived husband, though wife was shot first. 171M475, 214NW469.

1. Nature of wife's interest in husband's realty.
Where an intestate leaves no surviving issue, spouse, father, mother, brothers or sisters, the next of kin is to be determined by beginning with the intestate and ascending from him to a common ancestor and descending from the ancestor to the claimant, reckoning a degree each generation, as well in the ascending as in the descending line. Op. Atty. Gen., Sept. 9, 1930.

2. Nature of husband's interest in wife's realty.
Where woman dies without issue and leaving a surviving spouse and will devising most of her property to brothers and sisters, and spouse renounces will, surviving spouse is entitled to be appointed administrator with will annexed or to select appointee, brothers and sisters not being "next of kin." Long v. C., 194M238, 260NW 314. See Dun. Dig. 3561d.

3. Title on death of ancestor.
Right of dower in improvements made by grantee subsequent to spouse's death. 16MinnLawRev315.

10a. Distribution of damages for wrongful death.
176M130, 222NW643.

§8720–1. [Repealed.]
Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m.
Where soldier holding war risk insurance certificate died testate, and brother named as beneficiary was also named as residuary legatee, and brother died later testate, and present value of unpaid monthly installments was paid to administrator of soldier's estate, fund must be distributed as if soldier had died intestate to those entitled to be distributees at time of soldier's death, as it could not have been intention of soldier to bequeath to brother fund that could only come into existence through brother's death. Sponberg v. L., 187M650, 245N W636.

§§8721 to 8733, 8733–1, 8734 to 8786, 8786–1, 8787 to 8792. [Repealed.]
Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:
8721, see 8992-194.
8722, see 8992-47.
8723, see 8992-32.
8724, see 8992-33.
8725, see 8992-30.
8726(1), see 8992-28.
8726(2), see 8992-28.
8726(3), see 8992-28.
8726(6), see 8992-29.
8726(7), see 8992-29.
8727, see 8992-189.
8728, see 8992-190.
8729, see 8992-79.
8730, see 8992-80.
8731, see 8992-81.
8732, see 8992-81.
8733, see 8992-195.
8733-1, see 8992-195.
8734, see 8992-193.
8735, see 8992-34.
8736, see 8992-35.
8737, see 8992-36.
8738, see 8992-37.
8739, see 8992-38.
8740, see 8992-50.
8741, see 8992-39.
8742, see 8992-40.
8743, see 8992-49.
8744, see 8992-41.
8745, see 8992-42.
8746, see 8992-43.
8747, see 8992-44.

8748, see 8992-45.
8749, see 8992-46.
8750, see 8992-48.
8751, see 8992-51.
8752, see 8992-52.
8753, see 8992-53.
8754, see 8992-55.
8755, see 8992-54.
8756, see 9882-53.
8757, see 8992-56.
8758, see 8992-57.
8759, see 8992-64.
8760, see 8992-65.
8761, see 8992-65.
8762, see 8992-65.
8763, see 8992-66.
8764, see 8992-61.
8765, see 8992-62.
8766, see 8992-63.
8767, see 8992-36.
8768, see 8992-58.
8769, see 8992-58.
8770, see 8992-59.
8771, see 8992-60.
8772, see 8992-68.
8773, see 8992-69.
8774, see 8992-70.
8775, see 8992-71.
8776, see 8992-73.
8777, see 8992-72.
8778, see 8992-74.
8779, see 8992-74.
8780, see 8992-76.
8782, see 8992-78.
8783, see 8992-74, 8992-78.
8784, see 8992-75.
8785, see 8992-76, 8992-77.
8786, see 8992-89.
8786-1, see 8992-98.
8787, see 8992-90.
8788, see 8992-118.
8789, see 8992-120.
8790, see 8992-121.
8791, see 8992-123.
8792, see 8992-67.

ANNOTATIONS UNDER REPEALED SECTIONS

8722. Election—Interpretation, etc.

Overvold v. N., 186M359, 243NW439; notes under §8719.

Election to accept will, held effective, in view of this section though there was attached copy of contract making election conditional on contract being held valid. 180M134, 230NW575.

District court, in suit in equity by trustees for instructions, had jurisdiction to determine validity of contract under which widow made her election under will. 180M134, 230NW575.

Administrator of widow, who died before electing, took under the statute. Stampka's Estate, 168M283, 210NW 85. See Dun. Dig. 2726.

Surviving husband became vested immediately on the death of wife (who was not a parent) with title to statutory share of wife's realty and he could not be divested thereof without some affirmative action to take under will. Carey v. B., 194M127, 260NW320. See Dun. Dig. 2726.

Wife's will having made ample provision for husband in lieu of statutory rights, husband could not take both under will and statute. Id. See Dun. Dig. 2726.

Where surviving spouse is mentally incompetent to choose whether to take under will or statute, probate court should make choice or direct guardian to do so. Id. See Dun. Dig. 2726.

Where administrators of deceased husband's estate sought to effect election in behalf of his estate (he having survived his wife but dying before making choice) so as to take under statute rather than under wife's will, held that husband's best interests, while living, required election to take under will, and that probate court erred in granting petition of representatives of his estate to take under statute. Id. See Dun. Dig. 2726.

Statute requiring a surviving spouse to elect within six months whether she will take under the will of her deceased husband or pursuant to the statute has no application where the testator has no lineal descendants. Op. Atty. Gen., May 28, 1931.

8723. Illegitimate child.

One claiming rights as heir by reason of acknowledgment of parentage, held barred by laches from asserting his rights. 179M315, 229NW133.

Award in bastardy proceedings made without defense and subsequent agreement by defendant to pay lump sum in lieu of periodic payments, held not to establish right of child to inherit. 180M202, 230NW483.

8725. Degrees, how computed.

Op. Atty. Gen., Sept. 9, 1930; note under §8720.

8726. Minor children to receive such allowance; etc.

Minnesota probate court had complete jurisdiction over property of estate of a non-resident in the hands of an ancillary administrator appointed by it and could dispose of the same in accordance with the provisions of Minnesota Statutes. Fults' Estate, 177M334, 225NW152.

War risk insurance becoming part of estate of an intestate, is to be distributed according to applicable laws of descent, subject to claims of creditors. Hallbom, 189 M383, 249NW417. Aff'd 291US473, 54SCR497. See Dun. Dig. 2719a.

Testamentary disposition of personalty is governed by laws of state in which decedent was domiciled. Kimmel's Estate, 193M233, 258NW304. See Dun. Dig. 1555, 10256g.

A widow of a deceased soldier who was guilty of open and notorious illicit cohabitation with another may not take any part of war risk insurance fund as a distributee from her deceased husband's estate, upon distribution after the "present value" of the unpaid installments of such insurance is paid to estate of deceased soldier, after death of named beneficiary. Bergstrom's Estate, 194M 97, 259NW548. See Dun. Dig. 2733.

It was proper for ancillary Minnesota executrix to show, and for court to find, reasonable value of attorney's services in defending an action brought by one claiming to be entitled to proceeds of two insurance policies, payable to decedent's estate; widow having selected proceeds of policies as personal property out of which she desired her allowance to be paid. Zimmerman's Estate, 195M38, 261NW467. See Dun. Dig. 3644c.

1. Subd. 1.

Allocation of $500 as provided for in this section was merely a form of distribution as affecting right of administrator to appeal under §8983. Nelson's Estate, 194 M297, 260NW205. See Dun. Dig. 7785.

Administrators of husband's estate had right to make personal selection of $500 out of money left by wife in addition to provisions made for him under her will. Carey v. B., 194M127, 260NW320. See Dun. Dig. 2731(19).

2. Subd. 3.

A widow of a nonresident, having received her full allowance out of personal property of decedent's estate in domiciliary state as provided by its statutes, is not entitled in ancillary proceedings here to receive a like allowance under laws of this state. Zimmerman's Estate, 195M38, 261NW467. See Dun. Dig. 2732.

3. Subd. 6.

Where woman dies without issue and leaving a surviving spouse and will devising most of her property to brothers and sisters, and spouse renounces will, surviving spouse is entitled to be appointed administrator with will annexed or to select appointee, brothers and sisters not being "next of kin." Long v. C., 194M238, 260NW314. See Dun. Dig. 3561d.

8729. Application to determine descent.

Probate court has jurisdiction over homestead in regular probate proceedings after 5 years. Christianson v. O., 191M166, 253NW661. See Dun. Dig. 2725, 3585b, 3652, 4219a.

Petition to probate court for decree of heirship is optional and not exclusive method of procedure. Id.

8732. Action by the court.

179M315, 229NW133.

8735. Who may make a will, etc.

Laws 1931, c. 259, validates holographic wills bearing date between Mar. 29 and Mar. 31, 1927, and transmitting personal property. Repealed. See §8992-196, post.

Carey v. B., 194M127, 260NW320; note under 8722.

1. In general.

Evidence held not to justify a finding of testamentary capacity. 172M217, 214NW892.

Where will bears the genuine signature of the testator and the attestation clause is full and complete, it is presumed to have been duly executed. 174M13, 218NW 447.

Where will bears the genuine signature of the testator and of the witnesses and the attestation clause is full and complete it is presumed to have been duly executed and the testimony of a subscribing witness may not be sufficient to overcome this presumption. 174M13, 218NW 447.

Testator must know contents of his will. In re Eklund's Estate, 186M129, 242NW467. See Dun. Dig. 10206b.

One who is wholly or partially deaf may make will. Effect of deafness is to add to difficulty of execution. In re Eklund's Estate, 186M129, 242NW467.

Provision in will: "And it is my will and I do hereby direct that my executor, hereinafter named, shall handle my estate in his own way, but for the best interest of all of my heirs," did not add to or detract from duties and responsibilities imposed by law upon executor. Marchildon v. M., 188M38, 246NW676. See Dun. Dig. 3565a.

No charitable trust is invalid because it violates rule against perpetuities. Lundquist v. F., 193M774, 259NW9. See Dun. Dig. 7480.

Where testator willed $2,000 to a church, to be paid by residuary legatees, residuary legatees to take subject to payment of this $2,000, devise to the church is a charge or lien upon share going to residuary legatees; residuary legatees are personally liable for payment of $2,000 if they accept residuary devise; but if residuary legatees do accept, requirement that they pay $2,000 to church does not violate article 1, §16, of constitution, for nothing compels legatees to accept. Id. See Dun. Dig. 1653, 10286, 10287h.

Wills are ambulatory and are effective only as of date of death. Id. See Dun. Dig. 10204.

Evidence held to support finding that decedent never published instrument as his will. Ploetz v. P., 194M434, 260NW517. See Dun. Dig. 10221.

Agreement of principal beneficiary of will to give dissatisfied heir one-half of property in consideration of

his refraining from contesting will on ground of undue influence will be specifically enforced if dissatisfied heir acted in good faith. Schultz v. B., 195M301, 262NW877. See Dun. Dig. 10243k.

Incorporation of other document or paper by reference. 17MinnLawRev527.

Joint and mutual wills. 19MinnLawRev95.

1a. Signature.

Will need not be signed at bottom of end, it being sufficient if signature appears elsewhere, 177M437, 225 NW398.

A purported will properly denied probate on testimony of subscribing witnesses that the maker's signature was neither affixed in their presence nor acknowledged as such to them. Coleman, 192M86, 255NW481. See Dun. Dig. 10214.

2. Mental capacity and undue influence.

The medical certificate of death provided for by statute is admissible in evidence to prove prima facie, the immediate cause as well as the fact of death. 176M360, 223NW677.

Direct proof of undue influence procuring the execution of a will is not required. 176M360, 223NW677.

Without any foundation laid, attesting witnesses are competent to give in evidence their opinion as to the testamentary capacity of the testator. 176M360, 223NW 677.

Finding of testamentary capacity and lack of undue influence sustained. 176M456, 223NW771.

Findings against undue influence and testamentary incapacity sustained. 177M226, 225NW102.

Evidence held to negative testamentary incapacity and undue influence. 180M70, 230NW275.

Undue influence must have subjected mind of testator to that of some other person. 180M256, 230NW781.

Contestant has burden of proving undue influence, such burden does not shift, and must be established by clear and convincing evidence. 181M217, 232NW1. See Dun. Dig. 10240.

Evidence held to sustain finding that doctor obtained will by undue influence. Lande's Estate, 183M419, 236 NW705. See Dun. Dig 10243(11).

Finding that testator was incapable of making a will by reason of illness and heavy doses of morphine, held sustained. Lande's Estate, 183M419, 236NW705. See Dun. Dig. 10212(89).

Evidence held to sustain finding of testamentary capacity. Jensen v. M., 185M284, 240NW656. See Dun. Dig. 10212.

Finding of testamentary capacity held justified. Conway's Estate, 185M376, 241NW42. See Dun. Dig. 10212.

Finding that there was no undue influence upon testatrix, held sustained by evidence. Conway's Estate, 185M376, 241NW42. See Dun. Dig. 10243.

One of foreign birth may make will written in English if he understand its contents though he cannot read or understand English to any considerable extent. In Re Eklund's Estate, 186M129, 242NW467. See Dun. Dig. 10206b.

3. Construction of will.

Will held not to create a gift in trust for perpetual care of cemetery lot under §1016. 174M568, 219NW919.

When will gives an absolute title in fee and by later clauses expressed in terms of wish or direction makes inconsistent or repugnant dispositions, it will be held that the title in fee is in the devisee first named and that the other provisions are void. 176M445, 223NW783.

Will providing for equal distribution except that certain beneficiaries were to receive a certain amount more than "one-sixth thereof" construed. 177M266, 225NW17.

Weight of inferences and findings of fact by court in a proceeding involving construction of ambiguous will. 177M311, 225NW156.

Disposition in case of death of devisee before will was made. Kittson's Estate, 177M469, 225NW439.

Leader of orchestra in department store, held not entitled to benefit of bequest to employees. 178M572, 227NW898.

Will held to contemplate monthly payments to widow out of the principal of the estate where income of trust estate proved insufficient. Wheaton v. W., 182M212, 234 NW14. See Dun. Dig. 9888a, 10257.

Will interpreted to subject the proceeds of testator's homestead to the payment of debts. Chase's Estate, 182M271, 234NW294. See Dun. Dig. 10257.

In construing wills, the intent of the testator is to be ascertained from the will as a whole. Turle's Estate, 185M490, 241NW570. See Dun. Dig. 10259.

In construing a will, the words "and" and "or" may be substituted for one another to carry out the obvious intention. Turle's Estate, 185M490, 241NW570. See Dun. Dig. 10264a.

Under Mason's U. S. C. A., Title 38, §514, insured veteran's will must be construed and given effect according to law of state where he resided at his death. Sponberg v. L., 187M650, 247NW679. See Dun. Dig. 10301t.

Courts favor construing wills so as to avoid partial intestacy. Id. See Dun. Dig. 10259a.

Intention of testator should prevail, notwithstanding rules of construction. Id. See Dun. Dig. 10257.

Where a bequest is accompanied by a direction that inheritance tax be paid out of residue, it is in effect a bequest of specified sum, plus such an amount that, when the tax is computed on aggregate and deducted therefrom, specified legacy remains. Bowlin, 189M196, 248NW 741. See Dun. Dig. 10274.

Main object in construing a will is to ascertain intention of testator. Jacobson v. M., 191M143, 253NW365. See Dun. Dig. 10257.

Not only language used in particular part of will, but whole instrument and situation of testator at time will was made should be considered in construction. Id. See Dun. Dig. 10259.

Doctrine of cy pres involves notion of approximating intention of donor when his exact intention is not to be carried out for some reason. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 9893.

The cardinal rule of construction, to which all others must bend, is that intention of the testator, as expressed in language used in will, shall prevail, if it is not inconsistent with rules of law. Ordean's Will, 195M120, 261 NW706. See Dun. Dig. 10257.

Intention is to be gathered from everything contained within four corners of will, read in light of surrounding circumstances. Id.

When language is free from doubt no room is left for construction or interpretation. Id.

4. Persons taking and their respective shares.

Levings v. F., 192M143, 255NW828; note under §8043.

A bequest to wife with directions to divide it between the children as the widow should see fit and proper permitted her to give all of it to one of two children. Turle's Estate, 185M490, 241NW570. See Dun. Dig. 10274.

Where a will gave a life estate with right to all income and unrestricted power of disposition of the principal, there was a complete merger of the legal and equitable interest in the life estate and, hence, no trust. Julian v. N., 192M136, 255NW622. See Dun. Dig. 10291.

Under a will giving a life estate with right to all income and unrestricted power of disposition of the principal, remainderman held entitled to an admitted cash balance which was part of the property subject to the life estate and remained undisposed of at the life tenant's death. Id. See Dun. Dig. 3171.

Language of will held to mean that wife took entire estate and that later clauses thereof were directory only and not intended imperatively to control or limit wife's title. Hasey's Estate, 192M582, 257NW498. See Dun. Dig. 10281c.

Where a testator gives an absolute title, without limitation and by later clauses in his will expressed in terms of wish or direction makes inconsistent dispositions, title passes to beneficiary first named, and subsequent provisions are inoperative. Id.

Although will mentions "the First Lutheran Church of Battle Lake," whereas true name of church is "the First Evangelical Lutheran Church at Battle Lake, Minnesota," trust is not invalid, since it appears from evidence that testator intended this church and that it was commonly known by former and not by latter name. Lundquist v. F., 193M474, 259NW9. See Dun. Dig. 10262.

Distinction between specific, demonstrative and general legacies. 15MinnLawRev728.

Time at which class described as heirs is to be ascertained. 18MinnLawRev486.

4½. Vesting of interests.

Testamentary trust giving income to daughter for life and upon her death the corpus to be distributed in equal shares to her offspring, each to receive one-half thereof upon attaining age of 25 years and other half upon attaining age of 35 years and in event of no offspring property to go to others, held to vest trust fund in daughter's offspring upon her death, and, in event of none living at her death, fund to go to others. Jacobson v. M., 191M143, 253NW365. See Dun. Dig. 10274, 10278, 10297.

5. Contract to make will.

Where plaintiff's father and mother made mutual and reciprocal wills devising to survivor a life estate with remainder over to plaintiff and others, plaintiff is entitled to specific performance regardless of fact that after death of mother, father remarried and changed his will. Mosloski v. G., 191M170, 253NW378. See Dun. Dig. 10207a.

Evidence held to sustain finding that deceased promised plaintiff child certain land for services so that child was entitled to specific performance after father's death. Id. See Dun. Dig. 10207.

Child held not estopped to sue for specific performance under reciprocal mutual wills of parents by having signed a petition for administration of his father's estate or by taking a lease on land in question. Id. See Dun. Dig. 3217, 8772.

Conversation before marriage between a testator and members of his family wherein the former announced his mere intention or plans concerning the disposition of his property, properly held not to impose contractual obligation upon any one. Hanefeld v. F., 191M547, 254 NW821. See Dun. Dig. 10207.

If there was a contract between husband and wife whereby latter was bound to make agreed testamentary disposition of property left her by her husband, his will held of such nature that, coupled with other evidence of testator's intention, it was properly held that agreement between husband and wife had been abrogated, and that disposition made of his property by husband's will was intended to be absolute. Id.

While in cases involving specific performance of contract to will real property, contract must be shown by more than a mere preponderance of evidence, such is not true as to a contract to pay for services rendered at

death. Empenger v. E., 194M219, 259NW795. See Dun. Dig. 10207.

In proceeding to recover for services rendered deceased by claimant, his daughter-in-law, pursuant to an alleged contract to pay her at his death, court erred in refusing to instruct jury that services of wife with respect to family household belong to husband; that he may waive his right to compensation therefor from another party and consent that wife receive same, provided there is no question of set-off or counterclaim against husband, but where such appears it must be shown that one to be charged with payment of compensation acquiesced in payment to wife. Id. See Dun. Dig. 4261.

Evidence held to sustain finding that plaintiff had not promised to make a will or execute any other instrument that property she should receive from defendants under settlement was to go back to them or their heirs upon plaintiff's death. Schultz v. B., 195M301, 262NW877. See Dun. Dig. 10243k.

Contracts to devise. 19MinnLawRev95.

Validity of oral agreement to execute mutual wills bequeathing personalty. 20MinnLawRev238.

8738. Wills made out of the state.

Where will bears the genuine signature of the testator and of the witnesses and the attestation clause is full and complete it is presumed to have been duly executed, and the burden is on contestants to prove the contrary. 174M13, 218NW447.

Where a testator executes a will in another state while a resident therein and dies a resident of this state, it is valid here if executed as required by the laws of either state. 174M13, 218NW447.

8741. Written wills, how revoked or canceled.

Where circumstances raise inference that testator meant revocation of old will to depend on efficacy of the new disposition intended to be substituted, such will be the effect of the legal tansaction, and if new will is inoperative and fails because of formal defects, the original will remains in force. Nelson's Estate, 183M 295, 236NW459. See Dun. Dig. 10227.

Revocation rests upon intent and is an act of the mind which must be demonstrated by some outward and visible sign of revocation. Nelson's Estate, 183M 295, 236NW459. See Dun. Dig. 10227.

Evidence held insufficient to invoke doctrine of "dependent relative revocation." Nelson's Estate, 183M 295, 236NW459. See Dun. Dig. 10227.

Revocation of will held to have resulted from testator's own acts. Nelson's Estate, 183M295, 236NW459. See Dun. Dig. 10226.

Evidence held sufficient to prove revocation of a will. Nelson's Estate, 183M295, 236NW459. See Dun. Dig. 10226.

Statutory presumption of revocation of a will because of change in condition or circumstances is conclusive, and no evidence admissible to rebut it. O'Connor, 191M 34, 253NW18. See Dun. Dig. 10225b, 10233.

Where after making a will testator disposes of practically all of his property, leaving nothing of substance upon which will can operate, either as to general plan or any substantial detail, there is revocation as matter of law. Id. See Dun. Dig. 10234.

Proof of a second will was some evidence of destruction of prior wills. Mosloski v. G., 191M170, 253NW378. See Dun. Dig. 10230.

While a mutual will may be revoked as far as concerns proceedings in probate court, a beneficiary of a compact after survivor has accepted provisions of spouse's will and then died, may obtain specific performance of devise to him. Id. See Dun. Dig. 10207.

Wills are revocable, but contracts to make wills are irrevocable without consent of the parties. Jannetta v. J., 285NW619. See Dun. Dig. 10226a.

8742. Will revoked by marriage or divorce.

Where plaintiff's father and mother made mutual and reciprocal wills devising to survivor a life estate with remainder over to plaintiff and others, plaintiff is entitled to specific performance regardless of fact that after death of mother, father remarried and changed his will. Mosloski v. G., 191M170, 253NW378. See Dun. Dig. 10207a.

The old common-law rule that subsequent marriage revoked a woman's will did not apply where will was made pursuant to an antenuptial agreement giving woman full power to dispose of her own property. Kelly, 191M280, 254NW437. See Dun. Dig. 10229.

By this statute all wills are revoked by marriage regardless of existence of an antenuptial agreement. Kelly, 191M280, 254NW437. See Dun. Dig. 10229.

8743. Duty of custodian of will.

Correction—"138M279" should be "133M279."

8745. Child not provided for by will.

When the name of an adopted child is omitted from the will of the parent the presumption is that the omission was not intentional and was occasioned by accident or mistake. 175M193, 220NW601.

Finding that omission was intentional, sustained. 177 M169, 225NW109.

Communications between testator and attorney who drew and attested the will were properly received in evidence and were not privileged. 177M169, 225NW109.

Admissibility of extrinsic evidence to prove intentional omission of testator's child from will. 15MinnLawRev 255.

8746. From what estate such share taken.

Where sole and residuary legatee predeceased testator, and inmate of the Minnesota Soldier's Home, lapsed legacy should be disposed of in accordance with §4366. Op. Atty. Gen. (394e), Jan. 24, 1935.

8747. Devisee or legatee dying before testator.

Disposition in case of death of devisee before will was made. Kittson's Estate, 177M469, 225NW439.

It may be assumed that testator knew whether objects of his bounty were living or dead when the will was made and had in mind this situation. Kittson's Estate, 177M469, 225NW439.

Widow, under bequest of specific article "in addition to the amount now allowed her by law" held to take what she would have received in case of intestacy, with specific article, and her share of lapsed bequest falling into estate by the death of one of the children without issue before death of testator. 32M513, 21NW 725.

8751. Who may petition for.

Probate court acquired jurisdiction even though the person making petition was not a person interested in the estate, the petition upon its face stating that she was. 174M28, 218NW235.

8753. Filing petition—Notice; etc.

The proponent being required to call the subscribing witnesses is not concluded by their testimony, and may prove due execution of the will by any available evidence. 174M13, 218NW447.

Where a subscribing witness impeaches the recitals of the attestation clause subscribed by him, the proponent has the right to cross-examine him. 174M13, 218NW447.

Where the testator himself produces the will and asks the witnesses to sign as such, it may be presumed that he has signed it, although he does not so state and the witnesses do not see his signature. 174M13, 218NW 447.

In action by son for specific performance of mutual reciprocal wills executed by father and mother, sufficient foundation held laid for reception in evidence of carbon copy of father's mutual will. Mosloski v. G., 191M170, 253NW378. See Dun. Dig. 3279.

8755. Objections, when filed.

Petition and affidavit presented to the probate court, asking for the vacation of an order admitting a will to probate, liberally construed, prima facie showed sufficient grounds for her objections to the will. In re Butler's Estate, 183M591, 237NW592. See Dun. Dig. 7784, 10255.

8756. Proof required in case of contest.

Through a misapprehension of the applicable law, the right of cross-examination was unduly restricted the testimony of subscribing witnesses was deemed controlling and other evidence was not given due consideration. 174M13, 218NW447.

Direct proof of undue influence procuring the execution of a will is not required. 176M360, 223NW677.

The medical certificate of death provided for by statute is admissible in evidence to prove prima facie, the immediate cause as well as the fact of death. 176M360, 223NW677.

Without any foundation laid, attesting witnesses are competent to give in evidence their opinion as to the testamentary capacity of the testator. 176M360, 223NW 677.

Proponents must establish due execution of will, and contestant must prove undue influence. 180M256, 230NW 781.

On the issue of testamentary competency, it is proper to show the relationship of the testator and his beneficiary as tending to show that disposition was natural. Jensen v. M., 185M284, 240NW656. See Dun. Dig. 10210.

Where physician witnessed will but testified in contest that testator was lacking in testamentary capacity, it was competent for the beneficiary supporting will to introduce in evidence a letter written by the physician which stated that the testator was of sound mind. Jensen v. M., 185M284, 240NW656. See Dun. Dig. 10211, 10246d.

The testimony of an attesting witness to a will impeaching the testamentary capacity of the testator is subject to close scrutiny, and should be viewed and weighed with caution. Jensen v. M., 185M284, 240NW 656. See Dun. Dig. 10246d.

In probate of a will, the law requires the calling of the attesting witnesses if within the state. Jensen v. M., 185M284, 240NW656.

Burden is upon contestant of will to show undue influence. Conway's Estate, 185M376, 241NW42. See Dun. Dig. 10240.

Evidence held so conclusive that will presented for probate was made and published by deceased; that she was competent; and that no undue influence had induced its making, that court rightly directed jury to so find. Schuch v. A., 190M504, 252NW335. See Dun. Dig. 10212, 10221, 10243.

8758. When subsequent will is presented.

Where a later will is on file in the probate court of another county the earlier will cannot be admitted to probate until it has been determined which is the last will. 179M538, 229NW875.

8763. Ancillary administration.

Minnesota probate court had complete jurisdiction over property of estate of a nonresident in the hands of ancillary administrator appointed by it and could dispose of the same in accordance with the provisions of

Minnesota statutes. Fults' Estate, 177M334, 225NW 152.

A widow of a nonresident, having received her full allowance out of personal property of decedent's estate in domiciliary state as provided by its statutes, is not entitled in ancillary proceedings here to receive a like allowance under laws of this state. Zimmerman's Estate, 195M38, 261NW467. See Dun. Dig. 2732.

It was proper for ancillary Minnesota executrix to show and for court to find, reasonable value of attorney's services in defending an action brought by one claiming to be entitled to proceeds of two insurance policies, payable to decedent's estate: widow having selected proceeds of policies as personal property out of which she desired her allowance to be paid. Id. See Dun. Dig. 3644c.

8768. When granted.

Erroneous order refusing to appoint executor will not be reversed where it appears that widow could immediately petition for removal for causes shown by litigation. Betts' Estate, 185M627, 240NW904. See Dun. Dig. 3564(94).

That executor named is a debtor or creditor of testator, or that he has interests hostile to others, are not grounds for refusing to appoint him. Betts' Estate, 185 M627, 240NW904. See Dun. Dig. 3564(97).

Section is mandatory that immediately upon the allowance of a will the executor named therein be appointed, if legally competent and willing to accept and give the required bond. Betts' Estate, 185M627, 240NW 904. See Dun. Dig. 3564.

Order of probate court appointing executor cannot be attacked collaterally, remedy being by appeal from such order. Lehman v. N., 191M211, 253NW663. See Dun. Dig. 3563.

Effect of merger or consolidation on right of corporation to qualify as executor. 15MinnLawRev816.

8769. Failure of executors.

Right of testator to appoint successive executors. 19 MinnLawRev709.

8772. Persons entitled to letters of administration.

When a naturalized citizen dies within this state leaving property therein, it is not necessary to serve a notice of the time and place of hearing upon the consular representative of the country of his birth. 174M 28, 218NW235.

Heir already having assigned her share of estate to one in possession and enjoyment of it, a mere creditor of the heir has no standing to petition for administration. 176M223, 223NW133.

Validity of marriage between survivor and deceased may be drawn in question in probate court. O'Connor, 191M34, 253NW18. See Dun. Dig. 7770.

Order appointing an administrator is not a final judgment or determination of who are heirs of decedent or entitled to receive estate after administration is completed so as to bar review of that question on appeal from final decree. Firle, 191M233, 253NW889. See Dun. Dig. 389, 398.

Where woman dies without issue and leaving a surviving spouse and will devising most of her property to brothers and sisters, and spouse renounces will, surviving spouse is entitled to be appointed administrator with will annexed or to select appointee, brothers and sisters not being "next of kin." Long v. C., 194M238, 260NW314. See Dun. Dig. 3561d.

8774. Hearing—Contest, etc.

Order appointing administrator, not appealed from, becomes final except in a direct attack thereon on ground of fraud or mistake. Firle, 191M233, 253NW889. See Dun. Dig. 3563.

8776. Administrator with will annexed.

Where woman dies without issue and leaving a surviving spouse and will devising most of her property to brothers and sisters, and spouse renounces will, surviving spouse is entitled to be appointed administrator with will annexed or to select appointee, brothers and sisters not being "next of kin." Long v. C., 194M238, 260NW 314. See Dun. Dig. 3561d.

8777. Administrator de bonis non.

Probate court, by virtue of broad grant of power bestowed by the constitution and in conformity with statutory enactment directing its exercise, may appoint an administrator d. b. n. with or without notice, when a proper petition, made by one authorized by statute so to do, is presented to it, provided authority of prior representative has been extinguished and there remains property theretofore unadministered. Gilroy's Estate, 193M349, 258NW584. See Dun. Dig. 1641, 3583, 7783e.

8778. Special administrator.

Cause of action under Federal Employers' Liability Act is transitory and probate court of this state has jurisdiction to appoint special administrator to bring suit here, even though next of kin reside in another state and injury and death of employee occurred there. Peterson v. C., 187M228, 244NW823. See Dun. Dig. 3560c.

8786. General powers and duties.

Judgment in state court in action between administrator and heir held conclusive in subsequent action in federal courts involving title to the same real estate. Lamoreaux v. Lamoreaux, (USCCA8), 26F(2d)47.

Judgment in an action brought by an administrator within scope of his statutory power is binding on the heirs. Rule applied where administrator sued one in possession of land for an accounting of rents and profits and the defendant by cross-bill had a deed from himself to the deceased declared a mortgage. 171M423, 214NW267.

Where administrator forecloses mortgage and buys at the sale in his own name as administrator, and action to set aside the foreclosure and sale on the ground that no default had occurred is properly brought in the district court and against the administrator as sole defendant. 171M469, 214NW472.

The estate of a deceased person is not an entity. The personal representatives are officers of the court, not agents of the estate, and have no principal whom they can bind. They cannot set off claims in their favor against a claim which a creditor of the decedent has filed in the probate court. 172M68, 214NW895.

In the absence of special circumstances the representative of the estate of a deceased person is the only one who may maintain an action to recover a debt owing the estate, as, for instance, collusion between the representative and the debtor and refusal of the representative to act. 172M274, 215NW176.

Where guardian of insane person died without having accounted for money, administrator of his estate must account for the funds. Donlin v. W., 176M234, 223NW98.

An heir has no right of action to annul an express trust of which deceased was settler, it not appearing that the heir is executor or devisee. 176M274, 223NW 294.

Supreme Court refused to dismiss appeal on stipulation of two out of three executors. 178M509, 227NW660.

The probate court has jurisdiction to order coadministrators to hold and distribute estate funds jointly. Drew's Estate, 183M374, 236NW701. See Dun. Dig. 7771, 7778.

Evidence held to justify finding that sale of shares of stock by executors to part of their number was valid and in good faith. Davis v. S., 184M422, 239NW150. See Dun. Dig. 3570.

An executor has no general or implied authority to invest or loan money of estate; and if it is desirable to do either, it should be done only under authority of probate court; otherwise he is directly responsible for money invested or loaned. Marchildon v. M., 188M38, 246NW676. See Dun. Dig. 3571.

An executor is a fiduciary and as such is required to exercise highest degree of good faith in discharge of his official duties. Janke's Estate, 193M201, 258NW311. See Dun. Dig. 3565.

8787. Liability—Collection of debts, etc.

Administrator was properly directed to collect money deposited in bank before appointment, leaving question of negligence with respect to collection for determination after administration is completed. 180M97, 230NW 272.

Right of set-off or application of securities held for payment of a depositor's indebtedness to a bank exists against administrator of debtor's estate. Browning v. E., 189M375, 249NW573. See Dun. Dig. 3670.

A debtor to estate, who has a set-off against his indebtedness, may interpose such set-off in a suit by administrator against him to recover on his indebtedness although he has not filed his set-off as a claim in probate court. Id.

Bank after death of debtor to it could set-off indebtedness of decedent against claim of administrator for deposits pledged as collateral, though notes were not due. Id.

Executor who was also managing officer in bank in which deceased during his lifetime had deposited his funds was liable for negligence in failing to withdraw funds from bank prior to its closing. Janke's Estate, 193M201, 258NW311. See Dun. Dig. 3576.

8788. Allowances to executors; etc.

The fact that taxes and repairs were paid by executor for surviving husband could not have prejudiced heirs. Kaufenberg's Estate, 182M624, 235NW379. See Dun. Dig. 3644a.

An executor who misappropriates funds forfeits right to compensation. Marchildon v. M., 188M38, 246NW676. See Dun. Dig. 3646.

A guardian who mismanaged estate of his incompetent ward and misapplied proceeds thereof was properly denied compensation for his services. Galloway v. H., 189M66, 248NW329. See Dun. Dig. 4122.

8789. Representative may resign.

Order accepting resignation, held void where no final account was presented and allowed. Southern Surety Co. v. T., 179M40, 228NW326.

8790. Removal.

An executor who has remained wholly inactive for three years and has done nothing to dispose of the real estate, pay the debts, or care for the real estate, may be removed. 175M619, 221NW648.

A coadministrator who fails to obey a valid order of the probate court may be removed. Drew's Estate, 183 M374, 236NW701. See Dun. Dig. 3666(13), (18).

Erroneous order refusing to appoint executor will not be reversed where it appears that widow could immediately petition for removal for causes shown by litigation. Betts' Estate, 185M627, 240NW904. See Dun. Dig. 3666.

An executor may be removed for causes shown to exist through the litigation already had. This statute is permissive. Betts' Estate, 185M627, 240NW904. See Dun. Dig. 3666.

On appeal to district court from order of probate court refusing to appoint legally competent person executor, it is improper for district court to affirm on ground that litigation already had disclosed that there may be ground for his removal after appointed. In re Betts' Estate, 185M627, 243NW58. See Dun. Dig. 7795.

Widow upon whose petition special administrator was appointed to maintain action for death under Federal Employers' Liability Act cannot have such administrator removed except for good cause, there being minor children interested in proceeds. Peterson v. C., 187M 228, 244NW823. See Dun. Dig. 3666.

Evidence warranted removal of an executor of an estate of a deceased person for acts of omission and commission. Matteson v. M., 187M291, 245NW382. See Dun. Dig. 3666.

An order of the probate court denying a motion to revoke a prior order appointing an administrator is not appealable. Firle, 191M233, 253NW889. See Dun. Dig. 7786.

8791. Accounting by administrator; etc.

Where, after death of ward, probate court has finally settled guardian's account and determined amount of money remaining in hands of guardian, and has ordered such money to be paid to representative of ward's estate, and guardian dies before such payment is or can be made, it then devolves upon administrator of guardian's estate to complete settlement of guardian's account and make such payment out of fund in hands of guardian at time of his death. Winjum v. J., 191M 294, 253NW881. See Dun. Dig. 4115.

8792. Foreign executor; etc.

Curative act: Act Apr. 5, 1939, c. 147, §5. See Appendix 5, §21, post.

8793. Certain foreclosures legalized.

Saved from repeal. See §8992-196, post.

8794 to 8800, 8800-1, 8801 to 8832.

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8794, see 8992-87.
8795, see 8992-88.
8796, see 8992-94.
8797, see 8992-94.
8798, see 8992-91.
8799, see 8992-92.
8800, see §8992-93.
8801, see 8992-93.
8802, see 8992-95.
8803, see 8992-95.
8804, see 8992-191.
8805, see 8992-191.
8806, see 8992-96.
8807, see 8992-97.
8808, see 8992-97.
8809, see 8992-100.
8810, see 8992-100.
8811, see 8992-101.
8812, see 8992-101.
8813, see 8992-101.
8814, see 8992-103.
8815, see 8992-107.
8816, see 8992-104.
8817, see 8992-105.
8818, see 8992-106.
8819, see 8992-106.
8820, see 8992-102.
8822, see 8992-113.
8823, see 8992-113.
8824, see 8992-113.
8825, see 8992-146.
8827, see 8992-108, 8992-109.
8828, see 8992-111.
8831, see 8992-110.
8832, see 8992-112.

Annotations under §8796.

Minnesota probate court had complete jurisdiction over property of estate of a nonresident in the hands of an ancillary administrator appointed by it and could dispose of the same in accordance with the provisions of Minnesota Statutes. Fults' Estate, 177M334, 225NW 152.

Annotations under §8797.

District court has jurisdiction to determine title to homestead pending proceeding in probate court to administer estate of decedent. 171M182, 213NW736.

Annotations under §8798.

From the distributive share of money due a legatee from the estate of a decedent, the debt of the legatee may be deducted, even though such debt is barred by the statute of limitations. Lindmeyer's Estate, 182M 607, 235NW377. See Dun. Dig. 3661a, 5594.

Annotations under §8799.

Trial court had absolute power to vacate prior order and to make contrary findings where this statute had been overlooked, even though moving party produced no newly discovered evidence. Lehman v. N., 191M211, 253NW663. See Dun. Dig. 15, 16, 5121a, 6312.

Authorizes executor to complete mortgage foreclosure proceedings begun by mortgagee. Id.

Annotations under §8800.

See note under §8799.

Annotations under §8809.

Claim for damages against deceased director of National Bank, under Mason's U. S. Code, tit. 12, §93, may be subject of suit in federal court without first presenting same to state probate court. 36F(2d)367.

Annotations under §8811.

United Fruit Co. v. U. S., (USCCA5), 33F(2d)665.
Orth v. Mehlhouse, (USDC-Minn), 36F(2d)367.
Simons, 192M43, 255NW241; note under §8815.
State v. Fosseen, 192M108, 255NW816; note under §8812.

Court properly allowed claim to be filed after six months period. 174M102, 218NW456.

Failure of trustee for bondholders to file a claim in probate court against estate of a deceased cosurety within time specified by statute does not relieve other surety from liability. First Minneapolis Trust Co. v. N., 192M 307, 256NW240. See Dun. Dig. 9104.

Annotations under §8812.

Simons, 192M43, 255NW241; note under §8815.

1. In general.

Receiver of national bank, having no knowledge of the death of a shareholder, held not barred by this section, though he failed to file the claim before the closing of the estate. Gilbertson v. M., (USCCA8), 32 F(2d)665.

Neither the probate court nor the district court on appeal has jurisdiction over a claim which a creditor of a decedent has against the personal representative, or one which the representative has against the creditor, even though the subject-matter of the claim sprang from transactions between the creditor and the personal representative while they were carrying on the business of the decedent. 172M68, 214NW895.

Divorced wife of deceased who had installments falling due her under an agreement with deceased after expiration of time for filing claims, could file supplemental statements without notice to personal representatives. 172M231, 215NW223.

A claim upon a promissory note held as collateral is a claim on contract for the recovery of money and must be filed, but where judgment is rendered against an executor or administrator in his official capacity in a state or federal court and is presented to probate court while administration is pending and before distribution by final decree, it must be allowed as a claim against the estate. 175M524, 222NW68.

Under the authority of Coulter v. Goulding, 98M68, 107NW823, 8AnnCas778, evidence was properly received showing the ability of deceased to pay the claim, the payment of which was in dispute. His business habits relative to paying his bills might also have been shown. 178M90, 225NW918.

Finding as to amount due daughter sustained. 180M 122, 230NW273.

Payment after expiration of limitations, retention of written statement showing such payment and letters written by debtor, held to create new and binding agreement, which was properly filed in probate court. Hartnagel v. A., 183M31, 235NW521. See Dun. Dig. 5624 (46), 5647.

A creditor holding securities for his claim has the option, after the debtor's death, to enforce his securities or to file his claim in probate court as a general creditor of the estate. Browning v. E., 189M375, 249NW573. See Dun. Dig. 3593o.

A secured creditor, who desires to share with unsecured creditors, must file his claim as a general creditor. Id.

Compensation payable weekly to minor dependants of an employee is absolute, direct, and primary obligation of employer and, where employer dies after award is made, it is barred if not presented to and allowed by probate court in administration of his estate, so that no action can be maintained against distributees to recover to extent of assets received. Stitz v. R., 192M297, 256NW 173. See Dun. Dig. 3592a.

In proceeding to recover for services rendered deceased by claimant, his daughter-in-law, pursuant to an alleged contract to pay her at his death, court erred in refusing to instruct jury that services of wife with respect to family household belong to husband; that he may waive his right to compensation therefor from another party and consent that wife receive same, provided there is no question of set-off or counterclaim against husband, but where such appears it must be shown that one to be charged with payment of compensation acquiesced in payment to wife. Empenger v. E., 194M219, 259NW795. See Dun. Dig. 4261.

While in cases involving specific performance of contract to will real property, contract must be shown by more than a mere preponderance of evidence, such is not true as to a contract to pay for services rendered at death. Id. See Dun. Dig. 1737.

2. Contingent claims.

Claim against deceased director of National bank under Mason's U. S. Code, tit. 12, §93, held not contingent within this section. Orth v. M., (USDC-Minn), 36 F(2d)367.

A claim, on an unconditional guaranty of the payment of principal and interest on a bond at maturity is not a conditional claim against the estate of a deceased guarantor. It is a claim certain in amount and having a fixed maturity. As to bonds not due at the time of the death of the guarantor, it is a claim "not due," and, as such, must be presented to probate court for allowance against estate of guarantor within time allowed for

filing of claims or within one year and six months' period provided by statute. State v. Fosseen, 192M108, 255 NW816. See Dun. Dig. 3593, 3593a, 3593b.

Annotations under §8813.

172M68, 214NW895, note under §8812.

Annotations under §8814.

From the distributive share of money due a legatee from the estate of a decedent, the debt of the legatee may be deducted, even though such debt is barred by the statute of limitations. Lindmeyer's Estate, 182M 607, 235NW377. See Dun. Dig. 3661a, 5594.

Executors could not waive the bar of the statutes of limitations as to a debt of decedent as regards computation of succession tax. In re Walker's Estate, 184M 164, 238NW58. See Dun. Dig. 35931(72).

Annotations under §8815.

A claim upon a promissory note held as collateral is a claim upon contract for the recovery of money and must be filed, but where judgment is rendered against an executor or administrator in his official capacity in a state or federal court and is presented to probate court while administration is pending and before distribution by final decree, it must be allowed as a claim against the estate. 175M524, 222NW68.

Statute does not authorize a probate court to allow a claim against a decedent's estate after expiration of five years from his death, where such claim during said five years remains contingent, but becomes absolute prior to distribution of estate. Simons, 192M43, 255NW241. See Dun. Dig. 3593.

Annotations under §8816.

Settlement of claim in probate court having been ratified by sole heir, the authority of the attorney acting for the heir cannot be questioned by the administratrix. Parcker's Estate, 178M417, 227NW426.

Claims against estates of deceased persons filed and allowed in the probate court have the status of judgments. Walker's Estate v. M., 183M325 236NW485. See Dun. Dig. 4963.

Annotations under §8820.

Stitz v. R., 192M297, 256NW173; note under §8812.

Annotations under §8822.

When does interest begin to run on legacies. 16Minn LawRev226.

Annotations under §8826.

A minor child whose parents are dead may be adopted without the consent of the legal guardian of the person and estate of said child. Op. Atty. Gen., Aug. 21, 1930.

Annotations under §8827.

This section had no applications to claims, in the absence of a showing that the estate is insolvent. 172M 231, 215NW223.

Wisconsin statute giving right of action for tort against estate of deceased wrongdoer may be enforced in Minnesota. Chubbock v. Holloway, 182M225, 234NW 314. See Dun. Dig. 1530.

It was proper for ancillary Minnesota executrix to show and for court to find, reasonable value of attorney's services in defending an action brought by one claiming to be entitled to proceeds of two insurance policies, payable to decedent's estate; widow having selected proceeds of policies as personal property out of which she desired her allowance to be paid. Zimmerman's Estate, 195M38, 261NW467. See Dun. Dig. 3644c.

Annotations under §8828.

Op. Atty. Gen., Aug. 21, 1930; note under §8826.

Annotations under §8829.

Op. Atty. Gen., Aug. 21, 1930; note under §8826.

8833. Claim for maintenance of patient in state institutions.

Saved from repeal. See §8992-196, post.

Section 8976 was not repealed by §8833 and state does not have a claim against estate of deceased person who leaves children or spouse. Op. Atty. Gen. (349h), Apr. 3, 1934.

DISPOSAL OF REALTY BY REPRESENTATIVES

8834 to 8872, 8872–1, 8873 to 8927, 8927–1, 8927–2, 8928 to 8975.

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8834, see 8992-146.
8835, see 8992-146.
8836, see 8992-147.
8837, see 8992-147.
8838, see 8992-148.
8839, see 8992-148.
8841, see 8992-148, 8992-149.
8842, see 8992-152.
8843, see 8992-150.
8844, see 8992-151.
8845, see 8992-147.
8847, see 8992-90.
8849, see 8992-153.
8850, see 8992-153.
8851, see 8992-154.
8853, see 8992-156.
8854, see 8992-156.
8855, see 8992-156.
8856, see 8992-155.
8857, see 8992-162.
8858, see 8992-162.
8859, see 8992-163.
8861 to 8871, see 8992-158.
8872, see 8992-157.
8873, see 8992-114.
8874, see 8992-116.
8875, see 8992-116.
8876, see 8992-119.
8877, see 8992-114.
8879, see 8992-115.
8880, see 8992-115, 8992-117.
8886, see 8992-124.
8887, see 8992-124.
8888, see 8992-126.
8889, see 8992-126.
8891, see 8992-171.
8892, see 8992-171.
8895, see 8992-127.
8896, see 8992-128.
8897, see 8992-127.
8898, see 8992-128.
8907, see 8992-82.
8909, see 8992-83.
8910, see 8992-152.
8911, see 8992-85.
8912, see 8992-84.
8913, see 8992-85, 8992-152.
8914, see 8992-86.
8916, see 8992-129, 8992-130.
8917, see 8992-130.
8918, see 8992-130.
8919, see 8992-130.
8920, see 8992-129, 8992-135.
8922, see 8992-142.
8923, see 8992-129.
8924, see 8992-129, 8992-130.
8925, see 8992-133.
8926, see 8992-133, 8992-134.
8927, see 8992-132.
8927-1, see 8992-136.
8927-2, see 8992-136.
8928, see 8992-141.
8929, see 8992-143.
8931, see 8992-129, 8992-130.
8933, see 8992-129, 8992-135.
8935, see 8992-135.
8937 to 8943, see 8992-135.
8944, see 8992-67.
8946, see 8992-135.
8947, see 8992-135.
8948, see 8992-137, 8992-138, 8992-139.
8949, see 8992-137, 8992-138, 8992-139.
8950, see 8992-139.
8951, see 8992-141.
8952, see 8992-141.
8954, see 8992-173.
8955, see 8992-173.
8956, see 8992-174.
8957, see 8992-174.
8958, see 8992-175.
8959, see 8992-175.
8960, see 8992-176, 8992-179, 8992-183, 8992-184.
8961, see 8992-176.
8962, see 8992-176.
8963, see 8992-174.
8964, see 8992-178.
8966, see 8992-177.
8967, see 8992-177.
8968, see 8992-177.
8969, see 8992-181.
8970, see 8992-175.
8971, see 8992-182.
8973, see 8992-180.
8974, see 8992-180.
8975, see 8992-175.

Annotations under §8834.

Christianson v. O., 191M166, 253NW661; note under §8690, note 6.

This section as amended is confined to a sale as distinguished from a mortgage within the power given by §8201. 172M504, 215NW857.

Annotations under §8835.

172M504, 215NW857; note under §8834.

Annotations under §8836.

172M504, 215NW857; note under §8834.

Probate court has no authority to license representative to mortgage homestead for any other purpose than to pay off existing encumbrance. Op. Atty. Gen., June 22, 1933.

Annotations under §8851.

Plaintiff, who bought and paid earnest money, could not recover it unless he furnished the bond or the mortgage was discharged. Breitman v. T., 182M98, 233 NW830. See Dun. Dig. 3632(19).

Annotations under §8873.

Executor did not prejudice the rights of an heir in paying funeral expense of surviving husband, as the heir would have had to pay them in any event. Kaufenberg's Estate, 182M624, 235NW379. See Dun. Dig. 3644a.

Surviving husband held entitled to ask for sufficient moneys out of estate to pay taxes and make repairs. Kaufenberg's Estate, 182M624, 235NW379. See Dun. Dig. 3644a.

Duty of an executor is to settle estate and make distribution without delay. Marchildon v. M., 188M38, 246 NW676. See Dun. Dig. 3641b.

Decision on hearing of intermediate account of administrator held to constitute approval of act of bank in applying deposit of decedent to payment of notes held by it. Browning v. E., 189M375, 249NW573. See Dun. Dig. 3649a.

Annotations under §8874.

It was not error to credit executor for money spent in maintenance of family of decedent and schooling of minors. Marchildon v. M., 188M38, 246NW676. See Dun. Dig. 3644a, 3658.

Annotations under §8879.

Written agreement between all heirs as to distribution of estate is valid and binding and is not nullified by a decree of distribution entered by the court which had no knowledge of the agreement. 174M192, 218NW551.

Order of probate court held final order settling account and determining amount due from personal representative, as regarded amendment and correction. Simon, 187M399, 246NW31. See Dun. Dig. 7784.

Burns v. N., 285NW885; note under §8992-124.

4. Effect of decree.

Judgments are not subject to collateral attack and district court cannot in an independent action in equity amend a decree of distribution for mere errors in making up the final account by the administrator. 175M68, 220NW406.

Real estate assigned by final decree passes out of the control of the court and is discharged from further administration, and thereafter neither the probate court nor the district court on appeal has authority to vacate the decree without notice to the persons who then hold title to such real property. 176M524, 222NW68.

Decree distributing land to a person as heir is conclusive in a subsequent direct attack as against claim that such person was an illegitimate. 177M34, 224NW270.

A final decree, assigning the real property of one who was the record owner thereof at the time of his death, is evidence of title in the person to whom such property is assigned. 176M606, 225NW902.

A decree distributing estate of a person deceased is a judgment in rem, binding as such upon all the world, and claimants excluded by such a decree cannot recover any of property from distributees, upon ground of fraud, without first having decree vacated. Murray v. C., 191M 460, 254NW605. See Dun. Dig. 3660.

5. Enforcement of decree.

A demurrer to an answer, in a suit against an administrator personally and his surety for money assigned a widow in final decree, was properly sustained, where answer admitted assignment in decree but sought to interpose as counterclaims alleged indebtedness to estate. Saunderson v. H., 190M431, 252NW83. See Dun. Dig 3585b, 7662.

Annotations under §8886.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v. N., 285NW885. See Dun. Dig. 3580*l*.

It is proper to discharge guardian without a hearing upon petition by ward after attaining majority. Op. Atty. Gen., Feb. 24, 1933.

Annotations under §8887.

Burns v. N., 285NW885; note under §8992-124.

Annotations under §8888.

Money deposited with county treasurer by administrator after failure of heir to claim it is subject to garnishment by creditor of heir. 171M280, 214NW26.

Annotations under §8889.

Money deposited with county treasurer pursuant to §8888 is subject to garnishment. 171M280, 214NW26.

Annotations under §8907.

Freeborn County Nat. Bank & Trust Co. v. G., 190M 327, 251NW671; note under §8910.

Where defalcation occurred before bond was given, surety was liable because of guardian's failure to finally account for and pay over to his successor the amount of the defalcation. Bromen v. O., 185M409, 241NW54. See Dun. Dig. 4103.

Sureties on bond of guardian of incompetent are liable for defalcation of guardian occurring before bond was executed but after resignation of predecessor and filing of final account, approved by probate court as part of same transaction wherein bond in question was approved and filed. Lindquist v. T., 188M52, 247NW506. See Dun. Dig. 4103.

Surety on sale bond of an administrator, upon making good his principal's default in not accounting for proceeds of sale, is not entitled to contribution from sureties on administrator's general bond. Hartford Accident & I. Co. v. A., 193M200, 256NW185. See Dun. Dig. 1921, 9090.

Annotations under §8909.

Where co-guardian gave separate bonds, held that there was no right of contribution between the sureties on the different bonds, and no right of subrogation to cause of action by ward against innocent guardian for negligence. Southern Surety Co. v. T., 179M40, 228NW326.

Annotations under §8910.

Action on bond 18 years after sale held barred by laches. 178M401, 227NW355.

Sureties on sale bond of guardian were not liable for guardian's failure to account for interest received on purchase money mortgage taken with approval of probate court, such interest being income on general property of estate rather than receipt under license to sell. Siewert v. A., 187M71, 244NW337. See Dun. Dig. 4108a (40).

Where a guardian, licensed to sell real estate of his ward, sells same on terms of part cash and for balance a purchase-money mortgage, and probate court confirms such sale, mortgage so taken becomes an authorized and approved security held by guardian, under his general power, as part of estate of his ward, and is not thereafter held under any power derived from license to sell. Freeborn County Nat. Bank & Trust Co. v. G., 190M327, 251NW671. See Dun. Dig. 4110, n. 50.

Surety did not, by receiving annual premiums on bond, estop itself to deny liability for money which guardian held under his general power. Id. See Dun. Dig. 4103.

Surety on sale bond of an administrator, upon making good his principal's default in not accounting for proceeds of sale, is not entitled to contribution from sureties *on administrator's general bond.* Hartford Accident & I. Co. v. A., 192M200, 256NW185. See Dun. Dig. 1921, 9090.

Annotations under §8912.

The probate court has authority to direct guardians of minors and incompetents to require bonds to secure deposits of funds of their wards in banks. 176M541, 224 NW152.

Immaterial that judge, instead of guardian, was named as obligee; ward could sue on the bond. 176M541, 224 NW152.

Annotations under §8914.

Bromen v. O., 185M409, 241NW54; note under §8907.

A surety for one guardian may show that a liability incurred was a continuing one for the purpose of obtaining contributions from the sureties of the other guardian. Southern Surety Co. v. T., 179M40, 228NW326.

Surety of discharged guardian, held liable for obligations which had already accrued at time of discharge, and as to such liability the surety on a subsequent bond given by the remaining guardian was entitled to contribution. Southern Surety Co. v. T., 179M40, 228NW326.

On application of surety under this section probate judge should issue citation to principal, and discharge him if new bond is not given, but the order should be made so that the estate will not be left without a representative for any period of time. Op. Atty. Gen., Feb. 10, 1930.

Annotations under §8916.

Where father died a resident of Wisconsin and domiciled therein, the mother having predeceased him, leaving four minor children, domicile of children remains in that state, and courts thereof have jurisdiction to determine all matters pertaining to guardianship of the persons of such children, including as well all property to them belonging and having a situs within that state. State v. Hedberg, 192M193, 256NW91. See Dun. Dig. 2813, 4099.

The domicile of a minor child is that of its parent. Upon death of the parent, the domicile of the child continues, during its minority, to be the same as was that of deceased parent, subject to certain exceptions. Id. See Dun. Dig. 2813.

Annotations under §8924.

Where guardian of insane person died without having accounted for money, administrator of his estate must account for the funds. Donlin v. W., 176M249, 223NW98.

Evidence held to support finding that daughter of incompetent was qualified to be appointed guardian as against contention that she was improvident. Dahmen's Guardianship, 192M407, 256NW891. See Dun. Dig. 4332.

Selection of guardian of an incompetent is a matter peculiarly within discretion of appointing court, and an appellant who seeks to overthrow decision is required clearly to establish error. Dahmen's Guardianship, 192 M407, 256NW891. Id. See Dun. Dig. 4332.

Order appointing a guardian was void where petition did not prima state facts that would bring ward within class subject to guardianship. Carpenter's Guardianship, 203M477, 281NW867. See Dun. Dig. 4332, 7783.

Annotations under §8929.

Conclusion that competency was not shown sustained. 171M227, 213NWW898.

Order allowing final account and discharging guardian, held not subject to collateral attack. 179M523, 229NW 785.

Probate court has power to hear and determine applications for restoration to capacity by patients in insane hospitals. State v. O'Brien, 186M432, 243NW434. See Dun. Dig. 4528.

Fees and expenses, when necessary for proper initiation and hearing of application for restoration to capacity, stand on same footing as other necessary expenses for incompetent. Collins v. M., 187M514, 246NW5. See Dun. Dig. 4528.

Probate court has jurisdiction and authority to allow attorney's fees and expenses, incurred in a proceeding for restoration to capacity of an incompetent person under guardianship, out of funds of incompetent in hands of guardian. Collins v. M., 187M514, 246NW5. See Dun. Dig. 4528.

Jurisdiction conferred upon probate court by this section does not extend to the discharge of persons previously committed as insane to any of the state institutions for the insane. Op. Atty. Gen., Oct. 30, 1931.

Annotations under §8933.

A minor not emancipated cannot sue his or her parent for tort. Lund v. O., 183M515, 237NW188. See Dun. Dig. 7308.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. In re Martinson, 184M29, 237NW596. See Dun. Dig. 99.

The parent of a minor child, not emancipated, is not liable to child for negligence causing damage. Belleson v. S., 185M537, 242NW1. See Dun. Dig. 7308.

A parent has a natural right to custody of his child, but this right yields to best interests of child. State v. Miller, 187M152, 244NW685; State v. Markson, 187M176, 244NW687. See Dun. Dig. 7297.

Mother was given custody of boy 12 years old in preference to very old grandparents with whom it had lived since a baby. State v. Markson, 187M176, 244NW 687.

Money deposited by a guardian in a bank in his name as guardian, without any order of court, remains under control and in hands of guardian after, as well as before, such deposit. Winjum v. J., 191M294, 253NW881. See Dun. Dig. 4107.

Final order of probate court settling guardian's account and fixing amount of money remaining in hands of guardian, and ordering payment thereof to representative of deceased ward's estate, not having been appealed from, is conclusive and cannot be collaterally attacked in this action. Id. See Dun. Dig. 4125a.

Evidence does not compel a conclusion that plaintiff gratuitously assumed support of defendant's child without expectation of recompense. Knutson v. H., 191M420, 254NW464. See Dun. Dig. 7302.

Quasi contractual obligation imposed by law upon a father to support his minor child and to compensate others who, in his default, assume duty to nurture and educate such child, places him in same situation as if he had made an express contract to compensate, without specifying time of payment or termination of arrangement. Id.

Best interest of minor child is controlling force in determining custody. State v. Hedberg, 192M193, 256NW91 See Dun. Dig. 4433b.

On evidence in a habeas corpus proceeding, mother of a minor child held entitled to its custody. State v. Sivertson, 194M380, 260NW522. See Dun. Dig. 7297.

Commitment of indigent children to custody of state under general guardianship did not release father and mother from obligation to support them. Op. Atty. Gen., June 14, 1932.

Annotations under §8936.

See §8992-87.

Annotations under §8937.

Suit on behalf of a minor should proceed in his name, by his guardian, rather than in name of latter on behalf of minor. Borowski v. S., 188M102, 246NW540. See Dun. Dig. 4461.

Annotations under §8938.

Where a guardian embezzled funds of his ward and paid them to a bank, all representatives of latter supposing that he was using his own funds and having no reason to think otherwise, guardian cannot recover fund from bank in absence of a showing that recovery is necessary to protect ward from loss, primary liability in such case being upon guardian and his sureties. Galloway v. S., 193M104, 258NW10. See Dun. Dig. 783, 4103, 4122.

Annotations under §8939.

Where the mother supports her minor children after the death of the father, she may be compensated therefor out of the estate of the children, at least where her own estate is not sufficient to provide proper support. 177M571, 225NW896.

Annotations under §8947.

When a guardian deposits money of his ward in a bank of which he is the president and active manager and afterwards trades a mortgage owing the bank for the deposit, the ward may take the mortgage, or avoid the transaction and reach the deposit, or may have an accounting. Ottawa Banking & Trust Co. v. C., 185M22, 239NW666. See Dun. Dig. 4107.

Where guardian keeps funds of his wards in a bank, of which he is an active officer, in time certificates of deposit, savings and checking accounts, without bonds or security required by order of probate court being given, bank becomes trustee ex maleficio of funds and claim of present guardian against bank is entitled to a preference. Schendel v. P., 194M162, 259NW692. See Dun. Dig. 4107.

If a guardian, after a full disclosure of the facts, obtains an order permitting him to invest his ward's money, he is protected. Op. Atty. Gen., May 29, 1931.

Annotations under §8949.

When a person under guardianship dies, guardianship terminates, but probate court retains jurisdiction over guardian and property for purpose of hearing and settling final account of guardian. Winjum v. J., 191M294, 253NW881. See Dun. Dig. 4115a.

When a ward dies, his property in hands of his guardian, passes to representative of ward's estate but guardian has right to retain possession of property for time necessary to settle his final account. Id.

Probate court passes upon amount and validity of expenses paid or incurred by guardian and determines what compensation guardian is to receive for his services. It determines any and all matters incident to account. The court then determines amount of money or property, or both, remaining in hands of guardian after payment of allowed expenses and fees and orders guardian to pay or deliver remaining money or property, or both, to the representative of the deceased ward's estate. Id. See Dun. Dig. 4117a.

It is proper to discharge guardian without a hearing upon petition by ward after attaining majority. Op. Atty. Gen., Feb. 24, 1933.

Annotations under §8950.

Winjum v. J., 191M294, 253NW881; note under §8949.

An order duly made by the probate court settling the final account of a guardian is conclusive on the guardian, and cannot be attacked collaterally by him. Trapp v. T., 182M537, 235NW29. See Dun. Dig. 4125a(21).

The presentation of a claim by the guardian in probate court against the estate of his deceased ward, after his final account as guardian had been settled, whereby the guardian seeks to recover compensation for services rendered to his ward in addition to the allowance made to him for services in the order settling his account, is a collateral attack on such order. 182M537, 235NW29. See Dun. Dig. 4125a(21).

Proof of an understanding or agreement of the parties that plaintiff's claim need not be included in the guardian's account would be permissible only in a direct attack upon the order of the probate court settling the account. 182M537, 235NW29. See Dun. Dig. 4125a(21).

In a proceeding to examine and allow accounts of trustees, a decree of final distribution of probate court entered two years earlier cannot be collaterally attacked. Trust Created in and by Fogg's Will, 193M397, 259NW6. See Dun. Dig. 7784, 9945.

Annotations under §8953.

Notice of cancellation of contract served upon vendee one day before discharged as sane by decree of probate court, was valid, there being no guardian and vendee being on parole. McKinley v. S., 188M325, 247NW 389. See Dun. Dig. 4519, 4531, 10091.

Evidence held to justify finding that defendant was feeble-minded, warranting an order committing him to custody of state board of control. State Board of Control v. F., 192M412, 256NW662. See Dun. Dig. 4523.

Annotations under §8954.

Superintendent must release a voluntary inebriate inmate from institution three days after he demands his release, unless within the three days he has made application with judge of probate to have inebriate committed by such court. Op. Atty. Gen., Nov. 29, 1933.

Annotations under §8955.

Op. Atty. Gen., Nov. 29, 1933; note under §8954.

Annotations under §8956.

Provision giving probate court jurisdiction to commit insane person does not violate Const. Art. 6, §7. Op. Atty. Gen. (248b-3), Feb. 19, 1935.

Annotations under §8957.

Appeal may be taken from order of probate court refusing to set aside order committing person to State insane hospital if first order was procured by fraud, misrepresentation or surprise, or excusable inadvertence or neglect. Op. Atty. Gen., Apr. 7, 1932.

No appeal lies from order of probate court committing person to State insane hospital. Op. Atty. Gen., Apr. 7, 1932.

Attorney general at request of State Board of Control appears in behalf of the state, and duty of county attorney is to represent alleged insane person or if such person retains other counsel, to remain neutral. Op. Atty. Gen. (248b-3), Feb. 19, 1935.

Annotations under §8959.

State is not liable for damages for any act which an insane person improperly discharged from a state hospital might commit. Op. Atty. Gen., Jan. 27, 1932.

This section does not extend the jurisdiction of the probate court, and probate court has no jurisdiction to direct a discharge of a person committed upon a determination by the board of examiners that he was a dangerous insane person. Op. Atty. Gen., Jan. 27, 1932.

Annotations under §8960.

An appeal from order committing a feeble-minded person raises all questions involved in the findings of the examiners. State ex rel. Broberg v. State Board of Control, 183M345, 236NW481.

Right of appeal is not limited to orders granting or refusing applications for the discharge of a feeble-minded person from the custody and guardianship of the board of control. State ex rel. Broberg v. State Board of Control, 183M345, 236NW481.

Right of appeal is granted to the person adjudged to be feeble-minded, to the state board of control, and to the other persons specified in the amendment of 1927. State ex rel. Broberg v. State Board of Control, 183M345, 236NW481.

Where a person is found to be feeble-minded, it is for state board of control to determine whether he shall be placed in a state institution or other home or be left in his present home under supervision. State Board of Control v. F., 192M412, 256NW662. See Dun. Dig. 4523.

Finding of district court in one proceeding to have one adjudged feeble-minded that defendant was not so feeble-minded as to justify committing him to custody of board of control was not res adjudicata in a subsequent proceeding, proceeding not being an action at law or governed strictly by rules applicable in a law suit. Id. See Dun. Dig. 4523.

This section does not apply so as to permit appeal in insane cases. Op. Atty. Gen., Apr. 7, 1932.

Annotations under §8961.

No appeal lies from order of probate court committing person to state insane asylum. Op. Atty. Gen., Apr. 7, 1932.

Appeal may be taken from order of probate court refusing to set aside order committing person to state insane hospital if first order was procured by fraud, misrepresentation or surprise, or excusable inadvertence or neglect. Op. Atty. Gen., Apr. 7, 1932.

Insane patient in veterans' hospital cannot be transferred to state hospital with new commitment. Op. Atty. Gen. (1001f), Jan. 28, 1935.

Transfer of veteran operates to discharge him from commitment of state hospital but not from commitment to veterans' hospital. Op. Atty. Gen. (248b-8), Apr. 2, 1935.

Annotations under §8966.

Expenses of feeble-minded hearing are to be paid only on order of probate court. Op. Atty. Gen. (679), June 18, 1934.

Annotations under §8967.

Expense of commitment should be charged against county in which person committed has longest resided within year previous to commitment. Op. Atty. Gen., Aug. 9, 1932.

If a person has not lost his residence for purposes of voting, he has not lost his residence for purpose of hospitalization for insanity. Op. Atty. Gen., May 11, 1933.

Fact that one makes application for poor aid, which is not granted, does not prevent him from gaining a new settlement by residing in county for one year. Op. Atty. Gen., Nov. 2, 1933.

Annotations under §8969.

When court commissioner commits a patient to the hospital the warrant should bear the seal of the probate court. Op. Atty. Gen., May 14, 1931.

Court commissioner is not entitled to mileage when conducting insanity hearings away from county seat. Op. Atty. Gen., Aug. 14, 1933.

8976. Support of insane persons.—For the purpose of defraying expenses and costs of maintenance of any inmate in a state asylum, detention hospital or hospital for the insane, the state of Minnesota shall have a valid claim for reimbursement to the extent of $10.00 per month for each such inmate, for all moneys paid and expenses incurred by the state for such maintenance,—first, against the property or estate of such person so maintained, second, against the relatives of such person in the following order, to-wit: spouse, children and parents provided, that if the state board of control shall determine that the property or estate of any such insane person is not sufficient to more than care for and maintain the wife and minor children of such inmate, or that the means and property of the classes of persons herein secondarily charged with the liability and cost of the maintenance of such insane person in said institutions, is not more than sufficient to properly provide for themselves and those otherwise dependent upon them, the said board of control shall relieve the estate of such insane person and the relatives of such insane person from a portion or all of such charge or liability as they in their judgment and upon investigation may deem just and proper. In case of increase or decrease in the estate of such insane person, or in the estates of those persons herein secondarily liable for the cost of the maintenance of an insane person in such institutions, or in case of the death of such persons, or either of them, the board of control is hereby authorized to modify or cancel its previous order made in relation thereto, and from time to time make such other and further order with reference thereto as it may seem just and proper. Provided, if an inmate has not dependents the Board of Control may fix a charge in excess of $10.00 per month but not to exceed the per capita cost for the previous fiscal year of the institution of which he is an inmate and the state shall have a valid claim against the property or estate of such inmate for the amount so fixed.

In all cases under the provision of this act, the property which under the laws of this state, is exempt from attachment or sale on any final process, issued from any court, shall be exempt also to the estates and persons charged with or upon whom any liability is imposed under the provisions of this act. ('17, c. 294, §4; Apr. 21, 1931, c. 301.)

Saved from repeal. See §8992-196, post.

The estate of the father of an insane pauper is liable. Op. Atty. Gen., Aug. 27, 1930.

Estate of convict inmate of insane hospital is not liable for his maintenance. Op. Atty. Gen., June 15, 1933.

Section 8976 was not repealed by §8883 and state does not have a claim against estate of deceased person who leaves children or spouse. Op. Atty. Gen. (349h), Apr. 3, 1934.

Where person was committed to institution for feeble-minded from county in which parents resided, and paid for support at institution for some years and then moved to another county, the county of commitment and not the county to which parents moved is liable to the state for the support of the inmate. Op. Atty. Gen. (679c), July 20, 1935.

Where child was committed to private institution and it was later determined to commit it to state public school at Owatonna, county where child was first committed as a dependent child determines county liable for its support, regardless of where parents moved and location of private institution. Op. Atty. Gen. (840a-6), July 23, 1935.

Where mother of illegitimate had a legal settlement in St. Louis County at time baby was born in Minneapolis, and child was brought into juvenile court of Hennepin county on charge of dependency and was under the care of the Catholic central bureau for a number of years, and meanwhile mother remarried and left the state, proper settlement of child on being adjudged feeble-minded and placed under guardianship of state board of control was St Louis County, which county is responsible for him. Op. Atty. Gen. (339a-2), July 30, 1935.

Welfare board is not responsible for support of feeble-minded, epileptic and insane persons receiving institutional care. Op. Atty. Gen. (125a-64), July 28, 1937.

8977 to 8982.

Saved from repeal. See §8992-196, post.

APPEALS

8983 to 8992. [Repealed.]

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m. Reenacted as shown below:

8983, see 8992-164.
8984, see 8992-166.
8985, see 8992-166.
8986, see 8992-167.
8987, see 8992-168.
8988, see 8992-169.
8989, see 8992-169.
8990, see 8992-170.

Annotations under §8983.

180M195, 230NW584.

If court erred in construction of will the error was one of law and not of fact and decree became binding and conclusive in absence of appeal. 174M28, 218NW235.

Fraud or misrepresentation held not shown. 174M28, 218NW235.

Real estate assigned by final decree passes out of the control of the court and is discharged from further administration, and thereafter neither the probate court nor the district court on appeal has authority to vacate the decree without notice to the persons who then hold title to such real property. 175M524, 222NW68.

The probate court has power to vacate its final decree on the ground of fraud, mistake, inadvertence or excusable neglect upon proper application seasonably made. 175M524, 222NW68.

Sole heir having ratified settlement with claimants, authority of attorney acting for him cannot be questioned. Parcker's Estate, 178M409, 227NW426.

On appeal from order admitting will to probate there is no right to trial by jury, such a trial being discretionary. 180M256, 230NW781.

An order directing the representative of an estate to pay a certain amount of money as fees to an attorney is not appealable, but is reviewable by certiorari. Carson's Estate, 181M432, 232NW738. See Dun. Dig. 7786.

An order of the probate court directing an executor to turn over to decedent's aunt certain funds which he claimed to hold as an individual was a final order, and reviewable by writ of certiorari. Martin's Estate, 182M 576, 235NW279. See Dun. Dig. 1400, 7786, 7842.

Laws 1929, c. 271, §5, ante §§8717-11, automatically makes the decision of the referee that of the court, and appealable as such. Parcker's Estate, 183M191, 236NW 206. See Dun. Dig. 7786.

§9283 applies to an order of the probate court admitting a will to probate, and limits the time within which such order may be vacated. In re Butler's Estate, 183M591, 237NW592. See Dun. Dig. 7784, 10255.

An order of the probate court vacating the assent of the widow to the will of testator is not appealable; nor are parts of an order which do not finally determine or affect interests or rights in the estate. Betts' Estate, 185M627, 240NW904. See Dun. Dig. 7786, 7787.

Order appointing an administrator is appealable. Firle, 191M233, 253NW889. See Dun. Dig. 7786.

An order of the probate court denying a motion to revoke a prior order appointing an administrator is not appealable. Id.

Order appointing administrator does not create an estoppel by verdict or findings so as to bar review of

question of who are heirs or heir of decedent, on appeal from final decree. Id. See Dun. Dig. 3562b.

A separate order of probate court, made after appointment of administrator and prior to petition for a final decree, purporting to determine who is sole heir of decedent, is not final or appealable, and may be reviewed on appeal from final decree of distribution. Id. See Dun. Dig. 389, 7786.

An administrator, after full administration of estate, is not, as such administrator, aggrieved by decree of distribution which merely assigns estate to various heirs. Nelson's Estate, 194M297, 260NW205. See Dun. Dig. 7785.

Allocation of $500 provided for in §8726 was merely a form of distribution as affecting right of administrator to appeal. Id. See Dun. Dig. 7785.

An administratrix who appeals from an order of probate court removing her from office and appointing another in her place need not file an appeal bond, order removing her being suspended until determination of appeal. Johnson v. L., 194M300, 260NW295. See Dun. Dig. 7791.

Probate courts are courts of record and their orders and judgments are not subject to collateral attack in field entrusted to them by constitution, but a motion by a ward to expunge erroneous statements from record is not a collateral attack. Carpenter's Guardianship, 203M 477, 281NW867. See Dun. Dig. 7784.

Subd. 8.

Application to vacate decree of descent rendered by probate court on ground of mistake in both judicial discretion, and on appeal the district court exercises a like discretion. 179M315, 229NW133.

Statement in Savela v. Erickson, 138M93, 99, 163NW 1029, 1031, that relief from "surprise, or excusable inadvertence or neglect," might be justified under this subdivision, was an inadvertent statement, since statute merely authorizes an appeal. Simon, 187M399, 246NW31. See Dun. Dig. 7784(2).

Appeal may be taken from order of probate court refusing to set aside order committing person to state insane hospital if first order was procured by fraud, misrepresentation or surprise, or excusable inadvertence or neglect. Op. Atty. Gen., Apr. 7, 1932.

Annotations under §8984.

1. From allowance or disallowance of claims.

180M195, 230NW584.

The right of an aggrieved interested party to appeal from allowance of claim is subordinate to the right of the representative to appeal and may be exercised if the latter declines to appeal. 179M133, 228NW551.

2. In other cases.

Where probate court by its decree of distribution assigned commuted value of unpaid installments of war risk insurance to insured's mother, who was not a beneficiary under his will the administrator c. t. a., as appointed protector of estate, had right to appeal to district court. Leonard, 191M388, 254NW594. See Dun. Dig. 7785.

Annotations under §8985.

179M133, 228NW551.

Betts' Estate, 185M627, 240NW904; note under §8983.

An appeal must comply with the provisions of this section and jurisdiction cannot be conferred on the district court by consent. 174M133, 218NW546.

Notice of appeal from decree in proceedings in one county specifying the decree as one of the probate court of another county, held fataly defective. 178M601, 228 NW174.

Adverse party other than administrator appearing and contesting a claim is entitled to notice of appeal by claimant. 180M195, 230NW584.

While notice by mail, as authorized by §9242, is not applicable to the probate court, actual notice is sufficient to start the running of limitations under this section, and where a letter is actually received (the usual presumption in that respect being applicable) the requirement as to service of notice is satisfied. 180M 570, 231NW218.

Language in a notice of appeal from probate court held merely descriptive of the order appealed from and as not attempting to limit the appeal to that portion of the order unfavorable to appellant. Parcker's Estate, 182M191, 236NW206. See Dun. Dig. 7789.

Statute requires that notice of appeal from probate to district court be served and filed with proof of service within 30 days after notice of decision appealed from. Otting v. P., 188M401, 247NW804. See Dun. Dig. 7788(47).

Where no written notice of filing of decision is given, but notice of appeal is served, appellant must be considered as having had notice, or to have waived notice, not later than day on which notice of appeal was served. Id. See Dun. Dig. 7788, 7789.

Questions as to whether proper proof of claim was filed in probate court and as to whether a copy of notice of appeal was delivered to the probate judge for the benefit of nonappearing parties, not being raised in probate court, cannot be considered on appeal. Devenney's Estate, 195M265, 256NW104. See Dun. Dig. 7794, 7795.

Party appealing from decree of probate court has six months in which to perfect appeal unless appellant is served with notice of entry of decree, in which event he has thirty days thereafter only. Id. See Dun. Dig. 7788.

Notice of appeal from probate court actually received through the mail was equivalent of personal service. Id. See Dun. Dig. 7789.

Section 9692 authorizes an appellant to post an undertaking in lieu of bond. Id. See Dun. Dig. 7791.

Notice of appeal from order allowing claim in part and disallowing claim in part held sufficient. Id. See Dun. Dig. 7789.

(2).

In a proceeding to examine and allow the accounts of trustees, a decree of final distribution of probate court entered two years earlier cannot be collaterally attacked. Trust Created in and By Fogg's Will, 193M379, 259NW6. See Dun. Dig. 7784, 9945.

An administratrix who appeals from an order of probate court removing her from office and appointing another in her place need not file an appeal bond, order removing her being suspended until determination of appeal. Johnson v. L., 194M300, 260NW295. See Dun. Dig. 7791.

Annotations under §8986.

Probate court cannot charge fee for making return. Op. Atty. Gen., Apr. 30, 1929.

Annotations under §8987.

An administratrix who appeals from an order of probate court removing her from office and appointing another in her place need not file an appeal bond, order removing her being suspended until determination of appeal. Johnson v. L., 194M300, 260NW295. See Dun. Dig. 7791.

Annotations under §8988.

On an appeal from an order of the probate court admitting a will to probate, burden is on proponent to prove testamentary capacity of testator. 172M217, 214NW892.

Court should make findings of fact, but this may be waived where the decision necessarily decided the question of fact involved. 172M217, 214NW892.

On appeal the issue is the same as it was in the probate court. If the order was right when made, it cannot be reversed. 172M231, 215NW223.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Dismissal for failure to file appeal in district court is discretionary. 181M217, 232NW1. See Dun. Dig. 7787a.

On appeal to district court from an order of the probate court amending a final decree of distribution after the time for appeal from such decree had expired the trial is de novo, and, there being no pleadings in the district court, that court must determine the right to amendment upon the petition filed in the probate court and the proof in support thereof. 181M528, 233NW305. See Dun. Dig. 7794(76).

The recitals or findings in the order appealed from cannot serve as proof of the existence of the facts averred in the petition. 181M528, 233NW305. See Dun. Dig. 7794.

Order of district court dismissing appeal from probate court is not appealable. In re Ploetz' Will, 186M 395, 243NW383. See Dun. Dig. 294.

Annotations under §8989.

Order of probate court settling account of administrator is conclusive on sureties on bond. McDonald's Estate, (USDC-Minn), 42F(2d)266. See Dun. Dig. 3580f.

District court is without jurisdiction of settlement of accounts of administrator except on appeal. McDonald's Estate, (USDC-Minn), 42F(2d)266. See Dun. Dig. 2759(28).

District court, on appeal from order of probate court, has inherent equity power and jurisdiction to permit or compel a set-off on equitable grounds. An agreement for a set-off is one ground for allowing it in equity. Browning v. E., 189M375, 249NW573. See Dun. Dig. 7795.

Annotations under §8990.

42F(2d)266; note under §8989.

Exercise of judicial discretion by the probate court will not be reversed on appeal, except for a clear abuse thereof. Fults' Estate, 177M311, 225NW152.

Weight of inferences and findings of fact by court in a proceeding involving construction of ambiguous will. 177M311, 225NW156.

Where appeal to district court involved order refusing to vacate decree admitting will to probate, and also order refusing to probate later will, the court on determining that the order admitting the will to probate was not a bar to probate of the later will, should have determined which will was entitled to probate. 179M538, 229NW875.

Practice in district court of moving for a new trial after a trial de novo and findings made affirming the probate court, and in appealing from the order denying the new trial is not commended. Walker's Estate v. M., 183M325, 236NW485. See Dun. Dig. 294, 300, 7795.

MINNESOTA PROBATE CODE

TABLE OF CONTENTS

ARTICLE I.—POWERS, ETC., OF COURT.

8992–1. General provisions.—A probate court, which shall be a court of record having a seal, is established in each county. The court shall be open for the transaction of business at the county seat at all reasonable hours. Hearings may be had at such times and places in the county as the court may deem advisable. The necessary and reasonable traveling expenses of the judge, referee, reporter, clerks, and employees in attending hearings in places other than the county seat shall be paid by the county. (G. S. 8690) (Act Mar. 29, 1935, c. 72, §1.)

Annotations under former act, see ante, §8690.

A suit by third parties against surviving partners of a firm, to recover on liabilities of firm and of surviving partners, is within jurisdiction of district court, and not probate court. Fulton v. O., 195M247, 262NW570. See Dun. Dig. 7779.

Probate proceedings are in rem; res being property of deceased owner. Mahoney's Estate, 195M431, 263NW465. See Dun. Dig. 7771.

Jurisdiction of probate court continues until close of proceedings. Id. See Dun. Dig. 7777a.

In administering estate probate court applies equitable principles and exercises equitable powers; but it is not possessed of independent jurisdiction in equity over controversies between representative of estate with strangers to proceedings, claiming adversely, nor of collateral actions. State v. Probate Court of Hennepin County, 199 M297, 271NW879. See Dun. Dig. 7776.

Probate court has exclusive original jurisdiction of estates of deceased persons, but manner in which that jurisdiction is exercised is subject to regulation by legislature, and it may constitutionally limit jurisdiction of probate court to hear certain kinds of claims, and time to present claims, and probate court does not have power to extend time for filing claims which become absolute during period limited for filing claims beyond one year and six months from time notice of order was given, nor may compliance with statute be waived by a representative. Flewell, 201M407, 276NW732. See Dun. Dig. 3592a, 7770b, 7770c.

With probate court lies exclusive jurisdiction to construe and determine validity of wills and provisions thereof for purposes of administration, and to determine amount of distributive shares thereunder. Peterson's Estate, 202M31, 277NW529. See Dun. Dig. 7770c, 7770d, 7771, 7778.

Specific performance of a contract to make a will disposing of property may be granted in the district court by a judgment against the representative, heirs, legatees, and devisees without interfering with the probate court's exclusive jurisdiction of estates of decedents. Jannetta v. J., 285NW619. See Dun. Dig. 7770c.

Probate court has jurisdiction to administer estates of deceased persons and to determine rights to property so far as they depend on devolution, testate or intestate, but it has no general jurisdiction, and has no jurisdiction to grant specific performance or determine property rights as between third parties and representative, heirs, legatees and devisees. Id. See Dun. Dig. 7776.

Probate court possesses no independent jurisdiction in equity or at law over controversies between the representative of an estate, or those claiming under it, with strangers claiming adversely, nor of collateral actions. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3658, 7779.

8992–2. Powers.—In addition to its general powers, the probate court shall have power:

1. To examine witnesses on oath, to compel their attendance, and to preserve order during any proceedings before it.

2. To issue citations, subpoenas, and attachments, to make orders, judgments, and decrees, to issue executions, warrants, or processes to enforce them, and to authorize the taking of depositions of witnesses either within or without the state in any matter pending in such court; provided, that in any contested matter notice of the taking of the deposition shall be given as provided by law.

3. To adjourn any hearing with or without terms, provided that when objection is made the adjournment shall be only for cause shown by affidavit or otherwise.

4. To correct, modify, or amend its records to conform to the facts, and to correct its final decrees so as to include therein property omitted from the same or from administration.

5. To order any representative to surrender and deliver property to his successor or to distribute it.

6. To punish for contempt, including contempt committed in proceedings before the referee, clerk, or auditor. (G. S. 8701) (Act Mar. 29, 1935, c. 72, §2.)

Annotations under former act, see ante, §8701.

Orders of probate court allowing claims of creditors have effect of judgments which are final unless appealed from. National Surety Co. v. E., (USCCA8), 88F(2d)399.

Original jurisdiction of administration proceedings, and matters necessarily incident thereto, is exclusively and completely vested in probate court. State v. Probate Court of Hennepin County, 199M297, 271NW879. See Dun. Dig. 7770c.

Probate court held without jurisdiction to hear and determine petition of executrix to have contract made by her with third parties annulled for fraud. Id. See Dun. Dig. 7771.

Probate court does not adjudicate claims of third persons against heirs or contracts made by or between them. Schaefer v. T., 199M610, 273NW190. See Dun. Dig. 7770.

Probate courts may apply the equitable doctrine of estoppel in any matter involved in administration. Clover v. P., 203M337, 281NW275. See Dun. Dig. 7776.

Probate court is by constitution vested with complete jurisdiction over estates of deceased persons and persons under guardianship. State v. Probate Court of Hennepin County, 204M5, 283NW545. See Dun. Dig. 7770.

When there is conflict between representative and his attorney in respect to services rendered and fees to be *paid therefor, issues presented thereby should be determined* by a court of general jurisdiction, as probate court has no jurisdiction in such cases. Id. See Dun. Dig 7775.

Probate court in administering estate applies equitable principles and exercises equitable powers, it possesses no independent jurisdiction in equity or at law over controversies between representatives of estate, or those claiming under it, with strangers claiming adversely, nor of collateral actions. Id. See Dun. Dig. 7776.

Conclusion of court committing person as insane could be amended by court by inserting a specific finding that patient was dangerous to the public, and patient could be detained under amended warrant. Op. Atty. Gen. (346), May 4, 1938.

(4).

When probate court has made order for sale of real estate of an estate and it has been sold and sale confirmed and deed executed to purchasers and administrator discharged, matter is out of jurisdiction of probate court, and it cannot entertain an application for review and set aside sale proceedings. Mahoney's Estate, 195M 431, 263NW465. See Dun. Dig. 7777a.

Neither probate court nor district court on appeal obtained jurisdiction of person or subject matter under a petition requesting that order releasing guardian be set aside and that guardian be ordered to account, guardian having moved out of state and service being attempted by publication, proceeding not being one in rem, and res having disappeared. Sellars v. S., 196M143, 264NW 425. See Dun. Dig. 5141, 7784.

Record sustains trial court in affirming probate court's orders vacating and setting aside its previous order setting apart a homestead, on ground of fraud. Flanagan's Estate, 196M140, 264NW433. See Dun. Dig. 7784.

Probate courts are courts of record and their orders and judgments are not subject to collateral attack in field entrusted to them by constitution, but a motion by a ward to expunge erroneous statements from record is not a collateral attack. Carpenter's Guardianship, 203M 477, 281NW867. See Dun. Dig. 7774.

8992–3. Books of record.—The court shall keep the following books of record:

1. An index in which files pertaining to estates of deceased persons shall be indexed under the name of the decedent, those pertaining to guardianships under the name of the ward, those pertaining to an insane, inebriate, feebleminded, or epileptic person under the name of such person, those pertaining to wills deposited pursuant to Section 48, under the name of the testator. After the name of each file shall be shown the file number, and if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed, and the date of the filing of the first document. (As amended Apr. 26, 1937, c. 435, §1.)

2. A register, properly indexed, in which shall be listed under the name of the decedent, ward, insane, inebriate, feebleminded, or epileptic person, or testator, all documents filed pertaining thereto and in the order filed. Such list shall show the name of the document, the date of the filing thereof, and shall give a reference to the volume and page of any other book in which any record shall have been made of such document.

3. A record of wills, properly indexed, in which shall be recorded all wills admitted to probate with the certificate of probate thereof.

4. A record of bonds, properly indexed, in which shall be recorded all bonds filed; provided that bonds not in excess of $250.00 may be entered instead of recorded. Whenever a bond is entered and not recorded, the entry shall show the name of the estate, guardianship, or other proceedings, the name of the principal, the name and address of each surety, the amount, and the date of approval. (As amended Apr. 26, 1937, c. 435, §2.)

5. A record of letters, properly indexed, in which shall be entered all letters testamentary, of administration, and of guardianship issued.

6. A record of claims, properly indexed, in which shall be entered under the title of the estate all claims filed against such estate and all offsets thereto. It shall show the number of the claim, the date of filing, the name of the claimant, the amount of the claim, the date of adjudication, the amounts allowed and disallowed, and the final balance.

7. A record of orders, properly indexed, in which shall be recorded all orders, judgments, and decrees, except orders allowing or disallowing claims and nonappealable orders. (G. S. 8693) (Act Mar. 29, 1935, c. 72, §3.)

8992–4. Copies.—The court shall furnish a return on appeal or a certified, exemplified, or authenticated copy of any paper on file or of record upon payment therefor at the rate of ten cents per folio, and twenty-five cents for each certificate. (G. S. 8704) (Act Mar. 29, 1935, c. 72, §4.)

Annotations under former act, see ante, §8704.

On appeal by the state to the supreme court from probate court, state need not pay the $10 to cover fees in supreme court but must pay $5 covering return of certified copy of notice of appeal and bond, and must pay fees for transcript, certified copies, etc., such fees not going to the state. Op. Atty. Gen. (346c), Aug. 12, 1936.

It is not necessary for a special administrator to ask for and pay for a certified copy of his letters as a condition precedent to his appointment, but if he desires a certified copy of a paper on file or of record he must pay fee required. Op. Atty. Gen. (346c), June 12, 1939.

ARTICLE II.—PERSONNEL.

A.—JUDGE.

8992–5. Bond.—There shall be elected in each county a probate judge who before he enters upon the duties of his office shall execute a bond to the State in the amount of one thousand dollars, approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with his oath shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. (G. S. 8691) (Act Mar. 29, 1935, c. 72, §5; Apr. 26, 1937, c. 435, §3.)

Annotations under former act, see ante, §8691.

A probate judge who executed a bond to "the state" instead of to "the county board" before the passage of this act should now execute a new bond pursuant to this act. Op. Atty. Gen. (347a), June 3, 1935.

On going into effect of this act it is highly desirable, if not necessary, that new bonds be executed and filed in conformity with this act. Op. Atty. Gen. (347a), June 14, 1935.

8992–6. Filing of decisions.—The decision of every issue of law or fact shall be in writing and shall be filed within ninety days after submission unless prevented by illness or casualty. This provision shall be construed as mandatory, and the county auditor shall not sign or issue a warrant for the salary of the judge or any installment thereof unless the voucher for such warrant is accompanied by an affidavit of the judge that all matters submitted to him for decision ninety days or more prior to the filing of such affidavit have been decided as herein required, unless a decision has been prevented by illness or casualty in which case the reasons for delay shall be specifically stated.

Upon the filing of any appealable order, judgment, or decree, except in uncontested matters or where the final decision was announced at the hearing, the court shall give notice by mail of such filing to each party, or his attorney, who appeared of record at the hearing. (G. S. 8705, 8716) (Act Mar. 29, 1935, c. 72, §6.)

Annotations under former act, see ante, §8716.

8992–7. Disqualification.—The following shall be grounds for disqualification of any judge or referee from acting in any matter: (1) that he or his wife or any of his or her kin nearer than first cousin shall be interested as representative, heir, devisee, legatee, ward, or creditor in the estate involved therein; (2) that it involves the validity or interpretation of a will drawn or witnessed by him; (3) that he may be a necessary witness in such matter; (4) that it involves a property right in respect to which he has been engaged or is engaged as an attorney, or (5) that he was engaged in a joint enterprise for profit with the decedent at the time of death or that he is then engaged in a joint enterprise for profit with any person interested in such matter as representative, heir, devisee, legatee, ward, or creditor. Whenever grounds for disqualification exist, the judge may, and upon proper petition of any person interested in the estate must, request the probate judge of another county to act in his stead in such matter. (G. S. 8696) (Act Mar. 29, 1935, c. 72, §7.)

Annotations under former act, see ante, §8696.

8992–8. Substitution of judges.—Whenever the disqualification, absence, or illness of the resident judge exists, or whenever in his opinion the interest of the public or of any person interested in any matter requires that the probate judge of another county act in the stead of the resident judge, any other judge may act upon the request of the resident judge, or in the event of his incapacity, upon the request of the

presiding judge of the district court in the county wherein such matter is pending. Any order, judgment, decree, or other writing signed by such acting judge shall have the same force and effect as if signed by the resident judge. The reasonable and necessary expenses of the acting judge shall be paid by the county in which he is called to act. (G. S. 8697) (Act Mar. 29, 1935, c. 72, §8.)

Annotations under former act, see ante, §8697.

Section does not authorize appointment of probate judge of another county to act for a deceased probate judge. Op. Atty. Gen. (348), May 25, 1938.

8992-9. Insanity of judge.—Whenever a verified petition of five voters of any county is presented to a judge of the district court stating that the probate judge of such county is insane and incapacitated to act by reason of mental disability, such district judge shall examine into such alleged insanity or mental disability in the manner provided by law for examinations of insane persons by probate judges. If upon the examination such probate judge is found to be insane or incapacitated to act by reason of mental disability, the district judge shall certify such findings to the governor, who shall thereupon declare the office of such probate judge vacant, and fill the same by appointment. (G. S. 8698) (Act Mar. 29, 1935, c. 72, §9.)

8992-10. Delivery to successor.—Whenever the term of office of any judge expires, he shall deliver to his successor all books, records, and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor, he shall be guilty of a gross misdemeanor. (G. S. 8692) (Act Mar. 29, 1935, c. 72, §10.)

8992-11. Annual assemblage—Rules.—The judges of the probate courts shall assemble at the Capitol on the second Wednesday after January 1st of each year at ten o'clock in the forenoon or at such other place and time as may have been designated at the preceding assemblage, and any twenty of them shall constitute a quorum. When so assembled such judges shall formulate and adopt rules and make such revision and amendment thereof as they may deem expedient conformably to law, and the same shall take effect from and after the publication thereof as directed by them. Such rules shall govern all the probate courts of this State, but in furtherance of justice the court may relax or modify them or relieve a party from the effect thereof on such terms as may be just. The reasonable expenses of the judges attending such meetings shall be paid by their respective counties. (G. S. 8702, 8703) (Act Mar. 29, 1935, c. 72, §11.)

Annotations under former act, see ante, §8702.

8992-12. Not to be counsel.—No judge, referee, clerk, deputy clerk, or employee of any probate court, or the law partner of any of them, shall be counsel or attorney in any action or proceedings for or against any devisee, legatee, heir, creditor, representative, or ward over whom, or whose estate, claim, or accounts such court has jurisdiction. Except in matters relating to commitments, none of them shall give counsel or advice, or draw or prepare any paper relating to any matter which is or may be brought before such court, except orders, judgments, decrees, executions, warrants, certificates, or subpoenas issuing out of such court. No judge, referee, or clerk shall keep or hold his official office with any practicing attorney. (G. S. 8700) (Act Mar. 29, 1935, c. 72, §12.)

8992-13. Salaries.—The salaries of the judges, referees, clerks, reporters, and employees shall be as provided by law, but the salaries of the clerks and employees shall be fixed by the judge within the limits provided by law, notwithstanding the provisions of Section 196. (Act Mar. 29, 1935, c. 72, §13.)

Probate court is only court of original jurisdiction for settlement and allowance of accounts of administrators, and its judgments are final unless appealed from in manner provided by statute. National Surety Co. v. E., (US CCA8), 88F(2d)399.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

Clerks and employees in probate court are to be compensated pursuant to Laws 1935, c. 72, §13, compensation to be fixed by judge. Op. Atty. Gen. (348b), July 26, 1935.

Power of fixing salary for clerk hire in office of probate court is vested in judge of probate. Op. Atty. Gen. (347b), Oct. 17, 1935.

Clerk hire is to be fixed by judge of probate within extreme statutory limitations, and no action by county board is required. Op. Atty. Gen. (348a), Feb. 17, 1939.

Salary of probate judge may be reduced by legislative act during term. Op. Atty. Gen. (3471), March 10, 1939.

B.—CLERKS.

8992-14. Appointment—Powers.—The judge may appoint a clerk, deputy clerks, and employees as provided by law, to hold office during his pleasure, who shall perform the duties imposed by law and such judge. Such appointments shall be in writing and filed in such court. Before entering upon the duties of his office, each clerk and deputy clerk and, if ordered by the court, any employee shall execute a bond to the State in the amount of one thousand dollars approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bonds and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. A clerk or deputy clerk may take acknowledgments, administer oaths, authenticate, exemplify, or certify copies of instruments, documents, or records of the court, and when so ordered may hear and report to the court the testimony of any witnesses and the interrogatories and objections of counsel. (G. S. 8699) (Act Mar. 29, 1935, c. 72, §14; Apr. 26, 1937, c. 435, §4.)

Providing clerk hire on application to county board, see §997-4m.

Clerk has no authority to act after death of probate judge. Op. Atty. Gen. (348), May 25, 1938.

8992-15. Orders by clerk.—The judge may authorize the clerk or any deputy clerk to issue orders for hearing petitions for general administration, for the probate of any will, for determination of descent, for sale, lease, mortgage, or conveyance of real estate, for the settlement and allowance of any account, for partial or final distribution, for commitment, orders limiting the time to file claims and fixing the time and place for the hearing thereon, and to issue notice of the entry of any order. The issuance of any such order or notice by the clerk or deputy clerk shall be prima facie evidence of his authority to issue it. (G. S. 8711) (Act Mar. 29, 1935, c. 72, §15; Apr. 26, 1937, c. 435, §5.)

Clerk has no authority to act after death of probate judge. Op. Atty. Gen. (348), May 25, 1938.

C.—REFEREE.

8992-16. Appointment—Bond.—The judge of the probate court of any county in this state now or hereafter having a population of not less than four hundred thousand inhabitants may appoint one referee in probate who shall be a resident of such county and an attorney at law duly admitted in this state. He shall hold office during the pleasure of the judge appointing him. Such appointment shall be in writing and filed in such court. Before entering upon the duties of his office, he shall execute a bond to the State in the amount of one thousand dollars approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the secretary of state after approval as to form by the attorney general. The premiums on such bond and the expenses of such recording and filing shall be paid by

the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. (L. '29, c. 271; L. '31, c. 302) (Act Mar. 29, 1935, c. 72, §16; Apr. 26, 1937, c. 435, §6.)

Annotations under former act, see ante, §§8717-7, 8717-10.

8992-17. Compensation, etc.—Such referee shall receive from the county as compensation for his services a salary of three thousand six hundred dollars per annum payable from the general funds of the county not otherwise appropriated, at the same time and in the same manner and subject to the provisions of law applicable to the compensation of the judge. The county shall furnish him with a suitable office in the court house or in some other suitable place or places designated by the judge. The judge may assign to the referee from the court's clerks and employees such clerical help as may be necessary to enable him properly to discharge his duties. (L. '29, c. 271; L. '31, c. 302) (Act Mar. 29, 1935, c. 72, §17.)

Annotations under former act, see ante, §§8717-7, 8717-10.

Act Apr. 17, 1937, c. 269, provides that in counties of over 400,000 inhabitants probate referees shall receive salary of $4,200.

8992-18. Reference.—After such appointment the judge by order may refer to the referee any matter, cause, or proceeding pending in such court. In all matters so referred the referee shall find the facts and report the findings to the judge. In all matters referred and reported the referee may append his signature to the order or decree of the court; and whenever his signature shall be so appended, it shall constitute conclusive evidence that the matter was referred, heard, and reported in the manner required by law and the order of the court therein, provided that the failure of the referee to append his signature to any such order or decree shall not affect its validity. (L. '29, c. 271; L. '31, c. 302.) (Act Mar. 29, 1935, c. 72, §18.)

Annotations under former act, see ante, §§8717-7, 8717-10.

8992-19. Delivery of books, etc.—Whenever the term of office of such referee expires or is terminated, he shall deliver to his successor or to the judge all books and papers in his possession relating to his office. Upon his failure to do so within five days after demand by his successor or the judge, he shall be guilty of a gross misdemeanor. (L. '29, c. 271; L. '31, c. 302.) (Act Mar. 29, 1935, c. 72, §19.)

Annotations under former act, see ante, §§8717-7, 8717-10.

D.—REPORTER.

8992-20. Appointment and duties.—The judge may appoint a competent stenographer as reporter and secretary in all matters pertaining to his official duties to hold office during his pleasure. Such reporter shall make a complete record of all testimony given and all proceedings had before the court upon the trial of issue of fact except in commitment proceedings. He shall inscribe all questions in the exact language thereof, all answers thereto precisely as given by the witness or sworn interpreter, all objections made and the grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all admissions made, all oral stipulations, and all oral motions and orders. When directed by the judge, he shall make a record of any matter or proceeding and without charge shall read to or transcribe for such judge any record made by him. Upon completion of every trial or proceeding, such reporter shall file his stenographic record in the manner directed by the judge. Upon request of any person and payment of his fees by such person, he shall furnish a transcript. The reporter may take acknowledgments, administer oaths, and certify copies of his stenographic record or transcript thereof. (Act Mar. 29, 1935, c. 72, §20.)

8992-21. Compensation—Transcript Fees.—Where the salary of the reporter is not provided for by law, his compensation shall be paid by the representative as an expense of administration or guardianship, or by the party or parties presenting or contesting the proceedings reported, as the court may determine. In addition to the salary fixed by law or compensation fixed by the court, the reporter shall receive for transcripts furnished such fees as may be fixed by the court not exceeding those allowed by law to the district court reporters of the same county. (Act Mar. 29, 1935, c. 72, §21.)

8992-21a. Court reporters for probate court in certain counties.—The judge of probate of any county now having or which may hereafter have a population of 400,000 inhabitants or over, may appoint a competent stenographer as court reporter and secretary, who shall be paid a salary of $1800.00 per annum; and in addition to said salary the court reporter may also be paid such fees for transcripts of evidence made in relation to probate hearings, as the judge of probate shall fix and allow, and appoint one additional clerk who shall be a competent stenographer, who shall be paid a salary of $1200.00 per annum. (Act Apr. 29, 1935, c. 373, §1.)

8992-21b. To be additional employee.—The reporter and clerk mentioned in section 1 hereof shall be employed and appointed in addition to the clerk, deputy clerks and employees now provided by law, to hold office during the pleasure of the judge of probate and shall perform the duties imposed by law and such judge, and their salary shall be paid from the county funds in the same manner as prescribed for the payment of other employees of such court. (Act Apr. 29, 1935, c. 373, §2.)

E.—AUDITOR.

8992-22. Appointment.—The court may appoint an auditor in any matter involving an annual, partial, or final account, or the amount due on a claim or an offset thereto. Such appointment may be made with or without notice and on the court's own motion or upon the petition of the representative or of any person interested in the estate or guardianship. (G. S. 8717-1, 8717-2, 8717-3) (Act Mar. 29, 1935, c. 72, §22.)

8992-23. Powers.—The auditor shall have the same power as the court to set hearings, grant adjournments, compel the attendance of witnesses or the production of books, papers, and documents, and to hear all proper evidence relating to such matter. He shall report his findings of fact to the court. (G. S. 8717-4, 8717-5) (Act Mar. 29, 1935, c. 72, §23.)

8992-24. Compensation.—The auditor shall be allowed such reasonable fees, disbursements, and expenses as may be determined by the court and shall be paid by the representative as expenses of administration or guardianship or by the person applying for such audit as the court may determine. (G. S. 8717-6) (Act Mar. 29, 1935, c. 72, §24.)

ARTICLE III.—INTESTATE SUCCESSION.

8992-25. Definition of estate.—As used in this article, the word "estate" shall include every right and interest of a decedent in property, real or personal, except such as are terminated or otherwise extinguished by his death. (Act Mar. 29, 1935, c. 72, §25.)

Rights of inheritance are purely statutory. Reilly v. S., 196M376, 265NW284. See Dun. Dig. 2719.

Where two persons perish in a common disaster, there is no presumption that because of age, health, sex or strength, one survived other. Miller v. M., 198M497, 270 NW559. See Dun. Dig. 3434.

8992-26. ~~Descent of cemetery lot.~~—Subject to the right of interment of the decedent therein, a cemetery lot or burial plot unless disposed of as provided in G. S. 7582 shall descend free of all debts ~~as follows:~~

1. To his surviving spouse, a life estate with right of interment of such spouse therein, and remainder over to the person or association who would be entitled to the fee if there were no spouse.

2. If there be no surviving spouse, then ~~to his eldest surviving son.~~

3. If there be no surviving ~~son~~, then to his eldest surviving ~~daughter.~~

~~4. If there be no surviving daughter, then to his youngest surviving brother.~~

~~5. If there be no surviving brother, then to his youngest surviving sister:~~

6. If there be no surviving spouse, ~~son, daughter,~~ brother, ~~nor~~ sister of the decedent, then to the cemetery association or private cemetery in trust as a burial lot for the decedent and such of his relatives as the governing body thereof shall deem proper. Such cemetery association or private cemetery, or with its consent any person to whom such lot shall so descend, may grant and convey the same to any of the decedent's parents, brothers, sisters or descendants. A crypt or group of crypts or burial vaults owned by one person in a public or community mausoleum shall be deemed a cemetery lot. Grave markers, monuments, memorials, and all structures lawfully installed or erected on any cemetery lot or burial plot shall be deemed to be a part of and shall descend with such lot or plot. ~~(G. S. 7581) (Act Mar. 29, 1935, c. 72, §26.)~~

8992-27. Descent of homestead.—(a) Where there is a surviving spouse, the homestead shall descend free from any testamentary or other disposition thereof to which such spouse has not consented in writing or by election to take under the will as provided by law, as follows:

1. If there be no surviving child or issue of any deceased child, to the spouse;

2. If there be children or issue of deceased children surviving, then to the spouse for the term of his natural life, and the remainder in equal shares to such children and the issue of deceased children by right of representation.

(b) Where there is no surviving spouse and the homestead has not been disposed of by will, it shall descend as other real estate.

(c) Where the homestead is disposed of by a will which does not otherwise provide and in all cases where the homestead descends to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; in all other cases, it shall be subject to the payment of the items mentioned in Section 29. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce such lien or charge by an appropriate action in the District Court. (G. S. 8719) (Act Mar. 29, 1935, c. 72, §27; Apr. 26, 1937, c. 435, §7.)

Annotations under former act, see ante, §8719.

Upon death of spouse holding fee title to homestead surviving spouse takes homestead right not by right of survivorship, but as property set apart by law for benefit of surviving spouse or children. Maruska v. E., (USDC-Minn), 21FSupp841.

Record sustains trial court in affirming probate court's orders vacating and setting aside its previous order setting apart a homestead, on ground of fraud. Flanagan's Estate, 196M140, 264NW433. See Dun. Dig. 7784.

On death of homesteader title in fee vests in children, subject only to life estate of widow, and no waiver or other act of widow can impair rights secured to children, and cannot convert homestead into assets of estate. Kohrt v. M., 203M494, 282NW129. See Dun. Dig. 2721, 4220.

Widow who had life estate only under decree of distribution of homestead could not encumber right of child in remainder by entering into an agreement with an attorney to give a lien upon the property for services to be rendered. Id. See Dun. Dig. 2722, 4220.

Where a testator imposed a legacy as a charge upon real estate part of which was a homestead, it was improper for probate court to license a sale of entire tract either to pay debts or expenses of administration or legacies. Following in re Anderson's Estate, 202Minn 513, 279NW266, 116ALR82, the proper method of procedure is to devise homestead subject to lien. Schultz' Estate, 203M565, 282NW471. See Dun. Dig. 3614d.

Where homestead is disposed of by will which does not otherwise provide and in all cases where homestead descends to spouse or children or issue of deceased children, homestead of deceased recipient of old age assistance is not subject to claims of county or state agencies. Op. Atty. Gen. (521p-3), Apr. 6, 1936.

Claim of county for money paid as assistance against state of deceased recipient is same as claim of common creditor and is not preferred. Op. Atty. Gen. (521g), Apr. 15, 1936.

Where there are no children and nearest heirs at law are cousins, homestead is subject to payment of claim for old age assistance. Op. Atty. Gen. (521p-3), March 1, 1939.

(c).

Sections of Probate Code which deprive probate court of jurisdiction over claims against homestead and which confer such jurisdiction upon district court are not in violation of constitutional provision which gives probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 198M45, 268NW707. See Dun. Dig. 7770c.

Homestead of old age assistance recipient is exempt after his death, though he leaves only adult children. Op. Atty. Gen. (521p-3), July 28, 1938.

Homestead is subject to payment of claim for old age assistance furnished to decedent where he left no spouse or children or issue of deceased children. Op. Atty. Gen. (521G), April 5, 1939.

8992-28. Allowances to spouse, etc.—When any person dies, testate or intestate,

1. The surviving spouse shall be allowed from the personal property of which the decedent was possessed or to which he was entitled at the time of death, the wearing apparel, and, as selected by him, furniture and household goods not exceeding five hundred dollars in value, and other personal property not exceeding five hundred dollars in value.

2. If there be no surviving spouse, the minor children shall receive the property specified in the preceding subsection, as selected in their behalf.

3. During administration, but not exceeding eighteen months unless an extension shall have been granted by the court, or if the estate be insolvent not exceeding twelve months, the spouse or children or both constituting the family of the decedent shall be allowed such reasonable maintenance as the court may determine.

4. In the administration of an estate of a nonresident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section. (G. S. 8726 (1, 2, 3). (Act Mar. 29, 1935, c. 72, §28.)

Annotations under former act, see ante, §8726.

Interest of a surviving spouse in an estate may be lost by estoppel. Clover v. P., 203M337, 281NW275. See Dun. Dig. 2733.

(1).

Consent of husband to take under will of wife which left him nothing, did not affect his right to personalty under this subdivision. McBride's Estate, 195M319, 263 NW105. See Dun. Dig. 10301g.

8992-29. Descent of property.—Except as provided in Sections 26 and 27, and subject to the allowances provided in Section 28, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, the estate, real and personal, shall descend and be distributed as follows:

1. Personal property: To the surviving spouse one-third thereof free from any testamentary disposition thereof to which such survivor shall not have consented in writing or by election to take under the will as provided by law.

2. Real property: To the surviving spouse an undivided one-third of all real property of which the decedent at any time while married to such spouse as seized or possessed, to the disposition whereof by will or otherwise such survivor shall not have consented in writing or by election to take under the will as provided by law, except such as has been transferred or sold by judicial partition proceedings or appropriated to the payment of the decedent's debts by execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens.

3. If a spouse and only one child or the issue of a deceased child survive, the share of the spouse un-

der the provisions of Subsections 1 and 2 hereof shall be one-half instead of one-third.

4. Subject to the preceding provisions of this section, the whole estate, real and personal, except as otherwise disposed of by will shall descend and be distributed as follows:

(a) In equal shares to the surviving children and to the issue of deceased children by right of representation;

(b) If there be no surviving child nor issue of any deceased child, and if the intestate leave a surviving spouse, then to such spouse;

(c) If there be no surviving issue nor spouse, then to the father and mother in equal shares, or if but one survive, then to such survivor;

(d) If there be no surviving issue, spouse, father nor mother, then to the surviving brothers and sisters, if any, and to the issue of any deceased brother or sister in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree.

(e) If there be no surviving issue, spouse, father, mother, brother, sister, nor issue of any deceased brother or sister, then in equal shares to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

5. If a minor die leaving no spouse nor issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend and be distributed to the other children of the same parent, if any, and to the issue of any deceased child of such parent in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree; failing all such, it shall descend and be distributed by intestate succession as in other cases. (G. S. 8720, 8726 [6], [7]) (Act Mar. 29, 1935, c. 72, §29; Apr. 26, 1937, c. 435, §8; Apr. 15, 1939, c. 270, §3.)

6. If the intestate leave no spouse nor kindred, the estate shall escheat to the state. (G. S. 8720, 8726 [6], [7]) (Act Mar. 29, 1935, c. 72, §29; Apr. 26, 1937, c. 435, §8; Apr. 15, 1939, c. 270, §§1-3.)

Annotations under former act, see ante, §§8720, 8726.

Where a person dies intestate, title to his personal property vests in administrator for purpose of administration, while title to real estate passes immediately to heirs. Miller's Estate, 196M543, 265NW333. See Dun. Dig. 2722.

If one is entitled to specific performance of an oral contract to adopt, he may establish such right in an action to establish heirship. Firle's Estate, 197M1, 265 NW818. See Dun. Dig. 8773.

Where there is no surviving child, a surviving spouse who renounces a will takes one-half of property of testator. Pagel's Estate, 202M96, 277NW417. See Dun. Dig. 10301a.

Statute governing descent of estates of intestates may in case of doubt be resorted to as an aid in construction of a will. Thompson's Estate, 202M648, 279NW574. See Dun. Dig. 10272a.

Issue take per stirpes and not per capita, except when property descends to next of kin in which case those in equal degree take per capita. Id. See Dun. Dig. 2722a.

Evidence held wholly inadequate to establish an estoppel on the part of son from taking his statutory share of his father's intestate estate. Beier's Estate, 284NW 833. See Dun. Dig. 2723.

Where testator does not, by will, dispose of whole of his estate, no mere negative words of exclusion can prevent rest of property from passing under statutes of descent and distribution. Id. See Dun. Dig. 10206.

Right of a state to contest will. 23MinnLawRev250.

(4).

Where father individually and as special administrator brought action for death of infant son, and a settlement was made, mother is entitled to half, after deducting medical, funeral expenses and attorney's fees and other disbursements, though she suffered no pecuniary loss by reason of the death, having deserted family years before. Murphy v. D., 200M345, 274NW515. See Dun. Dig. 2617.

(4) (d).

Amended. Laws 1939, c. 270, §1.

(4) (e).

Amended. Laws 1939, c. 270, §2.

(5).

Amended. Laws 1939, c. 270, §3.

8992-30. Degree of kindred.—The degree of kindred shall be computed according to the rules of the civil law. Kindred of the half blood shall inherit equally with those of the whole blood in the same degree unless the inheritance comes to the intestate by descent, devise, or bequest from one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance. (G. S. 8725) (Act Mar. 29, 1935, c. 72, §30.)

Annotations under former act, see ante, §8725.

8992-31. Posthumous child.—A posthumous child shall be considered as living at the death of its parent. (G. S. 8718) (Act Mar. 29, 1935, c. 72, §31.)

8992-32. Illegitimate as heir.—An illegitimate child shall inherit from his mother the same as if born in lawful wedlock, and also from the person who in writing and before a competent attesting witness shall have declared himself to be his father; but such child shall not inherit from the kindred of either parent by right of representation. (G. S. 8723) (Act Mar. 29, 1935, c. 72, §32.)

Annotations under former act, see ante, §8723.

At common law, an illegitimate child had no right of inheritance from its father. Reilly v. S., 196M376, 265 NW284. See Dun. Dig. 826.

Illegitimate child failed to show that illegitimacy proceedings in Wisconsin were such as to meet requirements of statute. Id. See Dun. Dig. 826, 827.

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8½ months after death girl bore a child of the employee, there was no marriage and child was not entitled to compensation under workmen's compensation act. Guptil v. E., 197M211, 266NW748.

***8992-33. Heirs to illegitimate.**—If any illegitimate child dies intestate and without spouse or issue who inherit under the law, his estate shall descend to his mother, or in case of her prior decease to her heirs other than such child. (G. S. 8724) (Act Mar. 29, 1935, c. 72, §33.)*

ARTICLE IV.—WILLS.

8992-34. Requisites.—Every person of sound mind, not a minor, may dispose of his estate, or any part thereof, or any right or interest therein, by his last will in writing, signed by him or by some person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses. (G. S. 8735) (Act Mar. 29, 1935, c. 72, §34.)

Annotations under former act, see ante, §8735.

1. In general.

Where insured abandoned his wife leaving impression of having committed suicide and married another in a distant city and formed a corporation with another person and each member of corporation took out a life insurance policy making trust company beneficiary and legal owner of stock of corporation, insurance money going to wife of person first dying, and stock of corporation to surviving business associate, there was created a conventional life insurance trust which was contractual and a transaction inter vivos rather than testamentary, and original wife of insured had no right to insurance money, if trust agreement contemplated that second wife should be beneficiary. Soper's Estate, 196M60, 264NW427. See Dun. Dig. 10203.

Trust deposit in savings bank held not testamentary in character. Coughlin v. F., 199M102, 272NW166. See Dun. Dig. 10202c.

Right of one spouse to accept by gift inter vivos, or take under will of other spouse, is not affected by an antenuptial agreement between them, except where it is found that by such gift or agreement it was intended that there be satisfaction or ademption thereof. Berg v. B., 201M179, 275NW836. See Dun. Dig. 4251, 4285.

Where decision hinges upon oral evidence of that which statute of frauds and statute of wills require to be in writing, oral evidence to establish facts claimed must be clear, unequivocal, and convincing. Ives v. P., 204M142, 283NW140. See Dun. Dig. 10203a.

A testator, if competent, has power to dispose of his property in any way he chooses by a properly executed will provided there is no undue influence. Mazanec's Estate, 204M406, 283NW745. See Dun. Dig. 10205.

2. Mental capacity and undue influence.

To make a case of undue influence, will must express mind and intent of someone else and not the testator.

Mazanec's Estate, 204M406, 283NW745. See Dun. Dig. 10238.

There must be evidence that undue influence was in fact exerted, and it is not sufficient to show that a party benefited by will had motive and opportunity to exert such influence. Id. See Dun. Dig. 10240.

Burden of proving undue influence is on contestant. Id. See Dun. Dig. 10240.

A relationship of confidence between testator and a beneficiary is not sufficient to prove undue influence, but it must be shown that influence was exerted in a special degree to procure a will peculiarly acceptable to beneficiary. Id. See Dun. Dig. 10243.

Proof of undue influence must be clear and convincing, and not merely raise a mere suspicion or conjecture. Id. See Dun. Dig. 10243.

Mere inequality, however great, in distribution of property among children or relative, is not evidence of undue influence, nor is it made such by evidence of an impaired mind. Id. See Dun. Dig. 10243.

Evidence sustains finding that testator had sufficient mental capacity to make a will. Osbon's Estate, 286NW 306. See Dun. Dig. 10212.

Jury was justified in finding that will was not result of undue influence on part of sister. Id. See Dun. Dig. 10243.

3. Construction of will.

Testator's intent as to whether annuity bequeathed to widow in lieu of her statutory rights was payable in any event or only out of income must be ascertained from a consideration of the entire instrument in the light of the surrounding circumstances, giving the language its ordinary meaning. Congdon, (CCA8), 99F(2d) 318.

When unrestrained by statute, it is intent of donor and not character of donee's obligation which controls availability and disposition of his gift. Erickson v. E., 197M71, 266NW161. See Dun. Dig. 10257.

Will creating a trust in residue of testator's estate, income to be distributed to widow and eight children or to grandchildren by right of representation, the principal to be distributed to beneficiaries in five-year installments, no title either in principal or income to vest in beneficiaries until actual distribution to them, and beneficiaries to have no power to assign, transfer, anticipate, or dispose of their interests prior to distribution, created a valid spendthrift trust, both as to corpus and income of trust estate, which protected same during transmission to and until actually received by beneficiaries. Id. See Dun. Dig. 10287d.

Church held to have acted within terms of gift for hospital purposes in delaying construction of building during period of high prices and in changing plan during a period of depression, and there was no such unreasonable delay as to require forfeiture of bequest or declaration of a resulting trust. Wyman v. T., 197M62, 266NW 165. See Dun. Dig. 10287.

Prime purpose of construction is to arrive at intent of testator. Pagel's Estate, 202M96, 277NW417. See Dun. Dig. 10257.

To carry out intention of testatrix is controlling factor guiding court in construing a will, and where general purpose and intent is clearly apparent, directions must be rigidly adhered to. Peterson's Estate, 202M31, 277 NW529. See Dun. Dig. 10257.

Extrinsic evidence or parol testimony may be received to disclose a latent ambiguity as to identity of a legatee or beneficiary in a will, and same sort of evidence is admissible to remove ambiguity disclosed. Id. See Dun. Dig. 10260.

Important thing is to ascertain intention of testator. First Minneapolis Trust Co., 202M187, 277NW899. See Dun. Dig. 10257.

All provisions of a will should be harmonized and given meaning if possible. Id. See Dun. Dig. 10259.

Primary object in construction of a will is to ascertain intent and meaning of testator. Thompson's Estate, 202 M648, 279NW574. See Dun. Dig. 10257.

In construing will court may properly consider situation of testatrix, probable duration of trust, condition of life beneficiaries, manner of disposal of vast fortune, legal skill of draughtsman, discrimination shown in use of terms in different bequests, plan of distribution, statutes of descent of property of intestates, and such rules as have been shown by experience to be of aid in ascertaining intention of testatrix, but may not remake will by construction or ignore its plain language. Id. See Dun. Dig. 10257.

Will held to contemplate conversion of entire estate into cash, and not to distribute any real estate. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3133.

4. Persons taking and their respective shares.

Where testator provided that wife was to have one-third of crop of a certain farm or that she could sell property retaining a portion of proceeds, by accepting one-third of crop for a period of years she made her election and was precluded from claiming thereafter a right to dispose of property. Stucky v. B., 198M445. 270 NW141. See Dun. Dig. 10300.

Will construed to bequeath widow annuity payable in any event and not only out of income. Congdon, (CCA8), 99F(2d)318.

Specific bequests are not favored by the law. Pagel's Estate, 202M96, 277NW417. See Dun. Dig. 10275a.

Will creating a trust held not to create a special bequest in favor of brothers and sisters of testator. Id. See Dun. Dig. 10275a.

A devise or bequest, although in form an outright gift, made to institution whose sole reason for existence and whose entire activity is charitable, is in purpose and practical effect a charitable trust, and takes, not beneficially, but as trustee, to use gift in furtherance of particular charity designated in will. Peterson's Estate, 202M31, 277NW529. See Dun. Dig. 1418.

Where there is no surviving spouse or child the homestead passes by virtue of a residuary clause unless a contrary intention appears. Anderson's Estate, 279NW266. See Dun. Dig. 10276a.

Will providing that upon death of survivor of two daughters of testatrix "the property shall be divided and turned over, one-half thereof to the living issue of each daughter, if there then be such issue of each, whether of the first or succeeding generations," required distribution as of time of death of survivor of one-half of trust fund to living children of one daughter in equal shares and the other one-half to living children of other daughter in equal shares to exclusion of three grandchildren then living. Thompson's Estate, 202M648, 279NW 574. See Dun. Dig. 10265a.

Children do not take concurrently or in competition with living parents unless intention of testator that they shall so take may be clearly ascertained from will. Id. See Dun. Dig. 10265a.

A devisee or legatee or heir, otherwise entitled to contribution from other devisees or legatees or heirs of the same class on account of payment of testator's debt, has no right of contribution where party paying debt is primarily liable for such payment by reason of its being a charge on share of estate received by him by provisions of will or decree of court. Parten v. F., 204M200, 283NW 408. See Dun. Dig. 10287.

Where holding company was organized and until his death conducted by testator and settlor of trust, fact that he took all increases of capital as income is inadmissible to show that his trustee and life tenant could do the same, the trust instrument (the will) limiting her to income. Clarke's Will, 204M574, 284NW876. See Dun. Dig. 10272c.

4½. Vesting of interests.

Neither corpus nor income of spendthrift trust could be reached to satisfy claims for alimony or support money for children. Erickson v. E., 197M71, 266NW161. See Dun. Dig. 9890.

Intention of testator to postpone vesting of legacies of his nine children in his residuary estate until time of entry of decree of distribution appears so plainly from will, taken as a whole, that no rules of construction can be allowed to frustrate it. Jennrich's Estate, 197M162, 266NW461. See Dun. Dig. 10257.

Record does not furnish any ground upon which to hold that share of a daughter, who died after final account of executor was filed, but before a hearing thereon and rendition of final decree, vested because of dilatory tactics of executor. Id. See Dun. Dig. 10278.

5. Contract to make will.

Specific performance will lie to enforce family arrangement or settlement of property rights involving promise of widow to will property to children in equal shares. Anderson v. A., 197M252, 266NW841. See Dun. Dig. 10207.

An oral agreement, entered into between a mother and her nine children that children transfer to mother their interests in estate of their intestate father in consideration of mother leaving her estate in equal shares to children, and its full performance by children, was proven by clear, positive and convincing testimony. Id.

In action for specific performance of contract to will or leave property, burden is upon plaintiff to show by full and satisfactory proof, fact of contract and its terms. Hauge v. N., 197M493, 267NW432. See Dun. Dig. 8806.

In action for specific performance of a contract to leave property by will, evidence held to sustain finding that contract was made in writing between decedent and plaintiff, through his father, was performed by plaintiff, and was of such domestic and personal character that it could not be liquidated in money. Hanson v. B., 199M70, 271NW127. See Dun. Dig. 10207.

Corporate beneficiary under a will not making motion to dismiss action by certain heirs for specific performance of an agreement to distribute part of estate to heirs of deceased, waived defect in parties from omission of certain nieces and nephews of decedent, it appearing that enforcement of agreement was for benefit of all heirs, who otherwise would have received nothing, and there being no foundation for claim that corporation might be compelled to defend other litigation, and there having been no motion to have other parties brought in as additional parties. Schaefer v. T., 199M610, 273NW190. See Dun. Dig. 7323, 7328, 7329.

Probate court has no jurisdiction over proceedings for specific performance of contract to will property, as a specific performance must be sought in district court in equity, and district court upon appeal from probate court has no jurisdiction to decree specific performance, since it may exercise only appellate jurisdiction. Roberts' Estate, 202M217, 277NW549. See Dun. Dig. 3593i, 3658, 7795, 10207.

An oral agreement to will all property in consideration of support for life was indivisible and part relating to

personalty was not enforceable in probate court, entire agreement being within statute of fraud. Id. See Dun. Dig. 8883.

In action for specific performance of a contract to make a will, plaintiffs claim as owners, and it is not necessary for them to show that defendants are insolvent or have threatened to convey property involved. Jannetta v. J., 285NW619. See Dun. Dig. 8789a.

A party may bind himself by contract to make a testamentary disposition of his property. Id. See Dun. Dig. 10207.

Specific performance will be granted to children, who have fully performed, on their part, a contract made with their parent for testamentary disposition of his estate consisting of real and personal property, in the nature of a family settlement, where it appears that parent and children all had interests in property which children transferred to parent under an agreement that he would leave property, or so much thereof as remained, to them at his death. Id. See Dun. Dig. 10207.

Contract to will property must be proved by clear positive and convincing evidence. Id. See Dun Dig. 10207.

That contract to will property is oral does not bar specific performance if usual conditions relating to specific performance obtain. Id. See Dun. Dig. 10207.

Children may be entitled to specific performance of agreement between father and mother to make joint and mutual wills giving survivor a life estate with remainder to children. Id. See Dun. Dig. 10207.

Contracts to transfer property on death of promisor. 23MinnLawRev112.

6. Contracts of beneficiaries for distribution.

A will cannot be modified by agreement between beneficiaries, but that does not estop them from contracting among themselves to make such disposition of their property rights thereunder as they may deem best suited to their respective interests. Schaefer v. T., 199M610, 273 NW190. See Dun. Dig. 10243k.

Where a person, knowing that a testator, in giving him a devise or bequest, intends it to be applied for benefit of another, either expressly promises, or by his action at time implies, that he will carry out testator's intention into effect, and property is left to him in faith on part of testator that such promise will be kept, promisor will be held as a trustee ex maleficio. Ives v. P., 204M142, 283NW140. See Dun. Dig. 9919.

Equity looks with favor on arrangement made between members of family with respect to distribution of property at death. Jannetta v. J., 285NW619. See Dun. Dig. 10207.

8992–35. Competency of witnesses.—If a witness to a will is competent at the time of his attestation, his subsequent incompetency shall not prevent the admission to probate of such will, nor shall a mere charge on the real estate of the testator for the payment of his debts prevent a creditor from being a competent witness to his will. (G. S. 8736) (Act Mar. 29, 1935, c. 72, §35.)

8992–36. Nuncupative wills.—Nuncupative wills shall not be valid unless made by a soldier in actual service or by a mariner at sea, and then only as to personal estate. To entitle such a will to probate, the testamentary words, or the substance thereof, must be reduced to writing within thirty days after they were spoken; the petition for probate must be filed within six months after they were spoken. In addition to the facts otherwise required, the petition shall allege the date, before whom the same were spoken, and by whom the same were reduced to writing. Such writing shall accompany the petition. No such will shall be admitted to probate except upon testimony of at least two credible and disinterested witnesses. (G. S. 8737, 8767) (Act Mar. 29, 1935, c. 72, §36.)

8992–37. Wills made elsewhere.—A will made out of this state may be admitted to probate if executed according to the laws of this state, or if in writing, signed by the testator and valid according to the laws of the state or country in which it was made or of the testator's domicile. (G. S. 8738) (Act Mar. 29, 1935, c. 72, §37.)

Annotations under former act, see ante, §8738.

8992–38. Beneficiary a witness.—A beneficial devise or bequest made in a will to a subscribing witness thereto shall be void unless there be two other competent subscribing witnesses who are not beneficiaries thereunder. If such witness would have been entitled to any share of the testator's estate in the absence of a will, then so much of such share as will not exceed the value of the devise or bequest shall be assigned to him from the part of the estate included in the void devise or bequest. (G. S. 8739) (Act Mar. 29, 1935, c. 72, §38.)

8992–39. Revocation.—No will in writing shall be revoked or altered otherwise than by some other will in writing; or by some other writing of the testator declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence by his direction and consent. When so done by another person, the direction and consent of the testator and the facts of such injury or destruction shall be proved by at least two witnesses. Nothing in this section shall prevent the revocation implied by law from subsequent change in the condition or circumstances of the testator. (G. S. 8741) (Act Mar. 29, 1935, c. 72, §39.)

Annotations under former act, see ante, §8741.

8992–40. Revocation by marriage or divorce.—If after making a will testator marries, the will is thereby revoked. If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked. (G. S. 8742) (Act Mar. 29, 1935, c. 72, §40.)

Annotations under former act, see ante, §8742.

8992–41. After-born child.—If any child of the testator, including a posthumous child, born after the making of a will has no provision made for him by the testator by will or otherwise, he shall take the same share that he would have taken if the testator had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake. (G. S. 8744) (Act Mar. 29, 1935, c. 72, §41.)

8992–42. Omitted child.—If a testator omits to provide in his will for any of his children or the issue of a deceased child, they shall take the same share of his estate which they would have taken if he had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake. (G. S. 8745) (Act Mar. 29, 1935, c. 72, §42.)

Annotations under former act, see ante, §8745.

A pretermitted grandchild who by contract with children of testator acquired an interest in residue of his estate is a party aggrieved by an order of probate court allowing a claim against estate, and entitled to appeal to district court. Burton's Estate, 203M275, 281NW1. See Dun. Dig. 7785.

A pretermitted child or grandchild must assert his rights in probate court before final decree of distribution. Id. See Dun. Dig. 10206e.

Burden is upon those claiming under terms of will to prove that omission of grandchild as beneficiary was intentional. Id.

8992–43. Apportionment.—If the person takes a portion of a testator's estate under the provisions of Section 41 or 42, such portion shall first be taken from the estate not disposed of by the will; if that be insufficient, so much as is necessary shall be taken from all the devisees and legatees in proportion to the value of what they respectively receive under such will. But if the obvious intention of the testator in relation to some specific devise, bequest, or other provision of the will would thereby be defeated, then such specific devise, bequest, or provision may be exempted from such apportionment, and a different apportionment adopted in the discretion of the court. (G. S. 8746) (Act Mar. 29, 1935, c. 72, §43.)

Annotations under former act, see ante, §8746.

8992–44. Deceased beneficiary.—If a devise or bequest be made to a child or other blood relative of the testator who dies before the testator leaving issue who survive the testator, such issue shall take the same estate which such devisee or legatee would have taken if he had survived, unless a different disposition be made or required by the will. (G. S. 8747) (Act Mar. 29, 1935, c. 72, §44.)

Annotations under former act, see ante, §8747.
Set-off against substituted legatee of debt owed testator by original legatee. 23MinnLawRev398.

8992–45. Quantity devised.—Every devise of real estate shall convey all the estate of the testator therein subject to liens and encumbrances thereon unless a different intention appears from the will. (G. S. 8748) (Act Mar. 29, 1935, c. 72, §45.)

A "lien" is a hold or claim which one person has upon propery of another as security for some debt or charge. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 5577.

8992–46. After-acquired property.—All property acquired by the testator after making his will shall pass thereby in like manner as if possessed by him at the time when he made his will, unless a different intention clearly appears from the will. (G. S. 8749) (Act Mar. 29, 1935, c. 72, §46.)

8992–47. Renunciation and election.—If a will make provision for a surviving spouse in lieu of the rights in the estate secured by statute, such spouse shall be deemed to have elected to take under the will, unless he shall have filed an instrument in writing renouncing and refusing to accept the provisions of such will within six months after the filing of the certificate of probate. For good cause shown, the court may permit an election within such further time as the court may determine. No devise or bequest to a surviving spouse shall be considered as adding to the rights in the estate secured by Article III, Sections 27 and 29 to such spouse, unless it clearly appears from the contents of the will that such was the testator's intent. (G. S. 8722) (Act Mar. 29, 1935, c. 72, §47.)

Annotations under former act, see ante, §8722.
Voluntary written consent of husband to take under will of wife was binding upon him though he received no consideration and was left nothing under the will. McBride's Estate, 195M319, 263NW105. See Dun. Dig. 10301g.
Evidence held to sustain finding that surviving husband voluntarily consented to take under will of deceased wife. Id.
Consent of surviving husband to take under will of wife, which left him nothing, did not affect his right to personalty descending to him under §28. Id.

8992–48. Deposit of wills.—A will in writing inclosed in a sealed wrapper upon which is indorsed the name and address of the testator, the day when, and the person by whom it is delivered, may be deposited in the probate court of the county where the testator resides. The court shall give a certificate of its deposit and shall retain such will. During the testator's lifetime, such will shall be delivered only to him or upon his written order witnessed by at least two subscribing witnesses and duly acknowledged. After the testator's death, the court shall open the will publicly and retain the same. Notice shall be given to the executor named therein and to such other persons as the court may designate. If the proper venue is in another court, the will shall be transmitted to such court; but before such transmission a true copy thereof shall be made by and retained in the court in which the will was deposited. (G. S. 8750) (Act Mar. 29, 1935, c. 72, §48.)

8992–49. Duty of custodian.—After the death of a testator, the person having custody of his will shall deliver it to the court which has jurisdiction thereof. Every person who neglects to deliver a will after being duly ordered to do so shall be guilty of contempt of court. (G. S. 8743) (Act Mar. 29, 1935, c. 72, §49.)

Annotations under former act, see ante, §8743.

8992–50. Probate essential.—No will shall be effectual to pass either real or personal estate unless duly admitted to probate. Such probate shall be conclusive as to the due execution of a will. (G. S. 8740) (Act Mar. 29, 1935, c. 72, §50.)

ARTICLE V.—PROBATE OF WILLS.

8992–51. Petitioners.—At any time after the death of the testator, any executor, devisee, or legatee named in a will, or any other person interested in the estate may petition the court of the proper county to have the will admitted to probate, whether the same is in his possession or not, is lost, is destroyed, or is without the state. (G. S. 8751) (Act Mar. 29, 1935, c. 72, §51.)

Annotations under former act, see ante, §8751.

8992–52. Contents of petition.—Every petition for the probate of a will shall show:

1. The jurisdictional facts.
2. The names, ages, and addresses of the heirs, legatees, and devisees of the decedent so far as known to the petitioner.
3. The probable value and general character of the real and personal property, and the probable amount of the debts.
4. The name and address, if known, of the person named as executor, and the name and address of the person for whom letters are prayed. (G. S. 8752) (Act Mar. 29, 1935, c. 72, §52.)

8992–53. Hearing and proof.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. If probate is not contested, the court may admit the will on the testimony of one of the subscribing witnesses; but if contested, all the subscribing witnesses who are within the state and competent and able to testify shall be produced and examined. If the instrument is not allowed as the last will and if the estate should be administered, the court shall grant administration to the person or persons entitled thereto. (G. S. 8753, 8756) (Act Mar. 29, 1935, c. 72, §53.)

Annotations under former act, see ante, §§8753, 8756.
A proceeding for probate of a will is in rem, and constructive notice is sufficient, and a decree admitting will to probate is binding on everyone interested in estate, whether they appear at the hearing or not and whether they have actual notice or not. Mahoney's Estate, 195M 431, 263NW465. See Dun. Dig. 7783e.
There was no error in permitting proponents of will to introduce contents of a previous revoked will. Osbon's Estate, 286NW306. See Dun. Dig. 10246.
In will contest there was no error in refusal to permit divorced wife of decedent to testify as to a conversation with testator which had occurred during marriage. Id. See Dun. Dig. 10312.

8992–54. Objections.—No person may contest the validity of a will unless the grounds of objection thereto are stated in writing and filed at or before the time of the hearing. (G. S. 8755) (Act Mar. 29, 1935, c. 72, §54.)

Annotations under former act, see ante, §8755.
In contest of will of mother question of right of parties in property transferred to mother by children following death of father was not properly before court. Mazanec's Estate, 204M406, 283NW745. See Dun. Dig. 10245b.

8992–55. Secondary evidence.—If no subscribing witness competent to testify resides in the state at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the capacity of the testator and the execution of the will, and as evidence of such execution may admit proof of the handwriting of the testator and of the subscribing witnesses. (G. S. 8754) (Act Mar. 29, 1935, c. 72, §55.)

8992–56. Certificate of probate.—When proved as herein provided, every will shall have indorsed thereon or annexed thereto a certificate by the court of such proof. Every will so certified and the record thereof, or a duly certified transcript of such record may be read in evidence in all the courts within this state without further proof. (G. S. 8757) (Act Mar. 29, 1935, c. 72, §56.)

8992–57. Will in opposition.—If, after a petition for the probate of a will has been filed, another instrument in writing purporting to be the last will or codicil shall be presented, proceedings shall be had for the probate thereof, and thereupon the hearing on the petition theretofore filed shall be adjourned to the time fixed for the hearing of the subsequent petition. At such time proof shall be had upon all of such wills, codicils, and all matters pertaining thereto, and the court shall determine which of such instruments,

if any, should be allowed as the last will. (G. S. 8758) (Act. Mar. 29, 1935, c. 72, §57.)

Annotations under former act, see ante, §8758.

8992–58. Appointment of representative.—Upon the admission of the will to probate, the court shall appoint a representative and fix the amount of his bond as required by law. If any executor named in the will is found by the court to be suitable and competent to discharge the trust, he shall be appointed. If no executor was named in the will, or if no named executor is found by the court to be willing, suitable, and competent, the court shall appoint the person entitled to administration in case of intestacy as administrator with the will annexed. If any person appointed does not qualify within twenty days, the court may vacate his appointment and grant letters to the other executors. Upon the filing of the oath, acceptance and bond as required by law, letters shall issue. (G. S. 8768, 8769) (Act Mar. 29, 1935, c. 72, §58.)

Annotations under former act, see ante, §§8767, 8769.

Executor named in will is not entitled to appointment as such unless he be both "suitable and competent," and finding of unsuitability was sustained on evidence that, by pending litigation, named executor was put in a position of hostility to numerous legatees and their interests, and latter in an attitude of ill will toward him. Holterman's Estate, 203M519, 282NW132. See Dun. Dig. 3564.

8992–59. Named executor a minor.—When a person named as executor is a minor at the time of the admission of the will to probate, any other representative appointed and qualifying may administer the estate. When the minor attains majority, he may be appointed co-representative. (G. S. 8770) (Act Mar. 29, 1935, c. 72, §59.)

8992–60. No executor of executor.—The executor of an executor shall not administer as such executor on the estate of the first testator. (G. S. 8771) (Act Mar. 29, 1935, c. 72, §60.)

ARTICLE VI.—LOST AND DESTROYED WILLS.

8992–61. Petition and hearing.—The petition for the probate of a lost or destroyed will, or one which is without the state and cannot be produced in court shall set forth the provisions of the will in addition to the requirements of Article V, Section 52. Such provisions in such particularity as the court may direct shall be embodied in the notice of hearing, which notice shall be given pursuant to Article XIX, Section 188. (G. S. 8764) (Act Mar. 29, 1935, c. 72, §61.)

8992-62. Sufficiency of proof.—No such will shall be established unless it is proved to have remained unrevoked nor unless its provisions are clearly and distinctly proved. (G. S. 8765) (Act Mar. 29, 1935, c. 72, §62; Apr. 26, 1937, c. 435, §9.)

8992–63. Certification.—When such will is established, the provisions thereof shall be distinctly stated and certified by the court and filed and recorded. Letters shall issue thereon as in the case of other wills. (G. S. 8766) (Act Mar. 29, 1935, c. 72, §63.)

ARTICLE VII.—ESTATES OF NONRESIDENTS.

8992–64. Wills proved elsewhere.—Any will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved, may be filed and allowed in any county in which the testator left property upon which such will may operate. (G. S. 8759) (Act Mar. 29, 1935, c. 72, §64.)

Situs of chose in action on insurance policy as an asset for purposes of administration. 23MinnLawRev221.

8992–65. Allowance.—Upon the filing of a duly authenticated copy of such will and of the order, judgment, or decree admitting it to probate, with the petition of the executor or any person interested in the estate for its allowance and for letters, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. If such will was admitted to probate by a court of competent jurisdiction and if the order, judgment, or decree of admission to probate is still in force, the court shall allow the will and appoint a representative as if the will were originally proved and allowed in such court. (G. S. 8760, 8761, 8762) (Act Mar. 29, 1935, c. 72, §65.)

8992–66. Administration.—The estate of a nonresident decedent shall be administered in the same manner as an estate of a resident decedent. Upon the payment of the expenses of administration, of the debts and other items here proved, and of the inheritance taxes, the residue of the personalty shall be distributed according to the terms of the will applicable thereto; or if the terms of the will be not applicable thereto, or if there be no will, it shall be distributed according to the law of the decedent's domicile; or the court may direct that it be transmitted to the domiciliary representative to be disposed of by him. The real estate not sold in the course of administration shall be assigned according to the terms of the will applicable thereto, or if the terms of the will be not applicable thereto, or if there be no will, it shall descend according to the laws of this state. (G. S. 8763) (Act Mar. 29, 1935, c. 72, §66.)

Annotations under former act, see ante, §8763.

8992–67. Foreign representative.—Upon the filing for record in the office of the register of deeds of the proper county of an authenticated copy of his letters or other record of his authority and a certificate that the same are still in force, a representative appointed by a court of competent jurisdiction in another state or country may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any debt secured thereby belonging to the estate represented by him. Real estate acquired by a foreign representative on foreclosure or execution sale shall be held, sold, mortgaged, or leased pursuant to Section 93. (G. S. 8792, 8944) (Act Mar. 29, 1935, c. 72, §67; Apr. 26, 1937, c. 435, §10.)

Effect of statutory right to sue on right to possession of realty by foreign administrator. 23MinnLawRev373.

ARTICLE VIII.—GENERAL ADMINISTRATION.

8992–68. Persons entitled.—General administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, suitable and competent to discharge the trust, and in the following order:

The surviving spouse or next of kin or both, as the court may determine, or some person or persons selected by them or any of them.

If all such persons are incompetent or unsuitable or do not accept, or if the surviving spouse or next of kin do not file a petition therefor within thirty days after the death of the intestate, administration may be granted to one or more of the creditors, or to the nominee or nominees of such creditor or creditors. If the decedent was born in any foreign country or left heirs in any foreign country, and the surviving spouse or next of kin do not file a petition therefor within thirty days after his death, administration may be granted to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative.

Whenever the court determines that it is for the best interest of the estate and all persons interested therein, administration may be granted to any other person suitable and competent to discharge the trust whether interested in the estate or not.

If the person appointed does not file the required oath, acceptance, and bond within ten days after notice of such appointment, served in such manner as the court may direct, the court with or without notice may vacate the appointment and appoint such other person or persons as may be entitled to administer such estate. (G. S. 8772) (Act Mar. 29, 1935, c. 72, §68.)

Annotations under former act, see ante, §8772.

That widow as administratrix listed property in inventory as belonging to estate does not estop her from making claim that it was held in trust for her. Reifsteck's Estate, 197M315, 267NW259. See Dun. Dig. 3593h.

When a husband acquires possession of the separate property of the wife, whether with or without her consent, he must be deemed to hold it in trust for her benefit in the absence of evidence that she intended to make a gift of it to him. Id. See Dun. Dig. 4259.

On petition for appointment of administrator, evidence held not to rebut presumption that person, missing for well over seven years and from whom there had been no tidings, a portion of whose estate, if any there be, was claimed by appellant as next of kin, was no longer living at expiration of seven-year period, there being no unusual circumstances appearing to explain absence. Hokanson's Estate, 198M428, 270NW689. See Dun. Dig. 3434.

8992-69. Contents of petition.—Every petition for general administration shall show:

1. The jurisdictional facts.

2. The names, ages, and addresses of the heirs so far as known to the petitioner.

3. The probable value and general character of the real and personal property and the probable amount of the debts.

4. The name and address of the person for whom administration is prayed. (G. S. 8773) (Act Mar. 29, 1935, c. 72, §69.)

8992-70. Hearing.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Any person interested in the estate may contest the petition or oppose the appointment of the person for whom letters are prayed by filing written objections stating the ground thereof, at or before the time of the hearing. Upon proof of the petition, the court shall appoint an administrator and fix the amount of his bond as required by law. Upon the filing of the oath, acceptance, and bond as required by law, letters shall issue. (G. S. 8774) (Act Mar. 29, 1935, c. 72, §70.)

Annotations under former act, see ante, §8774.

On objection to petition for appointment of administrator, on ground that objector was common-law wife of decedent, burden of proof was upon objector to show that there was in fact a marriage contract. Welker's Estate, 196M447, 265NW273. See Dun. Dig. 3562b.

Right of a state to contest will. 23MinnLawRev250.

8992-71. Subsequent admission of will.—If, after the appointment of a general administrator, a will is admitted to probate, the powers of such administrator shall cease, and he shall proceed to a final accounting according to law. The new representative shall continue the administration. (G. S. 8775) (Act Mar. 29, 1935, c. 72, §71.)

8992-72. Administrator D. B. N.—If the sole or surviving representative dies or his authority is otherwise terminated before the estate is fully administered, the court with or without notice shall appoint a successor to administer the estate not already administered. Such successor shall have the same powers and duties as his predecessor. (G. S. 8777) (Act Mar. 29, 1935, c. 72, §72.)

Annotations under former act, see ante, §8777.

Administrator de bonis non had right to bring action against estate of former administrator and surety on bonds to recover amount unaccounted for by former administrator prior to his death, having right to collect and enforce claims of estate. Beckman v. B., 202M328, 277NW 355. See Dun. Dig. 3583b.

8992-73. Administrator C. T. A.—Where a will is admitted to probate and a representative other than the person named therein as executor has been appointed and has qualified, such representative shall have all the powers and perform all the duties of an executor including the power to sell, convey, mortgage, and lease real estate where the executor is empowered to do so by the terms of the will. (G. S. 8776) (Act Mar. 29, 1935, c. 72, §73.)

Annotations under former act, see ante, §8776.

ARTICLE IX.—SPECIAL ADMINISTRATION.

8992-74. Appointment.—Upon a showing of necessity or expediency, the court with or without notice may appoint a special administrator whether a petition for general administration or proof of will has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special administrator. (G. S. 8778, 8779) (Act Mar. 29, 1935, c. 72, §74.)

Annotations under former act, see ante, §8778.

No appeal lies from an order appointing a special administrator, but it is possible that mandamus might lie. Op. Atty. Gen. (346c), June 12, 1939.

Summary probate proceedings under new code. 19Minn LawRev833.

8992-75. Powers.—A special administrator shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special administrator power to perform any or all acts in the administration of the estate, not exceeding the powers conferred by law upon general administrators. (G. S. 8784) (Act Mar. 29, 1935, c. 72, §75.)

8992-76. Inventory and appraisal.—Within fourteen days after appointment, a special administrator shall file an inventory and appraisal of the personal property according to the requirements of Article XII A. (G. S. 8780, 8785) (Act Mar. 29, 1935, c. 72, §76.)

8992-77. Termination of powers.—Upon the granting of letters testamentary or of general administration, the power of a special administrator shall cease unless otherwise expressly ordered by the court. (G. S. 8785) (Act Mar. 29, 1935, c. 72, §77.)

8992-78. Final account and discharge.—Upon the termination of his power, a special administrator shall file his final account with his petition for the settlement and allowance thereof. The court with or without notice shall adjust, correct, settle, and allow or disallow such account. Upon allowance of the account and upon the filing of vouchers for all disbursements, and the balance, if any, having been paid to the person entitled thereto, the court shall discharge such special administrator and his sureties. (G. S. 8782, 8783) (Act Mar. 29, 1935, c. 72, §78.)

ARTICLE X.—DETERMINATION OF DESCENT.

8992-79. Essentials.—Whenever any person has been dead for more than five years and has left real estate or any interest therein, and no will has been admitted to probate nor administration had in this state; or whenever real estate or any interest therein has not been included in a final decree, any person interested in the estate or claiming an interest in such real estate may petition the probate court of the county of the decedent's residence or of the county wherein such real estate or any part thereof is situated to determine its descent and to assign it to the persons entitled thereto. (G. S. 8729) (Act Mar. 29, 1935, c. 72, §79.)

Annotations under former act, see ante, §8729.

8992-80. Contents of petition.—Such petition shall show so far as known to the petitioner:

1. The name of the decedent, the date and place of his death, his age and address at such date, and whether testate or intestate.

2. The names, ages, and addresses of his heirs, executors, legatees, and devisees.

3. That no will has been admitted to probate nor administration had in this state; or if a will has been admitted to probate or administration had, that real estate or some interest therein was not included in the final decree.

4. A description of the real estate, and if a homestead, designated as such, the interest therein of the decedent, the value thereof at the date of his death, and the interest therein of the petitioner.

5. If the decedent left a will which has not been admitted to probate; such will shall be filed and the petition shall contain a prayer for its admission to probate. If a will has been admitted to probate or if administration has been had, certified copies of such instruments in the prior administration as the court

may direct shall be filed. (G. S. 8730) (Act Mar. 29, 1935, c. 72, §80.)

8992-81. Decree of descent.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Upon proof of the petition and of the will if there be one, the court shall allow the same and enter its decree assigning the real estate to the persons entitled thereto pursuant to the will if there be one, otherwise pursuant to the law of intestate succession in force at the time of the decedent's death. No decree shall be entered until after the determination and payment of inheritance taxes. (G. S. 8731, 8732) (Act Mar. 29, 1935, c. 72, §81; Apr. 26, 1937, c. 435, §11.)

Annotations under former act, see ante, §8732.

ARTICLE XI.—BONDS.

8992-82. Condition.—Every representative, except as provided by Section 134 [§8992-134] and G. S. 7733, before entering upon the duties of his trust shall file a bond in such amount as the court directs, with sufficient sureties, conditioned upon the faithful discharge of all the duties of his trust according to law. (G. S. 8907) (Act Mar. 29, 1935, c. 72, §82.)

Annotations under former act, see ante, §8907.

In action against company which assumed obligations of surety on bond of administratrix arising after certain date, finding of probate court that reasonable time in which administratrix should have applied and sold real estate expired on a date after such assumption by defendant, held necessary to ultimate finding of probate court that administratrix was liable to estate. National Surety Co. v. E., (USCCA8), 88F(2d)399.

In action on bond of administratrix against company which assumed obligation of surety arising after specified date, answer claiming indebtedness of administratrix, as found by probate court, was not one within liability assumed by defendant involved only interpretation of contract and did not preclude summary judgment on the pleadings. Id.

Corporation assuming obligations of surety company arising after specified date, which company was surety on bond of administratrix, after consent of administrator de bonis non to the assumption agreement, became the principal obligator and liability of former surety was secondary only. Id.

Order of probate court surcharging account of administratrix with profit she realized and for loss sustained by estate from her failure to sell real estate, held conclusive in action on bond against company which assumed obligations of surety arising after specified date. Id.

Where defendant-corporation had assumed obligations of surety company arising after specified date, and administratrix who purchased note and mortgage of estate and profited thereafter by collecting it in full, failed to account therefor after such specified date, defendant was liable. Id.

Findings of probate court surcharging account of administratrix for failure to sell real estate within ten years after allowance of claims of creditors, held to mean property had the value found and that neglect of administratrix resulted in loss to the estate after date on which defendant-company assumed obligations of surety on bond of administratrix. Id.

Damage arising from failure of administratrix to sell real estate within reasonable period determined by probate court did not occur before expiration of such reasonable period as regarded liability of surety. Id.

Suit by administrator brought in district court against former administrator for failure to turn over moneys belonging to estate, was not binding as to judgment and findings as to sureties on former administrator's bond who had no notice or opportunity to defend. First Nat. Bank & Trust Co. v. N., (DC-Minn), 25FSupp392.

In probate bonds the surety undertakes that principal will obey all orders of probate court, and consequently places himself in privity to any proceeding therein. Id.

Where surety on administrator's bond assumed liability for all losses thereinunder, except "losses arising from or caused by acts committed prior to May 1, 1933," it was not liable for losses occasioned by acts of administrator committed prior to such date, regardless of when the loss actually occurred. Id.

An administrator has the duty to make good any loss to the end of his stewardship, and the surety on bond insures performance of that duty. Id.

Where administrator dissipated entire assets of estate prior to date of assumption of liability by surety, surety could not be held liable on theory that it was liable for administrator's default in failing to reimburse the estate upon demand made after its liability commenced. Id.

Surety on bond of executor is liable only for delinquencies by executor as such, and not for any delinquencies as trustee following distribution by decree. Shave v. U., 199M538, 272NW597. See Dun. Dig. 3580i.

Where executor embezzled trust funds and by final decree and fraudulent representations had himself appointed as trustee and distribution made to himself, limitations did not begin to run against liability on executor's bond until discovery of fraud by beneficiary. Id. See Dun. Dig. 3580i.

In action by administrator de bonis non against administrator de bonis non with will annexed of estate of former administrator and surety on his bond, defendant's surety, as subrogee, could set off claims of former administrator as heir of the estate, as against claim that heirs of former administrator were necessary parties to action and had not been joined, though estate of former administrator had been fully probated and estate closed. Beckman v. B., 202M328, 277NW355. See Dun. Dig. 3583b.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v. N., 285NW885. See Dun. Dig. 3580i.

8992-83. Joint or separate bonds.—When two or more persons are appointed joint representatives, the court may approve a separate bond from each or a joint bond from all (G. S. 8909) (Act Mar. 29, 1935, c. 72, §83.)

Annotations under former act, see ante, §8909.

8992-84. Approval and prosecution.—Except as otherwise expressly provided, all bonds in proceedings in the probate court shall be approved by the judge and shall run to such judge and his successors in office. In case of breach of any condition thereof, an action on such bond may be prosecuted by leave [of] or such court in the name and for the benefit of any person interested. (G. S. 8912) (Act Mar. 29, 1935, c. 72, §84.)

Annotations under former act, see ante, §8912.

8992-85. Increase and reduction.—The court on its own motion, or upon the petition of any person interested in the estate, may require a bond in addition to or in lieu of any bond on file. Upon the settlement and allowance of an account, the liability under the new bond shall be limited to the property with which the representative is chargeable at the time of such settlement and allowance, and to the acts and omissions of the representative occurring thereafter. Whenever an account is settled and allowed and the bond is found to be more than sufficient, the court may reduce the amount of the bond or cancel any bond found to be unnecessary. (G. S. 8911, 8913) (Act Mar. 29, 1935, c. 72, §85.)

8992-86. Discharge on surety's application.—Upon application of any surety, the court shall order the representative to account and to file a new bond. Upon the settlement and allowance of the account and the filing of the new bond, the surety shall be discharged. (G. S. 8914) (Act Mar. 29, 1935, c. 72, §86.)

Annotations under former act, see ante, §8914.

ARTICLE XII.—MANAGEMENT OF ESTATE.

A.—INVENTORY AND APPRAISAL.

8992-87. Contents of inventory.—Within one month after his appointment unless a longer time has been granted by the court, every representative shall make and exhibit to the court a verified inventory of all the estate of the decedent or ward which shall have come to his possession or knowledge. Such property shall be classified therein as follows: (1) real estate, with plat or survey description, and if a homestead, designated as such, (2) furniture and household goods, (3) wearing apparel, (4) corporation stocks described by certificate numbers, (5) mortgages, bonds, notes, and other written evidence of debt, described by name of debtor, recording data, or other identification, (6) all other personal property accurately identified. All encumbrances, liens, and other charges on any item shall be stated. (G. S. 8794) (Act Mar. 29, 1935, c. 72, §87.)

Annotations under former act, see ante, §8794, see also, ante, §8936.

8992-88. Appraisal.—If the inventory lists no property other than moneys of the United States, no appraisal shall be required; otherwise, the property shall be appraised at its full and fair value as

of the date of death, or in a guardianship as of the date of the appointment of the guardian, by two or more disinterested persons appointed by the court. Within two months after appointment unless a longer time has been granted by the court, the appraisers shall set down in figures opposite each item after deducting the encumbrances, liens, and charges, the net value thereof and show the total amount of each class, and of all classes, and forthwith deliver such inventory and appraisal certified by them, to the representative who shall immediately file the same. Such appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court and shall be paid by the representative as expenses of administration or guardianship. (G. S. 8795) (Act Mar. 29, 1935, c. 72, §88.)

B.—COLLECTION OF ASSETS.

8992–89. Possession.—Every representative shall be entitled to the possession of and charged with all property of the decedent which has not been set apart for the surviving spouse or children. He shall collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the heirs, legatees, or devisees. He shall keep in tenantable repair all buildings and fixtures under his control. He may by himself or with the heirs or devisees maintain an action for the possession of the real estate or to quiet title to the same. (G. S. 8786) (Act Mar. 29, 1935, c. 72, §89.)

Annotations under former act, see ante, §8786.

A claim by representatives of a deceased person against third party, not heirs or devisees of deceased, is within jurisdiction of probate court. Fulton v. O., 195M247, 262 NW570. See Dun. Dig. 3588.

Money and property in hands of representatives of an estate are subject to garnishment. Id. See Dun. Dig. 3966.

Where money was deposited, both as consideration for option to purchase considerable amount of stock and also with right to accept stock equivalent to amount of deposit, and depositor elected to take smaller amount of stock just after death of other party, there existed no right to rescind and recover amount of money deposited by reason of delay in appointment of administrator. Miller's Estate, 196M543, 265NW333. See Dun. Dig. 3565c.

Where a person dies intestate, title to his personal property vests in administrator for purpose of administration, while title to real estate passes immediately to heirs. Id. See Dun. Dig. 3567, 3568.

Personal representative is entitled to rents of land accruing only from time he asserts his right of possession for purposes of administration, and until that time, both title and possession, with right to rents, are in heirs without accountability therefor to representative. Bowen v. W., 203M599, 281NW256. See Dun. Dig. 3586c.

A foreign executor or administrator is not authorized to maintain an action based upon possessory rights in real estate of decedent. Id. See Dun. Dig. 3678.

The representative of an estate, upon appointment and qualification, becomes vested, for the purpose of administration, with title and right to immediate possession of all personal property belonging to decedent's estate, *including earnings, income, increase, accretions, and accessions* of or to such property, but is limited to purposes of administration. Butler's Estate, 284NW889. See Dun. Dig. 3568.

A judgment granting specific performance of contract to will property does not in any manner interfere with personal representative's possession of property during administration and enforces trust against such property only after every legitimate demand of administration has been satisfied. Jannetta v. J., 285NW619. See Dun. Dig. 3567, 3568.

Effect of statutory right to sue on right to possession of realty by foreign administrator. 23MinnLawRev373.

8992–90. Liability.—No representative shall make a profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate, but he shall account for the excess when he sells for more than the appraisal and shall not be responsible for the loss when he sells for less if such sale appears to be beneficial to the estate. He shall not be accountable for debts due the decedent which remain uncollected without fault on his part; but if he neglects or unreasonably delays to raise money by collecting debts or selling property, or neglects to pay over the money in his hands and by reason thereof the value of the estate is lessened, or unnecessary costs, interest, or penalties accrue, or the persons interested suffer loss, the same shall be deemed waste and the representative shall be charged in his account with the damages sustained. He shall not purchase any claim against the estate nor shall he purchase directly or indirectly or be interested in the purchase of any property sold by him. (G. S. 8787, 8847) (Act Mar. 29, 1935, c. 72, §90.)

Annotations under former act, see ante, §8787.

This statute makes it duty of an administrator to take possession of real estate and sell it within reasonable time after debts are determined. National Surety Co. v. E., (USCCA8), 88F(2d)399.

At common law a sale by an administrator to himself was not void but voidable at election of heirs, but such a sale is fraudulent as a matter of law and interested heirs may exercise their option to avoid it without proving *more than mere fact of selling.* Sprain's Estate, 199M511, 272NW779. See Dun. Dig. 3624.

Word "void" in G S. 1923, §8847, construed to mean that sales are voidable at election of those interested in land, timely exercised. Id.

Where sale proceedings in probate court have culminated in an order confirming a sale, directing a conveyance and execution of a deed to purchasers, such proceedings cannot be attacked by moving to vacate order of confirmation in probate court or by appealing from such order of confirmation, but must be attacked in an appropriate direct action to which purchasers, subsequent purchasers, and encumbrancers are duly made parties. Id. See Dun. Dig. 3627.

A legatee who urges executor to retain certain assets is estopped from contending that he was negligent in doing so. Clover v. P., 203M337, 281NW275. See Dun. Dig. 3645.

Beneficiaries of an estate may conclude themselves by acquiescing in or consenting to improper allowances. Id. See Dun. Dig. 3653a.

A settlement by a guardian with his wards after they become of age, by which he pays them balance due to them on a note and mortgage payable to him as guardian and they in turn release and discharge him and agree to assign to him their interest in note and mortgage as part of settlement, does not make guardian interested in a purchase of ward's property sold by him or in a claim against ward's estate. Baumann v. K., 204M240, 283 NW242. See Dun. Dig. 4107.

8992–91. Accord with debtor.—Whenever it appears for the best interest of the estate, the representative may on order of the court effect a fair and reasonable compromise with any debtor or other obligor. (G. S. 8798) (Act Mar. 29, 1935, c. 72, §91.)

Annotations under former act, see ante, §8798.

8992–92. Foreclosure of mortgages.—The representative shall have the same right to foreclose a mortgage, lien, or pledge, or collect the debt secured thereby as the decedent would have had if living or the ward would have had if competent, and he may complete any such proceeding commenced by such decedent or ward. (G. S. 8799) (Act Mar. 29, 1935, c. 72, §92.)

A mortgage of land is no longer a conveyance, but creates only a mere lien or security. Hatlestad v. N., 197M640, 268NW665. See Dun. Dig. 6145.

8992–93. Realty acquired.—When a foreclosure sale, or a sale on execution for the recovery of a debt due the estate is had, or redemption is made, the representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the representative, or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship without redemption the real estate shall be treated as personal property, but any sale, mortgage, or lease thereof shall be made pursuant to Article XVI, unless otherwise provided in the will. If not so sold, mortgaged, or leased, the real estate, or if so sold, mortgaged, or leased, the proceeds shall be assigned or distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, unless otherwise provided in the will. (G. S. 8800, 8801) (Act Mar. 29, 1935, c. 72, §93; Apr. 26, 1937, c. 435, §12.)

Annotations under former act, see ante, §8800.

8992–94. Property set apart.—After the inventory and appraisal has been filed, the surviving spouse, or in case there be none, the children, or when they are minors, their guardian may petition the court to set apart the homestead and the personal property allowed in Article III, Section 28. Such petition shall

show the names, ages, and relationship of the parties, a description of the homestead claimed and of the personal property selected, and the appraised value thereof. Upon proof of such petition, the court shall set apart such homestead and personal property. The property so set apart shall be delivered by the representative to the persons entitled thereto, and shall not be treated as assets in his hands, but the homestead shall be included in the partial or final decree of distribution. (G. S. 8796, 8797) (Act Mar. 29, 1935, c. 72, §94.)

Annotations under former act, see ante, §§8796, 8797.

8992–95. Property fraudulently conveyed.—Whenever the property available for the payment of debts is insufficient to pay the same in full, the representative may recover any property which the decedent may have disposed of with intent to defraud his creditors, or by conveyance or transfer which for any reason is void as to them. Upon the application of any creditor and upon making the payment of or providing security for the expenses thereof as directed by the court, the representative shall prosecute all actions necessary to recover the property. (G. S. 8802, 8803) (Act Mar. 29, 1935, c. 72, §95.)

A creditor may sue on his own behalf to set aside a fraudulent conveyance made by decedent prior to his death, right of personal representative of fraudulent debtor to bring suit not being exclusive. Lind v. O., 204M30, 282NW661. See Dun. Dig. 3587.

Equity will not lend its aid either to a grantor who seeks to impeach a fraudulent conveyance, or personal representative suing for benefit of his estate, though statute permits personal representative in some cases to sue for benefit of creditors. Id. See Dun. Dig. 3587.

8992–96. Property converted.—If any person embezzles, alienates, or converts to his own use any of the personal estate of a decedent or ward before the appointment of a representative, such person shall be liable for double the value of the property so embezzled, alienated, or converted. (G. S. 8806) (Act Mar. 29, 1935, c. 72, §96.)

8992–97. Disposal by coroner.—Whenever personal property of a decedent has come into the custody of any coroner and has not been surrendered as hereinafter provided and no will has been admitted to probate or no administration has been had within three months after the decedent's death, the coroner after the expiration of said time shall file in the probate court an inventory of all such property and a finger print of each finger of each hand of the decedent. Wearing apparel and such other property as the coroner determines to be of nominal value, may be surrendered by the coroner to the spouse or to any blood relative of the decedent. If no will is admitted to probate nor administration had within six months after death, the coroner shall sell the same at public auction upon such notice and in such manner as the court may direct. He shall be allowed reasonable expenses for the care and sale of the property, and shall deposit the net proceeds of such sale with the county treasurer in the name of the decedent, if known. The treasurer shall give the coroner duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. If a representative shall qualify within six years from the time of such deposit, the treasurer upon order of the court shall pay the same to such representative. (G. S. 8807, 8808) (Act Mar. 29, 1935, c. 72, §97; Jan. 18, 1936, Ex. Ses., c. 48.)

Coroner is required to file an inventory and sell property of nominal value, if there is not enough property to pay administration expenses and turn over proceeds to county treasurer even in cases where there is a surviving spouse, parent, child, brother or sister who under ordinary circumstances would be the persons entitled to it. Op. Atty. Gen. (103d), July 3, 1935.

Coroner is required to file fingerprints whenever personal property of a decedent comes into his hands and no will has been admitted to probate or no administration has been had, and this duty is not affected by identity or lack of identity of the deceased. Id.

The word "immediately" requires that report should be filed as soon as possible after data has been ascertained and assembled. Id.

Report of coroner should contain detailed information. Id.

Coroner should not file report until three months has elapsed. Op. Atty. Gen. (103d), Apr. 6, 1936.

Report should contain name of decedent, date of death, place of death, cause of death, residence, place of birth, occupation, and a general description of the body, in addition to inventory and finger prints. Id.

It is not necessary for coroner to file finger prints in probate court except in case where personal property of a decedent comes into his hands and no will has been admitted to probate or no administration has been had, and it is not necessary to file such finger prints where property is of nominal value and has been properly turned over to spouse or to any blood relative of decedent. Id.

8992–98. Continuation of business.—Upon a showing of advantage to the estate the court with or without notice may authorize a representative to continue and operate any business of a decedent or ward for the benefit of his estate, under such conditions, restrictions, regulations, and requirements, and for such period of time as the court may determine. (L. 1929, c. 188) (Act Mar. 29, 1935, c. 72, §98.)

Annotations under former act, see ante, §8786-1.

8992–99. Abandonment of property.—Whenever any property is valueless, or is so encumbered, or is in such condition that it is of no benefit to the estate, the court, upon such notice as it may direct to be given, may order the representative to abandon the same. (Act Mar. 29, 1935, c. 72, §99.)

C.—CLAIMS.

8992–100. Notice to creditors.—In the order for hearing a petition for the probate of a will or for general administration or in a subsequent order, the court shall limit the time for creditors to file claims and fix the time and place for the hearing on such claims, notice of which shall be given pursuant to Article XIX Section 188. The time so limited shall be four months from the date of the filing of such order. If it appears from the petition that the decedent left no property except such as may be allowed to the spouse and children under Article III Section 28, or such as is exempt from the claims of creditors, or such as may be recovered in an action for death by wrongful act, or if more than five years have elapsed since the decedent's death, no order in respect to claims need be made. (G. S. 8809, 8810) (Act Mar. 29, 1935, c. 72, §100.)

Annotations under former act, see ante, §8809.

Sections of Probate Code which deprive probate court of jurisdiction over claims against homestead and which confer such jurisdiction upon district court are not in violation of constitutional provision which gives probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 197M344, 268NW707. See Dun. Dig. 7770c.

Time within which to file a claim against estate of a decedent, not barred during his lifetime, is governed by limitation of probate code, and not by the general statute of limitations. Anderson's Estate, 200M470, 274NW621. See Dun. Dig. 3592a.

8992–101. Filing of claims.—All claims against a decedent arising upon contract, whether due or not due, shall be barred forever unless filed in court within the time limited. For cause shown and upon notice to the representative the court may receive, hear, and allow a claim presented before the final settlement and allowance of the representative's account and within one year after the date of the filing of the order to file claims.

Contingent claims arising upon contract which do not become absolute and capable of liquidation within the time limited shall not be filed. Any such contingent claim which becomes absolute and capable of liquidation after the expiration of the time limited but before the settlement and allowance of the final account may be filed and heard on notice to the representative, if the court in its discretion shall so order, notwithstanding the provisions of Section 107. If allowed it shall be paid as other claims, but only out of the assets with which the representative is chargeable at the time of the filing of such claim. No such claim shall be so filed or allowed unless administration of the estate was commenced within five years after the death of the decedent.

Claims shall be itemized and verified and shall show the address of the claimant and all payments and offsets known to the claimant. Any such claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the representative. On or before the hearing on claims, the representative shall file a statement of all offsets claimed. (G. S. 8811, 8812, 8813) (Act Mar. 29, 1935, c. 72, §101.)

Annotations under former act, see ante, §§8811, 8812, 8813.

Where deceased executed a promissory note secured by a mortgage on real estate, and mortgage was foreclosed, and proceeds applied on note, leaving a large amount unpaid, district court did not err in rendering judgment against estate for such balance. Nelson's Estate, 195M 144, 262NW145. See Dun. Dig. 3593p.

On a claim against his father's estate for services rendered, it was not error to admit evidence of value of a farm deeded to son upon payment by son's wife of an amount much less than value of farm, upon issue of whether or not there was a promise to pay for such services in addition to value of farm over amount so paid. Delva's Estate, 195M192, 262NW209. See Dun. Dig. 3601.

Conversations prior to or at time deed was given in which father indicated his intentions in regard to claimant, were admissible. Id.

Evidence that a note was given by the son to the father long after the deed was given was admissible as showing a situation inconsistent with the claimed debt. Id.

Rents and taxes to accrue in future under a lease for a term of years is a contingent claim and not properly a claim against estate of lessee. Wishnick's Estate, 199 M153, 271NW244. See Dun. Dig. 3593c.

No abuse of judicial discretion is shown in denying petition of lessors to extend time for filing claims in estate of deceased lessee and permit them to file and assert their claim as lessors for rents to accrue in future upon a lease for a term of years. Id. See Dun. Dig. 3598.

In proceeding against estate of decedent, where only question involved was whether money given decedent was a loan and not result of agency for purpose of investment by decedent, court did not err in refusing to permit testimony and exhibits showing that deceased had made certain payments to claimants after date of loan, such payments being conceded by claimant who stated that they were in nature of gifts, payment not being an issue in case. Jache's Estate, 199M177, 271NW452. See Dun. Dig. 3599.

Contract of decedent to pay son for services rendered may be shown by a fair preponderance of evidence, and need not be shown by evidence that is clear, satisfactory and convincing. Hage v. C., 199M533, 272NW777. See Dun. Dig. 3599.

Evidence sustained finding that there existed an implied contract to pay for services rendered at request of deceased mother during her lifetime. Id. See Dun. Dig. 7307.

Fact that child rendered services for mother under expectation of compensation was insufficient to support claim against estate of parent, in absence of showing that parent understood that services were not gratuitous. Anderson's Estate. 199M588, 273NW89. See Dun. Dig. 7307.

In absence of any evidence to contrary, payments made by mother to daughter caring for her will be considered as having been made out of a sense of gratitude and not as an acknowledgment of indebtedness or an intention to pay for services. Id.

In trial of claim by daughter against estate of mother for services rendered after 1925, contents of letter written by mother to daughter in 1918, requesting here to come home and help with farm work because sons had gone to war, were properly excluded as irrelevant and of no probative value. Id.

Probate court does not adjudicate upon claims of third persons against living heirs or upon contracts made by or between them. Schaefer v. T., 199M610, 273NW190. See Dun. Dig. 7770, 10286e.

Probate court has exclusive original jurisdiction of estates of deceased persons, but manner in which that jurisdiction is exercised is subject to regulation by legislature, and it may constitutionally limit jurisdiction of probate court to hear certain kinds of claims, and time to present claims, and probate court does not have power to extend time for filing claims which become absolute during period limited for filing claims beyond one year and six months from time notice of order was given, nor may compliance with statute be waived by a representative. Flewell, 201M407, 276NW732. See Dun. Dig. 7770b, 7770c.

A contingent claim is one where liability depends upon some future event which may or may not occur so that duty to pay may never become absolute. Id. See Dun. Dig. 3593.

Double liability of a stockholder in a state bank is a claim arising on contract, but is contingent until assessment is made by commissioner of banks, and if a contingent claim becomes absolute within time limited by probate court for filing of claim, it must be presented within that time or be barred. Id. See Dun. Dig. 3593.

Application to file claim should be in the form provided by §8992-186. Daggett's Estate, 204M513, 283NW 750. See Dun. Dig. 3598.

Requirement of notice and showing of cause cannot be waived by representatives. Id. See Dun. Dig. 3598.

Application, notice, and showing of cause is mandatory. Id. See Dun. Dig. 3598.

Claim for money and credits taxes is not one which is required to be filed in probate court. Op. Atty. Gen. (614f), Apr. 16, 1936.

8992-102. Joint debtor.—Whenever two or more persons are indebted on any joint contract, or upon a judgment founded on a joint contract, and one of them dies, his estate shall be liable therefor, and the amount thereof may be allowed by the court the same as though the contract had been joint and several or the judgment had been against him alone, but without prejudice to right to contribution. (G. S. 8820) (Act Mar. 29, 1935, c. 72, §102.)

Annotations under former act, see ante, §8820.

Fact that claim for services rendered father and mother was properly assertable against father's estate, would not prevent assertion of claim against mother's estate, she dying subsequent to father, provided she was a party to the employment contract. Hage v. C., 199M533, 272NW 777. See Dun. Dig. 3604.

8992-103. Claims barred.—No claim or offset thereto shall be allowed which was barred by the statute of limitations during the decedent's lifetime. (G. S. 8814) (Act Mar. 29, 1935, c. 72, §103; Apr. 15, 1939, c. 270, §4.)

Annotations under former act, see ante, §8814.

Time within which to file a claim against estate of a decedent, not barred during his lifetime, is governed by limitation of probate code, and not by the general statute of limitations. Anderson's Estate, 200M470, 274NW621. See Dun. Dig. 3592a.

8992-104. Adjudication on claim.—Upon the adjudication of any claim, the court shall make its order allowing or disallowing the same, which order shall have the effect of a judgment. Such order shall show the date of adjudication, the amount allowed, the amount disallowed, and shall be attached to the claim and the offsets, if any. An allowed claim shall bear interest at the legal rate. (G. S. 8816) (Act Mar. 29, 1935, c. 72, §104.)

Annotations under former act, see ante, §8816.

Jurisdiction of probate court to vacate its orders and judgment is as great as power possessed and exercised by district court in like or similar matters. Jordan's Estate, 199M53, 271NW104. See Dun. Dig. 7784.

If probate court lacked power to permit filing of outlawed claim and power to allow claim so filed, its action in so doing was invalid and subject to direct attack even after time for review by appeal or motion had expired. Flewell, 201M407, 276NW732. See Dun. Dig. 3592a, 7784.

If order allowing a claim in probate has effect of judgment, right of action thereof is not outlawed for 10 years. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 5150.

8992-105. Execution on offset.—When a balance is allowed against a claimant, the court may issue execution for such balance, which shall be collected in the same manner as an execution issued out of the district court. (G. S. 8817) (Act Mar. 29, 1935, c. 72, §105.)

8992-106. Actions pending.—All actions wherein the cause of action survives may be prosecuted to final judgment, notwithstanding the death of any party, and in such case the representative may be substituted therein in the stead of the deceased party. If judgment be rendered against the representative, it may be certified to the probate court and shall be then paid in the same manner as other claims against the estate. The defendant in any action commenced by a decedent or representative may set off a claim against the decedent's estate notwithstanding such claim has not been filed in the probate court. (G. S. 8818, 8819) (Act Mar. 29, 1935, c. 72, §106.)

In action by administrator de bonis non against administrator de bonis non with will annexed of estate of former administrator and surety on his bond, defendant's surety, as subrogee, could set off claims of former administrator as heir of the estate, as against claim that heirs of former administrator were necessary parties to

action and had not been joined, though estate of former administrator had been fully probated and estate closed. Beckman v. B., 202M328, 277NW355. See Dun. Dig. 3583b.

8992–107. Actions precluded.—No action at law shall lie against a representative for the recovery of money upon any claim required to be filed by Section 101 [§8992-100]. Except as provided in Section 101 [§8992-101] with reference to contingent claims, no claim against a decedent shall be a charge upon his estate unless filed in the probate court within five years after his death and within the time limited under Section 100 [§8992-100] or extended under Section 101 [§8992-101]. Nothing in this section shall be construed as preventing an action to enforce a lien existing at the date of decedent's death nor as affecting the rights of a creditor to recover from the next of kin, legatees, or devisees to the extent of the assets received, upon any claim not required to be filed by Section 101 [§8992-101], or upon any contingent claim arising upon contract which did not become absolute and capable of liquidation until after the time limited under Section 100 [§8992-100] or extended under Section 101 [§8992-101] or until five years after the death of the decedent. (G. S. 8815) (Act Mar. 29, 1935, c. 72, §107.)

Annotations under former act, see ante, §8815.

Time within which to file a claim against estate of a decedent, not barred during his lifetime, is governed by limitation of probate code, and not by the general statute of limitations. Anderson's Estate, 200M470, 274NW621. See Dun. Dig. 3592a.

Probate court had no jurisdiction to receive or allow claims which remained contingent for more than five years after death of decedent. Flewell, 201M407, 276NW 732. See Dun. Dig. 3592a.

An executrix represented estate in her official capacity, and there is no defect of parties defendant in an action against her in that capacity to enforce a lien upon property of the estate, notwithstanding that she is the widow, no question of homestead being involved. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3558.

Statute of limitations did not begin to run against an action to enforce a lien upon a distributive share of an estate of a decedent, evidenced by an assignment as security, until entry of decree of distribution of estate. Id. See Dun. Dig. 5602.

8992–108. Priority of debts.—If the applicable assets of the estate be insufficient to pay the following in full, the representative shall make payment in this order:

1. Expenses of administration.
2. Funeral expenses.
3. Expenses of last illness.
4. Debts having preference by laws of the United States.
5. Taxes.
6. Other debts duly proved. (G. S. 8827) (Act Mar. 29, 1935, c. 72, §108.)

Annotations under former act, see ante, §8827.

Evidence that decedent had paid claimant interest on money held to show that money was loaned to decedent and that he was not merely an agent of claimant for purpose of investment. Jache's Estate, 199M53, 271NW 452. See Dun. Dig. 3599.

8992–109. Secured debts.—When a claimant holds any security for his debt, he may file his claim, which may be allowed conditioned upon the claimant surrendering the security to the representative or exhausting the security. In either case, a report thereof shall be filed within the time fixed by the court. Upon his failure to comply with the order, the claim shall be disallowed. Upon his compliance with the order, the court shall make a final order on such claim, either allowing it in full if the security has been surrendered, or for any remaining amount found to be due on the debt if the security has been exhausted. The claim so allowed shall be paid as other debts duly proved. (G. S. 8827) (Act Mar. 29, 1935, c. 72, §109.)

Annotations under former act, see ante, §8827.

Secured claims may properly be presented to and allowed by probate court, but it is not necessary that this be done to preserve lien and right to resort to property covered by it. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 35930.

It is necessary for lien claimant before he can share in general assets of estate of a decedent to first exhaust his security or release or surrender it. Id. See Dun. Dig. 3593o, 3593p.

Where bank made loan to residuary legatee and took assignment of borrower's interest in estate as security, and its claim on note was allowed in probate court in proceeding to administer estate of such residuary legatee, district court had plenary jurisdiction of an action by bank against personal representative of the residuary legatee to enforce lien on interest of such legatee in the first estate and to determine ownership of fund distributed to such legatee by decree of probate court, probate court having no jurisdiction in such matters. Id. See Dun. Dig. 3658, 7770, 7776, 7779.

8992–110. Encumbered assets.—When any assets of the estate are encumbered by mortgage, pledge, or otherwise, the representative may pay such encumbrance or any part thereof, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate and if the court, with or without notice, shall have so ordered. No such payment shall increase the share of the devisee, legatee, or heir entitled to receive such encumbered assets, unless otherwise provided in the will. (G. S. 8831) (Act Mar. 29, 1935, c. 72, §110.)

8992–111. Preferences prohibited.—No preference shall be given in the payment of any debt over any other debt of the same class, nor shall a debt due and payable be entitled to preference over debts not due. (G. S. 8828) (Act Mar. 29, 1935, c. 72, §111.)

Annotations under former act, see ante, §8828.

8992–112. Payment under will.—When a will designates the property to be appropriated for the payment of debts or other items, it shall be applied to such purpose. (G. S. 8832) (Act Mar. 29, 1935, c. 72, §112.)

ARTICLE XIII.—ACCOUNTING AND DISTRIBUTION.

8992–113. Duration of administration.—Every executor, general administrator, or administrator with the will annexed shall have one year from the date of his appointment for the settlement of the estate. A special administrator or an administrator de bonis non shall have such time not exceeding one year as the court may determine. For cause shown the period herein limited may be extended by the court, not exceeding one year at a time. The representative shall not be disqualified thereafter in any way, unless removed; but he shall not be relieved from any loss, liability, or penalty incurred by his failure to settle the estate within the time limited. (G. S. 8822, 8823, 8824) (Act Mar. 29, 1935, c. 72, §113.)

Annotations under former act, see ante, §8822.

8992–114. Filing of account.—Within the time limited every representative shall file a file [sic] a verified account of his administration and petition the court to settle and allow his account and to assign the estate to the persons entitled thereto. The representative shall also account at such other times as the court may require; the hearing on such account shall be had upon such notice as the court may direct. (G. S. 8873, 8877) (Act Mar. 29, 1935, c. 72, §114.)

Annotations under former act, see ante, §8873.

The exclusive authority to adjust accounts between the administrator and estate rests in the probate court. First Nat. Bank & Trust Co. v. N., (DC-Minn), 25FSupp392.

8992–115. Hearing and decree.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188, except as provided in Sections 78, 114, and 125. Unless otherwise ordered, the representative shall, and other persons may, be examined relative to the account and the distribution of the estate. If all taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed.

Upon such settlement and allowance the court shall determine the persons entitled to the estate and assign

the same to them by its decree. The decree shall name the heirs and the distributees, describe the property and state the proportion or part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all of the heirs be ascertained. No final decree shall be entered until after the determination and payment of inheritance taxes except as provided in Section 189.

If all of the creditors have consented in writing, the court with or without notice may assign the estate, if insolvent, without conversion thereof into money, to such creditors in the proportions to which each is entitled.

If any liquidated demand for money arising on contract or if any unsatisfied judgment for the payment of money, whether or not unenforceable because of lapse of time or discharge in bankruptcy, exists in favor of decedent at the time of his death against an heir, legatee, or devisee, and not forgiven or otherwise specifically disposed of in the will, or if any judgment recovered by the representative against an heir, legatee, or devisee has not been paid during administration, the amount thereof shall be considered a part of the estate for purposes of distribution and taken by such heir, legatee, or devisee as a part of his share of the personalty.

If such amount exceeds such beneficiary's share of the personalty, the real property assigned to him shall be subjected in the decree to a lien in favor of the other heirs or beneficiaries in accordance with their respective shares.

It such demand or judgment became unenforceable prior to decedent's death, no interest after it became unenforceable shall be included and the total amount charged against such heirs, legatee, or devisee shall in no event exceed the value of his share of the estate. In the event of an escheat of part of the estate no such lien shall be imposed upon any other part of the estate in favor of the State of Minnesota.

Any beneficiary hereunder shall not be required to pay any inheritance tax and no inheritance tax shall be payable as to him on that part of said estate created by the set-off hereinbefore provided and inherited by said beneficiary, which said beneficiary would not otherwise have been required by law to pay because said demand so set off was unenforceable as to said beneficiary because of lapse of time or a discharge in bankruptcy.

Upon its own motion or upon the request of any party, without the determination or payment of inheritance taxes, the court may enter into an interlocutory decree, determining the persons entitled to the estate, naming the heirs and distributees, describing the property and stating the proportion or part thereof to which each is entitled. Such interlocutory decree shall be final as to the persons entitled to distribution, and as to the part or portion of the estate each is entitled to receive, but it shall not have the effect of assigning the estate to such persons. (G. S. 8879, 8880) (Act Mar. 29, 1935, c. 72, §115; Apr. 26, 1937, c. 435, §13; Apr. 15, 1939, c. 270, §5.)

Annotations under former act, see ante, §§8879, 8880.

Burns v. N., 285NW885; note under §8992-124.

To the extent that defendant assumed obligations arising after specified date of surety on bond of administratrix, it was bound to same obligations that bound the surety company and was estopped by order of probate court surcharging account of administratrix for profit she had realized and for loss sustained by estate from her failure to sell real estate within reasonable time determined by probate court. National Surety Co. v. E., (USCCA8), 88F(2d)399.

Judgment of probate court charging administrator's account with amount which he failed to turn over to estate was binding upon surety on administrator's bond. First Nat. Bank & Trust Co. v. N., (DC-Minn), 25FSupp392.

When final decree in probate issues, rights of parties to take property of decedent is therein and thereby determined, and even will cannot be used to impeach the decree. Mahoney's Estate, 195M431, 263NW465. See Dun. Dig. 3660.

Decree of distribution need not determine effect of conditions imposed upon legatees after receipt of legacy, such effect lying beyond scope of its jurisdiction, a mere reference to language of will being sufficient. Wyman v. T., 197M62, 266NW165. See Dun. Dig. 3658.

If there is ambiguity or conflict in terms of decree of distribution, its absence should not be so construed as to defeat manifest purpose of testator. Id. See Dun. Dig. 3660.

Probate court, being without jurisdiction to enforce contract between beneficiaries of will as to distribution of property, only determines way property should go to beneficiaries under terms of will. Beneficiaries must resort to a court of general jurisdiction. Schaefer v. T., 199M610, 273NW190. See Dun. Dig. 10243c.

A final decree of distribution of probate court is not subject to collateral attack and void for uncertainty of description, where it assigns all property of deceased to heir entitled thereto without having described property with particularity, even though such property is not described in inventory. Baumann v. K., 204M240, 283NW242. See Dun. Dig. 3660.

A decree of distribution is not the source of title for it simply declares what the law has ordained. All it does is to adjudicate upon the devolution of decedent's property as of the date of his death. Butler's Estate, 284NW 889. See Dun. Dig. 3660.

Absent fraud, undue influence, or mistake, contracts between heirs of decedent as to division, sale, or other disposition of an ancestor's property are valid and will be enforced. Id. See Dun. Dig. 3653a.

A decree of distribution, including construction of a will, is conclusive upon heirs, devisees, legatees, creditors of decedent, and personal representative. Marquette Nat. Bank v. M., 287NW233. See Dun. Dig. 3660, 3778(23, 24).

Death of residuary legatee prior to enforcement of lien created by assignment of his interest in estate cannot affect right of assignee. Id. See Dun. Dig. 3661b.

8992–116. Partial distribution.—A partial distribution of an estate may be made before final settlement in the manner and upon the notice provided for final distribution. No decree of partial distribution shall be entered until after the determination and payment of inheritance taxes on the property thereby distributed. Such decree shall be final as to the persons entitled to such distribution and as to their proportions, and except where such decree includes only specific bequests or devises, as to the persons entitled to, and their proportions of the whole estate. No distribution shall be made until after the expiration of the time limited for the filing of claims, nor until a bond has been filed to secure the payment of unpaid claims and bequests, and the unpaid expenses of the administration, funeral, and last illness, and taxes. (G. S. 8874, 8875) (Act Mar. 29, 1935, c. 72, §116.)

Annotations under former act, see ante, §8874.

Decree of partial distribution determines validity of bequest and power of legatee to take and use it for purpose directed by decree, and decree becomes final in absence of appeal, and only open question is proper construction and scope of decree. Wyman v. T., 197M62, 266 NW165. See Dun. Dig. 3654.

Probate court in making recital in so-called finding of fact held not to have effect of construing terms or conditions or purposes of gift, but merely a recitation of reasons which led to decree of distribution. Id. See Dun. Dig. 3660.

Widow was estopped by reason of her acquiescence for several years with knowledge of condition of estate from objecting to prior payment in full of other legatees of estate. Clover v. P., 203M337, 281NW275. See Dun. Dig. 3653a.

8992–117. Recording decree.—A certified copy of any decree of distribution may be filed for record in the office of the register of deeds of any county. It shall not be necessary to pay real estate taxes in order to record such certified copy, but the same shall be first presented to the county auditor for entry upon his transfer record and shall have noted thereon "Transfer entered" over his official signature. Upon request, the court shall furnish a certified copy of any decree of distribution, omitting the description of any property except that specified in the request, but indicating omissions by the words "other property omitted." Such copy and its record shall have the same force and effect as to property therein described as though the entire decree had been so certified and recorded. (G. S. 8880) (Act Mar. 29, 1935, c. 72, §117.)

Annotations under former act, see ante, §8880.

8992-118. Allowance to representative. — Every representative shall be allowed his necessary expenses incurred in the execution of his trust and shall have such compensation for his services as the court shall deem just and reasonable. An attorney performing

services for the estate at the instance of the representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Where, upon demand the representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against him on behalf of the estate and any party interested shall then by his own attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, such attorney shall be allowed such compensation out of the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made. If a decedent by will makes provision for the compensation of his executor, that shall be taken as his full compensation unless he files a written instrument renouncing all claim for the compensation provided for in the will. Such amounts shall be allowed as credits to the representative in his account or at any time during administration, the representative may apply to the court by petition for an order directing the payment of his compensation (in whole or in part) out of the estate, and any attorney having rendered services as aforesaid may by petition apply to the court for an order directing the payment to him (in whole or in part) of such attorney's fees out of the estate. Upon payment by the representative of the whole amount allowed his attorney by the court the representative shall be fully released and discharged from all liability on account of such attorney's services.

Whenever any person named as executor in a will or codicil defends it or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully oppose the allowance of any will or codicil, he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings together with such compensation for his services and those of his attorneys as the court shall deem just and proper. (G. S. 8788) (Act Mar. 29, 1935, c. 72, §118; Apr. 15, 1939, c. 270, §6.)

Annotations under former act, see ante, §8788.

Allowance of attorney's fee is to personal representative as such and not to attorney. State v. Probate Court of Hennepin County, 199M297, 273NW636. See Dun. Dig. 699, 3644c.

Estate is not liable to an attorney for his services at instance of an executor or administrator, but latter is himself liable in a suit by attorney. State v. Probate Court of Hennepin County, 204M5, 283NW545. See Dun. Dig. 702.

Representative in performance of his official duties is authorized to retain services of attorneys, and to incur reasonable expenses in that regard, but allowance is to representative as such and not to attorney. Id. See Dun. Dig. 3644a.

When there is conflict between representative and his attorney in respect to services rendered and fees to be paid therefor, issues presented thereby should be determined by a court of general jurisdiction, as probate court has no jurisdiction in such cases. Id. See Dun. Dig. 7771.

The amount allowed a representative of an estate for professional services rendered by his attorney held not so inadequate as to require supreme court to set aside the findings made by the trial court. Fitzgerald's Estate, 285NW285. See Dun. Dig. 3644a.

8992-119. Attorney's lien.—When any attorney at law has been retained to appear for any heir, devisee, or legatee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the representative before the decree of distribution is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his services, and by filing such notice with proof of service thereof. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in Section 5695, Mason's Minnesota Statutes, 1927, and such lien may be enforced and the amount thereupon determined in the manner therein provided. (G. S. 8876) (Act Mar. 29, 1935, c. 72, §119; Apr. 15, 1939, c. 270, §7.)

8992-120. Resignation of representative.—A representative may resign his trust at any time, but his resignation shall not be operative until the court shall have examined and allowed his final account and has made an order accepting such resignation. (G. S. 8789) (Act Mar. 29, 1935, c. 72, §120.)

Annotations under former act, see ante, §8789.

8992-121. Removal of representative.—Whenever a representative becomes insane or otherwise mentally incompetent, or unsuitable, incompetent, or incapable of discharging his trust, or has mismanaged the estate, or has failed to perform any duty imposed by law or by any lawful order of the court, or has absconded, or has ceased to be a resident of this state, the court may remove him. The court on its own motion may, and on the petition of any person interested in the estate shall, order the representative to appear and show cause why he should not be removed. Service of such order may be made either upon the representative or his sureties, personally or by mailing a copy to him or any of them at the address given in the file, or in such other manner as the court may direct. (G. S. 8790) (Act Mar. 29, 1935, c. 72, §121; Apr. 26, 1937, c. 435, §14.)

Annotations under former act, see ante, §8790.

8992-122. Discharge upon resignation or removal.—Notwithstanding the resignation of a representative or his removal by the court, he and his surety shall not be discharged from liability until a successor has been appointed and qualified and has receipted for the unadministered property. (Act Mar. 29, 1935, c. 72, §122.)

8992-123. Account of deceased or insane representative.—Whenever a sole or the last surviving representative dies, or becomes insane or otherwise mentally incompetent, his representative, upon appointment, shall file an account and petition for the settlement and allowances thereof, and if proper, for distribution. If the estate has not been fully administered, the surety shall not be discharged until a successor has been appointed and qualified and receipted for the unadministered property. (G. S. 8791) (Act Mar. 29, 1935, c. 72, §123.)

Annotations under former act, see ante, §8791.

In action by administrator de bonis non against administrator de bonis non with will annexed of estate of former administrator and surety on his bond, defendant's surety, as subrogee, could set off claims of former administrator as heir of the estate, as against claim that heirs of former administrator were necessary parties to action and had not been joined, though estate of former administrator had been fully probated and estate closed. Beckman v. B., 202M328, 277NW355. See Dun. Dig. 3583b.

8992-124. Discharge of representative.—Whenever any representative has paid or transferred to the persons entitled thereto all of the property in the estate, paid all taxes required to be paid by him and has filed proof thereof, and has complied with all the orders and decrees of the court and with the provisions of law, and has otherwise fully discharged his trust, the court shall finally discharge him and his sureties. Whenever any bequest or devise to a testamentary trustee amounts to more than five hundred dollars and the will contains no express waiver, the representative shall not be discharged until a trustee has qualified in a court of competent jurisdiction and until proof of such qualification and a receipt by the trustee have been filed. No representative who has received any funds for death by wrongful act shall be discharged until he has filed a certified copy of the order, judgment, or decree of distribution of the court wherein such funds were recovered, and vouchers from the persons entitled to such funds, or copies thereof, certified by the clerk of such court.

Provided, that whenever a minor child shall receive personal property not to exceed the sum of $200, the Judge of Probate Court may order and direct representatives of estates to make payment thereof to the parent or parents, custodian, or the person, corporation or institution with whom such minor child may be, for the benefit, support, maintenance and educa-

tion of such minor child, or may direct the deposit thereof in a savings bank in the name of such minor child, and when so deposited in a savings bank, the book showing such deposit to be retained by the Probate Court, and no funds shall be withdrawn from such savings bank until such minor child shall have reached majority, unless by order of the Probate Court. (G. S. 8886, 8887) (Act Mar. 29, 1935, c. 72, §124; Apr. 26, 1937, c. 435, §15.)

Annotations under former act, see ante, §8886.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v. N., 285NW885. See Dun. Dig. 3580*l*.

Representative filing receipts covering all property ordered distributed in final decree with exception of certain moneys which were owing by designated heirs and for which they received credit on note owing the estate, but refused to sign receipt, is not entitled to discharge. Op. Atty. Gen. (349a-11), Jan. 10, 1939.

8992–125. Summary proceedings.—In a special administration, general administration, or in the administration of the estate of a person dying testate, if the court has determined that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in Section 28, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the representative by order of the court may pay the same in the order named, and file his final account with his petition for the settlement and allowance thereof. Thereupon the court with or without notice may adjust, correct, settle, allow, or disallow such account, and if the account be allowed, summarily determine the heirs, legatees, and devisees in its final decree assigning to them their share or part of the property with which the representative is charged upon the allowance of his final account, and close the administration.

If upon the hearing of a petition for summary assignment or distribution, for special administration, general administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree may be entered, with or without notice, assigning such property to the persons entitled thereto pursuant to the terms of the will, or if there be none pursuant to the law of intestate succession in force at the time of the decedent's death. (Act Mar. 29, 1935, c. 72, §125; Apr. 26, 1937, c. 435, §16.)

Sections of Probate Code which deprive probate court of jurisdiction over claims against homestead and which confer such jurisdiction upon district court are not in violation of constitutional provision which gives probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 198M45, 268NW707. See Dun. Dig. 7770c.

8992–126. Unclaimed money.—If any part of the money on hand has not been paid over because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. Money so deposited shall be credited to the county revenue fund. Upon application to the probate court within twenty-one years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto his warrant for the amount thereof. No interest shall be allowed or paid thereon, and if not claimed within such time no recovery thereof shall be had. (G. S. 8888, 8889) (Act Mar. 29, 1935, c. 72, §126.)

Annotations under former act, see ante, §§8888, 8889.

ARTICLE XIV.—ADVANCEMENTS.

8992–127. Definition.—Any property given by an intestate in his lifetime to a child or other lineal descendant when expressed in the gift or grant as an advancement or charged in writing by the intestate as such, or so acknowledged by the child or other descendant, shall be deemed an advancement to such heir, and treated as part of the estate of such intestate in the distribution of the same, and shall be taken by such heir toward his share of the estate. When the amount advanced exceeds the share of such heir, he shall receive nothing in the distribution, but he shall not be required to refund any part of such advancement. When the amount so received is less than his share, he shall be entitled to enough more to make up his full share. When a child or other lineal descendant to whom an advancement has been made dies before the intestate, leaving issue, such advancement shall be deducted in the distribution of the estate as though made directly to such issue. (G. S. 8895, 8897) (Act Mar. 29, 1935, c. 72, §127.)

District court had jurisdiction of an action to specifically enforce family settlement wherein deceased agreed to will property to children in equal shares, though one of the children had received an advancement or loan which he, at time of agreement, stated should be deducted from his share in the mother's will to be made, as against contention that probate court had exclusive jurisdiction. Anderson v. A., 197M252, 266NW841. See Dun. Dig. 7770c, 8773.

An advancement is an irrevocable gift in praesenti of money or property to a child by a parent to enable donee to anticipate his inheritance to extent of gift. Beier's Estate, 284NW833. See Dun. Dig. 2722f, 2724a, 3658.

There is a well defined distinction between an advancement and a debt or loan. In the former there is a transfer of property without consideration, hence no obligation of repayment; in the latter the consideration for the loan is the obligation of repayment. Id. See Dun. Dig. 2722f, 2724a, 3658.

Although an advancement is in the nature of a gift, it differs from the ordinary gift in that, while the property or money given need not be returned or repaid, it must be accounted for by the donee upon the distribution of the estate of the donor. Id. See Dun. Dig. 2722f, 2724a, 3658.

Doctrine of advancements is based upon assumed desire of donor to equalize distribution of his estate amongst his children, and very foundation for rule prevents doctrine from applying unless ancestor dies wholly intestate. Id. See Dun. Dig. 2722f, 2724a, 3658.

In order that a transfer of property from a parent to his child shall be considered an advancement, it must appear that an intention existed, coincident with the transaction, to treat it as an anticipation of the child's share of the donor's estate if the latter should die intestate. Id. See Dun. Dig. 2722f, 2724a, 3658.

Evidence held not to show any release by the son to his father of the former's expectancy as an heir of the father. Id. See Dun. Dig. 2723.

8992–128. Valuation.—When such advancement is made in real estate, the value thereof for the purpose of distribution shall be considered a part of the real estate to be divided, and when it is in personal estate, as a part of the personal estate; and when in either case it exceeds the share of real or personal estate, respectively, that would have come to such heir, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to that of other heirs entitled to a like amount with him. When the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the heir receiving it, that shall be its value in the distribution; otherwise, it shall be estimated according to its value when given, as nearly as can be ascertained. All questions as to advancements made, or alleged to have been made, by the intestate to any heir shall be heard and determined by the court at the time of settlement, and every such advancement shall be specified in the decree distributing and assigning the estate. For the purpose of determining what proportion any one who has received an advancement is en-

titled to the court shall ascertain the value of the entire residue of such estate, by ordering an appraisal or in such other manner as it may deem best. (G. S. 8896, 8898) (Act Mar. 29, 1935, c. 72, §128.)

ARTICLE XV.—GUARDIANSHIPS.

8992–129. Persons subject.—The court may appoint one or two persons suitable and competent to discharge the trust as guardians of the person or estate or of both of any person who is a minor, or who because of old age, or imperfection or deterioration of mentality is incompetent to manage his person or estate, or of any person who because of excessive intoxication, gambling, idleness, or debauchery, so spends or wastes his estate or injures his person as to be likely to expose himself or his family to want or suffering, provided such person is a resident of the county or being a non-resident of this state has property in the county. No guardian of the person of any minor shall be appointed while proceedings for his care and custody are pending in any juvenile court of this state. Nothing herein contained shall diminish the power of any court to appoint a guardian to serve or protect the interest of any minor or other person under disability in any proceedings therein, nor abridge the rights of the father and mother, if suitable and competent, as the natural guardians of their minor children. (G. S. 8916, 8920, 8923, 8924, 8931, 8933) (Act Mar. 29, 1935, c. 72, §129.)

Annotations under former act, see ante, §§8916, 8924, 8933.

Mere ill health or physical ailments do not warrant placing a person under guardianship. Carpenter's Guardianship, 203M477, 281NW867. See Dun. Dig. 4332.

Proceedings are not adversary in nature but rather partake of character of a proceeding by state in its character of parens patrae, and manner and method of determining facts rest in sound discretion of trial court, controlled, in a general way, by rules of ordinary judicial procedure. Strom's Guardianship, 286NW245. See Dun. Dig. 4523.

Finding that appellant was incompetent held sustained by evidence. Id. See Dun. Dig. 4577.

Jurisdiction of our probate courts is founded upon constitutional grant. The powers so granted are plenary, and the jurisdiction of that court is to be liberally construed. Its jurisdiction over persons under guardianship is in its origin exclusive, where person alleged to be incompetent was found by probate court to be competent, and on appeal district court reversed, finding person incompetent, and inasmuch as probate court never passed upon or decided question of who should be guardian of such incompetent person, district court should have remanded case to probate court for appointment of guardian, as its jurisdiction is appellate only, not original. Id. See Dun. Dig. 7771a.

Guardianship and commitments under probate code. 20 MinnLawRev 333.

8992–130. Petitioners.—Any person may petition for the appointment of a guardian or guardians for any person believed to be subject to guardianship, provided that the petition of a person over the age of fourteen years for the appointment of a guardian or guardians of his own person or estate, and the petition of any person nominated by the will of a deceased parent with the written consent of the other parent if living and not under disability, for the appointment of a guardian or guardians for their minor child shall have priority over the petition of any other person. When any minor under guardianship attains the age of fourteen years, he may petition for the appointment of a guardian or guardians nominated by him in lieu of the guardians theretofore appointed. (G. S. 8916, 8917, 8918, 8919, 8924, 8931) (Act Mar. 29, 1935, c. 72, §130.)

Annotations under former act, see ante, §§8916, 8924.

There is no distinction between a veteran and a non-veteran, and spouse of insane veteran has no preference, but court inclines to appointment of spouse as guardian. Op. Atty. Gen. (346d), Aug. 28, 1935.

8992–131. Contents of petition.—The petition shall show (1) the name and address of the person for whom a guardian is sought, (2) the date and place of his birth, (3) if he be a minor, the names and addresses of his parents, or if the parents be dead or have abandoned the minor, the names and addresses of his custodians and of any person named as testamentary guardians in the will of a decedent, (4) if he be not a minor, the names and addresses of his nearest kindred, (5) if he be married, the name and address of his spouse, (6) the reasons for the guardianship, (7) the probable value and general character of his real and personal property and the probable amount of his debts, (8) the names, ages, addresses, and occupation of the proposed guardians. (Act Mar. 29, 1935, c. 72, §131.)

One who recognizes the need of being placed under guardianship may petition therefor and waive notice of hearing, but petition must on its face indicate existence of a proper case for guardianship. Carpenter's Guardianship, 203M477, 281NW867. See Dun. Dig. 4332, 7777, 7783.

8992–132. Lis pendens.—After the filing of the petition, a certified copy thereof may be filed for record in the office of the register of deeds of any county in which any real estate owned by the ward is situated and if a resident of this state, in the county of his residence. If a guardian be appointed on such petition, all contracts except for necessaries, and all transfers of real or personal property made by the ward after such filing and before the termination of the guardianship shall be void. (G. S. 8927) (Act Mar. 29, 1935, c. 72, §132.)

Law aims to protect property and estate of one who is in fact incapable of doing so for himself, but his incapacity cannot be changed from a shield of protection to a rapier of offense. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 4522.

An action on contract will lie in district court against an insane person under guardianship. Id. See Dun. Dig. 4532.

8992–133. Notice of hearing.—If the petition be made by the person for whom a guardian is sought, or by a parent, custodian, or testamentary guardian of a minor under the age of fourteen years, the court may hear the same with or without notice. In all other cases, upon the filing of the petition the court shall fix the time and place for the hearing thereof. At least fourteen days prior to such time, personal service shall be made upon the ward. If he have a spouse, cutodian, or if there be a testamentary guardian named in the will of a decedent, notice shall be given to such persons and to such of the nearest kindred and in such manner as the court may direct. If he be an inmate of any hospital or asylum, notice by mail shall be given to the superintendent thereof. If he be a nonresident or if after diligent search he cannot be found in this state, notice shall be given in such manner and to such persons as the court may determine. (G. S. 8925, 8926) (Act Mar. 29, 1935, c. 72, §133.)

Annotations under former act, see ante, §8926.

Service of notice of guardianship hearing is to be personally on ward and by mail to superintendent of hospital or asylum. Op. Atty. Gen. (88a-14), Oct. 8, 1935.

8992–134. Hearing—Appointment.—Upon proof of the petition, the court shall appoint one or two persons suitable and competent to discharge the trust as general guardians of the person or estate or of both. Upon the filing of a bond in such amount as the court may direct and an oath according to law, or upon the filing of an acceptance of the trust pursuant to G. S. 7733, letters of guardianship shall issue. If there be no personal property, the court may waive the filing of a bond, but if the guardian receives or becomes entitled to any such property, he shall immediately file a report thereof and a bond in such amount as the court may direct. (G. S. 8926) (Act Mar. 29, 1935, c. 72, §134.)

Annotations under former act, see ante, §8926.

A judgment or order, in proceedings for appointment of a guardian of an incompetent person and taking from such person the management of his property, is admissible in evidence in any litigation whatever, but not conclusive, to prove that person's mental condition at time order or judgment is made or at any time during which judgment finds person incompetent. Champ v. B., 197M 49, 266NW94. See Dun. Dig. 4524.

A person may be insane on some subjects but still be able to manage his property and affairs. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 4519.

Judgment in proceedings for appointment of a guardian of an incompetent person is admissible in evidence, but not conclusive, in any litigation, to prove mental condition of person at time judgment is rendered, or at

any time during which judgment finds person incompetent, though an adjudication of insanity and commitment to an insane asylum is evidence of insanity. Id. See Dun. Dig. 4517.

Order appointing a guardian should indicate that person subjected to guardianship has been found in fact incompetent, otherwise record fails to disclose jurisdiction. Carpenter's Guardianship, 203M477, 281NW867. See Dun. Dig. 4332.

8992–135. Guardian's duties.—A guardian shall be subject to the control and direction of the court at all times and in all things. A general guardian of the person shall have charge of the person of the ward. A general guardian of the estate shall (1) pay the reasonable charges for the support, maintenance, and education of the ward in a manner suitable to his station in life and the value of his estate; but nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children, (2) pay all just and lawful debts of the ward and the reasonable charges incurred for the support, maintenance, and education of his wife and children, and upon order of the court for the support of any person unable to earn a livelihood who is or may become legally entitled to support from the ward, (3) possess and manage the estate, collect all debts and claims in favor of the ward, or with the approval of the court compromise the same, and invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in such securities as are authorized by G. S. 7714 and approved by the court, except as provided in G. S. 7735. (G. S. 8920, 8933, 8935, 8937 to 8943, 8946, 8947) (Act Mar. 29, 1935, c. 72, §135.)

Annotations under former act, see ante, §§8933, 8937 to 8939, 8947.

Under federal statute authorizing suits by incompetent insured persons on war risk insurance policies within three years after removal of their disabilities, guardian of an insane veteran was entitled to sue after the definite periods of limitations had expired but before his ward's disability was removed, such right of action being that of his ward. Johnson v. U. (USCCA8), 87F(2d)940.

The guardian of an incompetent takes no legal estate in property of his ward. Id.

"May" is permissive and a guardian is not absolutely liable for loss because he did not obtain approval of court to investment. Champ v. B., 197M49, 266NW94. See Dun. Dig. 4526.

Duties of a guardian in respect of investment of his ward's funds are similar to duties of a trustee. Id. See Dun. Dig. 4107.

Evidence sustains findings that appellant ward was in fact of sound mind, capable of handling her own affairs, and that she approved of and consented to certain investments when and as made by guardian of her estate. Id. See Dun. Dig. 4526.

Law requires of trustee more than good faith and honest judgment; his judgment must be enlightened and guided by approved rules applicable to investment of trust funds, bearing in mind that funds must be guarded carefully and invested cautiously. Id.

Evidence sustains judgment of district court charging guardian with funds of ward invested in a second mortgage on real estate, which investment was unsafe and negligently made. Fredrick v. K., 197M524, 267NW473. See Dun. Dig. 4110.

An insane person may sue and be sued, though he should appear by a next friend, general guardian, or guardian ad litem, but power of district court to appoint guardian and hear cases is not taken away by statute authorizing probate courts to appoint general guardian. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 4529.

Contract of an insane person is not void but voidable. Id. See Dun. Dig. 4522.

A guardian, other than a parent or natural guardian, is under no obligation to support his ward out of his own means. County of Stearns v. F., 203M11, 279NW707. See Dun. Dig. 4526.

Judge of probate has jurisdiction to authorize general guardian to compromise and settle a claim for injuries sustained by a minor as a result of an automobile accident, though claim has not been sued on and is not therefore pending in district court. Op. Atty. Gen. (346d), March 3, 1938.

Guardianship funds may not be invested in paid up stock of a building and loan association operating under supervision of Banking Division of State of Minnesota. Op. Atty. Gen. (346d), March 1, 1939.

8992–136. Transfer of venue.—When it is for the best interest of the ward or his estate, the venue may be transferred to another county. Upon the filing of a petition by any person interested in the ward or in his estate, the court shall fix the time and place for the hearing thereof, notice of which shall be given to such persons and in such manner as the court may direct. Upon proof that a transfer of venue is for the best interest of the ward or his estate, and upon the settlement and allowance of the guardian's accounts to the time of such hearing, the court shall transmit the entire file to the court of such other county in which all subsequent proceedings shall be had. (G. S. 8927-1-2) (Act Mar. 29, 1935, c. 72, §136.)

Where a person is committed to guardianship of state board of control as feeble-minded in certain county and she is paroled and goes to live in another county, any interested person may petition probate court of committing county to change venue to residence of the ward for the purpose of making a petition for restoration to capacity. Op. Atty. Gen. (679b), July 18, 1935.

Change of venue may be had from one county to another in a feeble-minded proceeding, wherein state board of control is given custody of person. Op. Atty. Gen., (679a), Aug. 11, 1938.

8992–137. Filing of accounts.—Except where expressly waived by the court, every guardian annually shall file a verified account covering the period from the date of appointment or his last account. At the termination of the guardianship, or upon the guardian's removal or resignation, he or his surety, or in the event of his death or disability, his representative or surety shall file a verified final account with a petition for the settlement and allowance thereof. Every account shall show in detail all property received and disbursed, the property on hand, the present address of the ward and of the guardian, and unless the guardian be a corporation, the amount of the bond, the names and addresses of all sureties thereon, that each unincorporated surety is a resident of this state, is not under disability, and is worth the amount in which he justified. (G. S. 8948, 8949) (Act Mar. 29, 1935, c. 72, §137.)

Annotations under former act, see ante, §8949.

Strom's Guardianship, 286NW245; note under §8992-139.

Court on its own motion or upon petition of guardian or upon petition of any one interested in ward or in his estate, shall fix a time for hearing on account of guardian of insane person. Op. Atty. Gen. (248c-4), Mar. 31, 1936.

8992–138. Notice of hearing on account.—The court on its own motion may, or upon the petition of the guardian or any person interested in the ward or his estate shall, fix the time and place for the hearing on any account, notice of which shall be given in such manner and to such persons as the court may direct. Wherever any funds have been received from the Veterans' Administration, notice by mail shall be given to the Regional Office having charge thereof. (G. S. 8948, 8949) (Act Mar. 29, 1935, c. 72, §138.)

Annotations under former act, see ante, §8949.

8992–139. Adjudication on account.—Unless otherwise ordered, the guardian shall, and other persons may, be examined on the hearing. If the account be correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed. The order of settlement and allowance shall show the amount of the personal property remaining. Upon settlement of the final account, and upon delivery of the property on hand to the person entitled thereto, the court shall discharge the guardian and his sureties. Any person for whom a guardian has been appointed and who has become of age or has been restored to capacity may show to the court that he has settled with his guardian and may petition for the guardian's discharge without further hearing. Upon such petition, the court may discharge the guardian and his sureties. (G. S. 8948, 8949, 8950) (Act Mar. 29, 1935, c. 72, §139.)

Annotations under former act, see ante, §§8949, 8950.

Neither probate court nor district court on appeal obtained jurisdiction of person or subject matter under a petition requesting that order releasing guardian be set aside and that guardian be ordered to account, guardian having moved out of state and service being attempted by publication, proceeding not being one in rem, and res having disappeared. Sellars v. S., 196M143, 264NW425. See Dun. Dig. 5141, 7784.

There was no error on accounting of guardian in admission of evidence as to a statement made by guardian,

before his appointment, as to what fees he would charge, if appointed. Fredrick v. K., 197M524, 267NW473. See Dun. Dig. 4122.

Court did not err in reducing amount allowed by probate court for services of guardian. Id.

Matter of determining a guardian's compensation and necessary expenses in discharge of his official duty is primarily for probate court as one having original jurisdiction in respect thereof. District court has jurisdiction only upon appropriate appeal to review propriety and validity of items composing it. It has no original jurisdiction with respect to such. Strom's Guardianship, 286 NW245. See Dun. Dig. 4122.

8992–140. Succeeding guardian.—If a guardian dies, resigns, or is removed, the court with or without notice may appoint a successor. (Act Mar. 29, 1935, c. 72, §140.)

8992–141. Special Guardian.—Upon a showing of necessity or expediency, the court with or without notice may appoint a special guardian of the person or estate or both of any person designated in Section 129, whether a petition for general guardianship has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special guardian. A special guardian of the person shall have charge of the person of the ward. A special guardian of the estate shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special guardian power to perform any or all acts in the administration of the guardianship, not exceeding the powers conferred by law upon general guardians.

Within fourteen days after appointment, a special guardian of the estate shall file an inventory and appraisal of the personal property according to the requirements of Article XII A. Upon the granting of letters of general guardianship, the power of a special guardian shall cease, and he shall proceed forthwith to a final accounting. Whenever a special guardian has been appointed to protect the ward's interest in any matter wherein the interest of the general guardian appears to conflict with that of the ward, or to protect the ward's interest upon suspension of an order of removal of a general guardian by appeal, the power of such special guardian shall not cease until terminated by the court. (G. S. 8928, 8951, 8952) (Act Mar. 29, 1935, c. 72, §141.)

8992–142. Termination.—A guardianship of a minor shall terminate upon his death or upon his attainment of legal age. The marriage of a female ward under guardianship as a minor only and not under a juvenile court guardianship shall terminate the guardianship of her person but not of her estate, provided that such guardianship shall not affect her capacity to join with her husband in instruments involving his interest in real estate. The guardianship of a ward other than a minor shall terminate upon his death or upon his restoration to capacity. Whenever there is no further need for any guardianship, the court may terminate the same upon such notice as it may direct. (G. S. 8922) (Act Mar. 29, 1935, c. 72, §142.)

Female under 21 is a minor, and a guardian must be appointed to minor receiving monthly compensation as a child of a deceased world war veteran, and conveyances of land must be by guardian. Op. Atty. Gen. ((498c), Nov. 4, 1937.

Guardianship of female child had in Probate Court before passage of Laws 1937, c. 435 [§§8992-3(1) to 8992-185], is to be continued until she reaches age of twenty-one. Op. Atty. Gen. (346d), Dec. 9, 1937.

8992–143. Restoration to capacity.—Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the ecounty auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred. (G. S. 8929) (Act Mar. 29, 1935, c. 72, §143; Apr. 15, 1939, c. 270, §8.)

Annotations under former act, see ante, §8929.

District court on appeal from order of probate court denying petition for restoration of incompetent capacity and appointment of a new guardian had authority to appoint guardian ad litem, where authority of incompetent's attorney was questioned. Foust's Guardianship, 195M289, 262NW875. See Dun. Dig. 7794.

District court on appeal from order of probate court dismissing petition for restoration of incompetent to capacity and appointment of a new guardian had right to permit questioning of authority of attorney to take appeal from probate court for the incompetent. Id.

Probate court of another county where patient has no legal settlement and from which he has not been committed has no jurisdiction to discharge patient. Op. Atty. Gen. (6f), Jan. 4, 1938.

Probate court hearing one petition for restoration may treat a second petition in longhand as merely request of an insane person and disregard it. Op. Atty. Gen. (248b-8), Jan. 19, 1939.

Discharge by superintendent of state hospital for insane does not restore patient to capacity but there must be a proceeding under this section. Op. Atty. Gen. (248B-8), July 20, 1939.

8992-143a. Discharge of guardian of feeble-minded or epileptic persons.—When it appears to the state board of control that a person committed to its guardianship as a feebleminded or epileptic person is no longer in need of guardianship or supervision for his own or the public welfare, the board may petition the court of commitment, or the court to which the venue has been transferred, for its discharge as such guardian, stating facts in support of its petition. (Apr. 17, 1937, c. 255, §1.)

8992-143b. Petition—hearing.—Upon the filing of such petition the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition the court shall make an order discharging the state board of control as the guardian of such person. (Apr. 17, 1937, c. 255, §2.)

ARTICLE XVI.—SALES, ETC., OF REALTY

8992–144. Definitions.—As used in this article, the word "mortgage" shall include an extension of an existing mortgage, subject to the provisions of Section 159 [§8992-159]; the word "lease," unless the

context otherwise indicates, means a lease for more than three years. (Act Mar. 29, 1935, c. 72, §144.)

8992–145. Lease for three years or less.—The court with or without notice may direct a lease for three years or less of any real estate (including a homestead if the written consent of the spouse has been filed) whenever it appears to be for the best interest of the estate and of the persons interested in such real estate. (Act Mar. 29, 1935, c. 72, §145.)

8992–146. Reasons for sale, mortgage, lease.—The court may direct a sale, mortgage, or lease of any real estate of a decedent whenever the personal property is insufficient to pay the allowances to the spouse and children, expenses of administration, funeral expenses, expenses of last illness, taxes, debts, and bequests, or whenever it shall determine such sale, mortgage, or lease to be for the best interests of the estate and of the persons interested in such real estate. The proceeds of any such sale, mortgage, or lease which may be available for distribution shall be distributed to the same persons and in the same shares as if it had remained real estate.

The court may direct a sale, mortgage, or lease of any real estate of a ward whenever the personal property is insufficient to pay his debts and other charges against his estate, or to provide for the support, maintenance, and education of the ward, his wife, and children, or whenever it shall determine such sale, mortgage, or lease to be for the best interest of the ward.

The homestead of a decedent when the spouse takes any interest therein or the homestead of a ward shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed. Unless the written consent of *all* persons who take any interest therein has been filed, the homestead of a decedent shall not be mortgaged except for the purpose of extending, renewing, or satisfying an existing mortgage and paying the taxes, assessments, liens, encumbrances, repairs, and incidental expenses or other items necessary to procure such mortgage. (G. S. 8825, 8834, 8835) (Act Mar. 29, 1935, c. 72, §146.)

Annotations under former act, see ante, §§8834, 8835.

Duties of a guardian in respect of investment of his ward's funds are similar to duties of a trustee. Champ v. B., 197M49, 266NW94. See Dun. Dig. 4107.

Evidence sustains findings that appellant ward was in fact of sound mind, capable of handling her own affairs, and that she approved of and consented to certain investments when and as made by guardian of her estate. Id. See Dun. Dig. 4526.

Homestead of one dying without surviving spouse or child may not be sold to pay legacies merely because personal estate is insufficient for that purpose. Anderson's Estate, 202M513, 279NW266. See Dun. Dig. 3615a.

Where no spouse or child survives testator, and homestead is devised, if will discloses intent to charge homestead with payment of such part of legacies as personal estate is insufficient to pay, normally homestead should be decreed to persons to whom is was devised subject to such payment, leaving to a court of equity enforcement of charge. Id. See Dun. Dig. 3615a.

Where a testator imposed a legacy as a charge upon real estate part of which was a homestead, it was improper for probate court to license a sale of entire tract either to pay debts or expenses of administration or legacies. Following in re Anderson's Estate, 202Minn 513, 279NW266, 116ALR82, the proper method of procedure is to devise homestead subject to lien. Schultz' Estate, 203M565, 282NW471. See Dun. Dig. 3615.

8992–147. Petition, notice, hearing.—A representative may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the decedent or ward or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall state briefly the nature of the application made by the petition and shall be given pursuant to Article XIX, Section 188. Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the application made by the petition. (G. S. 8836, 8837, 8845) (Act Mar. 29, 1935, c. 72, §147; Apr. 26, 1937, c. 435, §17.)

Annotations under former act, see ante, §8836.

Finding that reasonable time in which administratrix should have applied and sold real estate expired on certain date, held within authority of probate court, in action against company which assumed obligations of surety of administratrix arising after a subsequent date. National Surety Co. v. E., (USCCA8), 88F(2d)399.

Probate court, in surcharging account of administratrix, properly found ten years was reasonable time in which administratrix should have applied and sold real estate. Id.

Defects and errors in petition to mortgage land were immaterial where all objections were heard, and money was accounted for on final accounting and land distributed subject to mortgage. Mahoney's Estate, 195M431, 263 NW465. See Dun. Dig. 3630.

8992–148. Order for sale, mortgage, lease.—The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. When the purpose of a sale, mortgage, or lease is to pay debts, bequests, or other items, the real estate shall be sold, mortgaged, or leased in the following sequence: (1) real estate devised charged with the payment of such debts, bequests, or other items (2) real estate not specifically devised (3) real estate specifically devised but not so charged. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interests and shall direct the purpose for which the proceeds *shall be used. An order for sale, mortgage, or lease* shall remain in force until terminated by the court, but no private sale shall be made after one year from the date of the order unless the real estate shall have [been] reappraised under order of the court within three months preceding the sale. (G. S. 8838, 8839, 8841) (Act Mar. 29, 1935, c. 72, §148; Apr. 26, 1937, c. 435, §18.)

Annotations under former act, see ante, §8841.

Act Apr. 26, 1937, cited omits the word "been" in brackets.

8992–149. Terms of sale.—The court may order a sale of real estate for cash, part cash and a purchase-money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten per cent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four per cent per annum and shall be payable in reasonable monthly, quarterly, semi-annual, or annual payments, and the final installment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide for conveyance by quitclaim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and his assigns in such contract, the real estate may be resold under the original order and a reappraisal within three months preceding the sale. A sale of the vendor's interest in real estate sold by the representative on contract may be made under order of the court with or without notice upon an appraisal of such interest within three months preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal. (G. S. 8841) (Act Mar. 29, 1935, c. 72, §149; Apr. 26, 1937, c. 435, §19.)

Annotations under former act, see ante, §8841.

8992–150. Public sale.—If a sale at public auction be ordered, three weeks' published notice of the time and place of sale shall be given. Proof of publication shall be filed before the confirmation of the sale. Such publication and sale may be made in the county where the real estate is situated or in the county of the probate proceedings. If the parcels to be sold are contiguous and lie in more than one county, notice may

be given and the sale may be made in either of such counties or in the county of the probate proceedings. The representative may adjourn the sale from time to time, if for the best interests of the estate and the persons concerned, but not exceeding three months in all. Every adjournment shall be announced publicly at the time and place fixed for the sale, and if for more than one day further notice thereof shall be given as the court may direct. (G. S. 8843, 8848) (Act Mar. 29, 1935, c. 72, §150.)

8992–151. Private sale.—If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court, which reappraisal shall be filed before the confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. (G. S. 8844) (Act Mar. 29, 1935, c. 72, §151.)

Appraisal is necessary only in event of sale, and irregularity in appraisement by appraisors was immaterial where land was only mortgaged. Mahoney's Estate, 195M431, 263NW465. See Dun. Dig. 3636.

8992–152. Additional bond.—If the bond of the representative be insufficient, before confirmation of a sale of [sic] lease or before execution of a mortgage he shall file an additional bond in such amount as the court may require. (G. S. 8842, 8910, 8913) (Act Mar. 29, 1935, c. 72, §152.)

Annotations under former act, see ante, §8910.

Editorial note.—"Of" following sale in line 3 of text in 1936 Supplement should be "or" but was enacted "of."

8992–153. Sale of contract interest.—Whenever a person entitled under contract of purchase to any interest in real estate dies, or whenever a ward is entitled under contract of purchase to any interest in real estate, such interest may be sold for the same reasons and in the same manner as other real estate of a decedent or ward. Before confirmation the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the representative shall assign the contract and convey by quitclaim deed. The proceeds of such sale in the estate of a decedent shall be disposed of in the same manner as the proceeds of sales of real estate of which the decedent was seised. (G. S. 8849, 8850) (Act Mar. 29, 1935, c. 72, §153.)

8992–154. Sale subject to charge.—When the estate of a decedent or ward is liable for any charge, mortgage, lien, or other encumbrance upon the real estate therein, the court may refuse to confirm the sale or lease until after the filing of a bond in such amount as the court may direct conditioned to save the estate harmless. (G. S. 8851) (Act Mar. 29, 1935, c. 72, §154.)

Annotations under former act, see ante, §8851.

8992–155. Confirmation.—Upon making a sale or lease, the representative shall file his report thereof. Upon proof of compliance with the terms of the order, the court may confirm the sale or lease and order the representative to execute and deliver the proper instrument. (G S. 8856) (Act Mar. 29, 1935, c. 72, §155.)

Statutes are to be liberally construed so as to uphold title derived from sales made in probate proceedings, and substantial compliance only is required. Mahoney's Estate, 195M431, 263NW465. See Dun. Dig. 3617a.

8992–156. Eminent domain proceedings.—Whenever any real estate of a decdent or ward is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the representative may agree in writing upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the approval of the court. When such agreement has been made, the representative shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court with or without notice shall hear, determine, and act upon the petition. If the court approves the agreement, the representative upon payment of the agreed compensation shall convey the real estate sought to be acquired, and execute any release which may be authorized. (G. S. 8853, 8854, 8855) (Act Mar. 29, 1935, c. 72, §156.)

8992–157. Platting.—Whenever it is for the best interests of the estate of a decedent or ward, real estate may be platted by the representative under such conditions and upon such notice as the court may order. (G. S. 8872) (Act Mar. 29, 1935, c. 72, §157.)

8992-158. Conveyance of vendor's title.—When any person legally bound to make a conveyance or lease dies before making the same, or when any ward is legally bound to make a conveyance or lease, the court with or without notice may direct the representative to make the conveyance or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to such conceyance or lease, or by the representative, or by any person interested in the estate or claiming an interest in such real estate or contract, and shall show the description of the land and the facts upon which such claim for conveyance or lease is based. Upon proof of the petition, the court may order the representative to execute and deliver an instrument of conveyance or lease upon performance of the contract. (G. S. 8861 to 8871, inclusive) (Act Mar. 29, 1935, c. 72, §158; Apr. 26, 1937, c. 435, §20.)

Contract to will property, see §8735, note 5, §8992-34, note 5.

8992–159. Mortgage extension.—A representative without order of the court may make an extension of an existing mortgage for a period of five years or less, if the extension agreement contains the same prepayment privileges and the rate of interest does not exceed the lowest rate in the mortgage extended. (Act Mar. 29, 1935, c. 72, §159.)

8992–160. Liability on mortgage note.—No representative shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed by him in his representative capacity. (Act Mar. 29, 1935, c. 72, §160.)

8992–161. Title free from tax lien.—The lien of the State for inheritance taxes payable by a representative shall not extend to any right acquired by a purchaser, mortgagee, or lessee through any conveyance made by such representative under a power contained in a will or under order of the court. (Act Mar. 29, 1935, c. 72, §161.)

8992–162. Validity of proceedings.—No sale, mortgage, lease, or conveyance by a representative shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate. (G. S. 8857, 8858) (Act Mar. 29, 1935, c. 72, §162.)

Where sale proceedings in probate court have culminated in an order confirming a sale, directing a conveyance and execution of a deed to purchasers, such proceedings cannot be attacked by moving to vacate order of confirmation in probate court or by appealing from such order of confirmation, but must be attacked in an appropriate direct action to which purchasers, subsequent purchasers, and encumbrancers are duly made parties. Sprain's Estate, 199M511, 272NW779. See Dun. Dig. 3627.

8992–162a. Certain deeds validated.—All deeds for the conveyance of real estate made and executed by an administrator or executor of the estate of a deceased person, pursuant to the order of any Probate Court of this State authorizing and directing the making and execution of such instrument, where the execution thereof was otherwise valid, and in which instrument the description of the property conveyed does not correspond with the description set forth in the order of the Probate Court authorizing and directing the making and execution of such instrument, the same are hereby validated and legalized, and such conveyances are hereby made valid as to the property described in the order of the Probate Court authorizing and directing the making and execution of such instrument. (Jan. 21, 1936, Ex. Ses., c. 58, §1.)

8992-162b. Same—pending actions not affected.—Nothing herein contained shall affect any action now pending or commenced within six months from and after the passage of this act to determine the validity of any instrument validated hereby. (Jan. 21, 1936, Ex. Ses., c. 58, §2.)

8992-163. Limitation of action.—No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a representative shall be maintained by any person claiming under or through the decedent or ward unless such proceeding is begun within five years immediately succeeding the date of such sale, mortgage, lease, or conveyance, provided however, in case of real estate sold by a guardian, no action for its recovery shall be maintained by or under the ward unless it is begun within five years next after the termination of the guardianship; provided further that in cases of fraud, minors and others under legal disability to sue when the right of action first accrues may begin such action at any time within five years after the disability is removed. (G. S. 8859) (Act Mar. 29, 1935, c. 72, §163.)

ARTICLE XVII.—APPEALS.

8992-164. Appealable orders.—An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

1. An order admitting, or refusing to admit, a will to probate.
2. An order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian.
3. An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate.
4. An order directing, or refusing to direct, a conveyance or lease of real estate under contract.
5. An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counter-claim in whole or in part when the amount in controversy exceeds one hundred dollars.
6. An order setting apart, or refusing to set apart property, or making, or refusing to make, an allowance for the spouse or children.
7. An order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue.
8. An order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds one hunderd dollars.
9. An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds one hundred dollars.
10. An order adjudging a person in contempt.
11. An order vacating a previous appealable order, judgment, or decree; an order refusing to vacate a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect.
12. A judgment or decree of partial or final distribution.
13. An interlocutory decree entered pursuant to Article XIII, Section 115.
14. An order granting or denying restoration to capacity.
15. An order made pursuant to Section 118 directing or refusing to direct the payment of representatives' fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to take such appeal. (G. S. 8983) (Act Mar. 29, 1935, c. 72, §164; Apr. 15, 1939, c 270, §9.)
16. An order determining, or refusing to determine, inheritance taxes upon a hearing on a prayer for reassessment and redetermination; but nothing herein contained shall abridge the right of direct review by the supreme court. (G. S. 8983) (Act Mar. 29, 1935, c. 72, §164; Apr. 15, 1939, c. 290, §9.)

Annotations under former act, see ante, §8983.

Appeals from probate court are entirely statutory and it is necessary that statute allowing them be complied with. Van Sloun v. D., 199M434, 272NW271. See Dun. Dig. 7784a.

Jurisdiction of district court is limited to appeals seasonably taken in accordance with statutory directions, jurisdiction being statutory only, and not founded upon constitutional grant. Peterson's Estate, 202M31, 277NW 529. See Dun. Dig. 7770e, 7784a, 7795.

Probate court has no jurisdiction over proceedings for specific performance of contract to will property, as a specific performance must be sought in district court in equity, and district court upon appeal from probate court has no jurisdiction to decree specific performance, since it may exercise only appellate jurisdiction. Roberts' Estate, 202M217, 277NW549. See Dun. Dig. 3593i, 3658, 7795, 10207.

Maxim that appeals from inferior tribunals are favored in law applies to appeals from probate court to district court. Dahn v. D., 203M19, 279NW715. See Dun. Dig. 7784b.

Order discharging administrator, following one settling his account, is not appealable. Zebott's Estate, 203 M193, 280NW652. See Dun. Dig. 7786.

(4).

On appeal from probate court to district court, supplemental statements or agreements of parties cannot confer jurisdiction where record or return of probate court shows want of jurisdiction, but where a party duly served with notice of appeal moves district court to dismiss appeal for want of service of such notice on all necessary parties, it may be shown that such mover was only adverse party to appellant in probate court; there being nothing on face of record to contrary. Nelson's Estate, 195M144, 262NW145. See Dun. Dig. 7790.

(9).

An order of probate court, made on notice and after hearing, allowing account of a guardian covering a period of some thirteen years, is appealable. Fredrick v. K., 197M524, 267NW473. See Dun. Dig. 294.

Daughters of incompetent have such interest in proper care and conservation of property as to entitle them to appeal, as parties aggrieved, from an order of probate court allowing account of guardian. Id. See Dun. Dig. 310.

(15).

Amended. Laws 1939, c. 270, §9.

8992-165. Venue.—Such appeal shall be to the district court of the county of the probate court which made the order, judgment, or decree appealed from, except that an appeal taken from any order, judgment, or decree (other than one determining or refusing to determine venue or transferring or refusing to transfer venue) made before the transfer of venue shall be taken to the district court of the county to which the transfer was made. (Act Mar. 29, 1935, c. 72, §165.)

8992-166. Requisites.—Such appeal may be taken by any person aggrieved within thirty days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1), the appellant shall serve upon the adverse party or his attorney or upon the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, and file in the probate court such notice with proof of service thereof; (2) pay to the probate court an appeal fee of three dollars to apply on the fee for the return; and (3) the appellant, other than the state, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein.

The notice of the order, judgment, or decree appealed from, the notice of appeal, and the bond if required, shall be served as in civil actions in the district court.

Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the district court may permit an amendment on such terms as may be just. (G. S. 8984, 8985) (Act Mar. 29, 1935, c. 72, §166; Apr. 26, 1937, c. 435, §21.)

Annotations under former act, see ante, §§8984, 8985.

On appeal to district court from order of probate court disallowing a claim filed against an estate, notice of appeal need be served only upon parties who appeared and contested allowance of such claim in probate court. Nelson's Estate, 195M144, 262NW145. See Dun. Dig. 7789.

Administrator may appeal in his representative capacity and without an appeal bond from an order of probate court surcharging and settling his final account. Clover v. P., 197M344, 267NW213. See Dun. Dig. 7785.

Motion to dismiss appeal from probate court because of failure to comply with §8992-169, though grounded on mistake as to extent of relief that would be granted, did not constitute a general appearance which would preclude movant from obtaining relief for failure to serve bond as required by §8992-166, though motion did not specifically state that appearance was "special." Van Sloun v. D., 199M434, 272NW261. See Dun. Dig. 7791.

Court properly dismissed an appeal from order of probate court in which there was no service of bond. Id.

Where appellee did not regard failure to serve bond as a matter of any consequence, district court should have relieved appellant of his default. Dahn v. D., 203M19, 279NW715. See Dun. Dig. 7791.

Rule of Van Sloun v. Du Toit, 199Minn434, 272NW261 that service and filing of bond is jurisdictional no longer stands under this section which vests discretion in district court to permit an amendment. Zebott's Estate, 203M193, 280NW652. See Dun. Dig. 7791.

Appellant, from an order of district court dismissing appeal from probate court, cannot successfully assign error for failure to exercise discretion to allow amendment, where the record shows no effort to invoke such discretion. Id. See Dun. Dig. 7794.

A pretermitted grandchild who by contract with children of testator acquired an interest in residue of his estate is a party aggrieved by an order of probate court allowing a claim against estate, and entitled to appeal to district court. Burton's Estate, 203M275, 281NW1. See Dun. Dig. 7785.

Motions for relief from defaults are in sound discretion of court and should be made with diligence. Kees' Estate, 285NW836. See Dun. Dig. 7796.

Representative is required to file and serve a bond where appeal is not for interest or advantage of estate but to prevent payment of a claim due from representative to estate. Id. See Dun. Dig. 7791.

A finding of lack of diligence on the part of appellants is justified where it appears that they waited four and one-half months with full knowledge of facts before moving to be relieved of their default in failing to serve on appellee appeal bond as required by statute on appeal from probate to district court, during which time they maintained an appeal to supreme court contending that such service of bond was unnecessary. Id. See Dun. Dig. 7796.

An appeal from probate court to district court may be dismissed for appellant's failure to comply with requirement of statute that appeal bond be served. Id. See Dun. Dig. 7787a.

8992-167. Return.—When an appeal has been effected, the probate court upon payment of the remainder of its fee, if any, forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. If the required fee for the return be not paid within twenty days after the appeal has been effected, the district court may dismiss the appeal. If the appeal be taken under section 164, subsection 10, such transcript shall also contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return. (G. S. 8986) (Act Mar. 29, 1935, c. 72, §167; Apr. 26, 1937, c. 435, §22.)

Annotations under former act, see ante, §8986.

8992-168. Suspension by appeal.—Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The district court may require the appellant to give additional bond for the payment of damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such. (G. S. 8987) (Act Mar. 29, 1935, c. 72, §168.)

Annotations under former act, see ante, §8987.

On appeal from commitment state board of control is not required to release child from state public school. Op. Atty. Gen. (840a-6), Dec. 28, 1936.

8992-169. Trial.—Within twenty days after perfection of the appeal, the appellant shall file with the clerk of the district court, and serve upon the adverse party or his attorney a clear and concise statement of the proposition, both of law and of fact, upon which he will rely for reversal of the order, judgment, or decree appealed from; within twenty days after such service the adverse party may serve and file his answer thereto and the appellant, within twenty days thereafter, may serve and file a reply. If there be no reply, allegations of new matter in the answer shall be deemed denied. Demurrers shall not be permitted. The district court may allow or require any pleading to be amended, grant judgment on the pleadings, or, if the appellant fail to comply with the provisions hereof, dismiss the appeal.

After issues are so formed, the case may be brought on for trial by either party by the filing and service upon the attorney for the adverse party, or if he have none, then upon the clerk for him, of a notice of trial or note of issue, in accordance with the practice in the district court. Thereupon the cause shall be placed upon the calendar, tried, and determined in the same manner as if originally commenced in that court. All appeals other than those from the allowance or disallowance of a claim shall be tried by the court without a jury, unless the court orders the whole issue, or some specific question of fact involved therein, to be tried by a jury or referred. (G. S. 8988, 8989) (Act Mar. 29, 1935, c. 72, §169.)

Annotations under former act see ante, §§8988, 8989.

District court on appeal from order of probate court denying petition for restoration of incompetent capacity and appointment of a new guardian had authority to appoint guardian ad litem, where authority of incompetent's attorney was questioned. Foust's Guardianship, 195M289, 262NW875. See Dun. Dig. 7794.

District court on appeal from order of probate court dismissing petition for restoration of incompetent to capacity and appointment of a new guardian had right to permit questioning of authority of attorney to take appeal from probate court for the incompetent. Id.

Neither probate court nor district court on appeal obtained jurisdiction of person or subject matter under a petition requesting that order releasing guardian be set aside and that guardian be ordered to account, guardian having moved out of state and service being attempted by publication, proceeding not being one in rem, and res having disappeared. Sellars v. S., 196M143, 264NW425. See Dun. Dig. 5141, 7784.

District court has discretionary power to determine whether an appellant from probate court should be relieved of a default for failure to file within statutory time, statement of propositions of law and fact upon which he is relying for reversal of an order of probate court. Slingerland's Estate, 196M354, 265NW21. See Dun. Dig. 2740, 7794.

Complaint filed by widow against estate of which she was administratrix to recover property held in trust for her by deceased stated a cause of action as against claim that administratrix and claimant were same person and therefore she could not bring an action against herself. Reifsteck's Estate, 197M315, 267NW259. See Dun. Dig. 3669.

Failure to file within 20 days upon clerk of district court or serve upon adverse party a clear and concise statement of propositions of law and of facts is not necessarily jurisdictional. Van Sloun v. D., 199M434, 272 NW261. See Dun. Dig. 7790.

Motion to dismiss appeal from probate court because of failure to comply with §8992-169, though grounded on mistake as to extent of relief that would be granted, did not constitute a general appearance which would preclude movant from obtaining relief for failure to serve bond as required by §8992-166, though motion did not specifically state that appearance was "special." Id. See Dun. Dig. 7791.

District court properly dismissed appeal from order of probate court removing co-guardian of an incompetent in absence of a clear and concise statement of propositions of law and fact. Pollock, 201M638, 277NW11. See Dun. Dig. 7790.

Parties cannot by consent give jurisdiction to appellate district court to try a matter not submitted to and determined by probate court. Peterson's Estate, 202M31, 277 NW529. See Dun. Dig. 7794.

On appeal from probate court district court exercises probate jurisdiction only. Anderson's Estate, 202M513, 279NW266. See Dun. Dig. 7794.

Where appellant, on appeal from probate court to district court, can be relieved of his defaults in failing to serve appeal bond, which had been filed, and to file and serve within time limited a concise statement of propositions of law and fact upon which he relies for reversal without prejudice to other party, it appearing that appeal was taken in good faith and that defaults were due

to mistake, court should grant an amendment relieving party of his defaults. Dahn v. D., 203M19, 279NW715. See Dun. Dig. 7791.

Jurisdiction of our probate courts is founded upon constitutional grant. The powers so granted are plenary, and the jurisdiction of that court is to be liberally construed. Its jurisdiction over persons under guardianship is in its origin exclusive, where person alleged to be incompetent was found by probate court to be competent, and on appeal district court reversed, finding person incompetent, and inasmuch as probate court never passed upon or decided question of who should be guardian of such incompetent person, district court should have remanded case to probate court for appointment of guardian, as its jurisdiction is appellate only, not original. Strom's Guardianship, 286NW245. See Dun. Dig. 7771a.

Jury trial in will cases. 22MinnLawRev513.

8992–170. Affirmance—Reversal.—Whenever the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed on certiorari is sustained, judgment shall be entered in the district court affirming the decision of the probate court. Upon the filing in the probate court of a certified transcript of such judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the district court shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of such judgment, it shall proceed as directed by the district court. (G. S. 8990) (Act Mar. 29, 1935, c. 72, §170.)

Annotations under former act, see ante, §8990.

District court has no authority to direct probate court to proceed except on appeal from probate court. Anderson v. A., 197M252, 266NW841. See Dun. Dig. 7770e.

8992–171. Judgment—Execution.—The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the State, the Veterans' Administration, or representative appealing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon. (G. S. 8891, 8892) (Act Mar. 29, 1935, c. 72, §171.)

Matter of determining a guardian's compensation and necessary expenses in discharge of his official duty is primarily for probate court as one having original jurisdiction in respect thereof. District court has jurisdiction only upon appropriate appeal to review propriety and validity of items composing it. It has no original jurisdiction with respect to such. Strom's Guardianship, 286 NW245. See Dun. Dig. 7794.

8992–172. Direct appeal to supreme court.—A party aggrieved may appeal direct to the supreme court from an order determining or refusing to determine inheritance taxes upon a hearing on a prayer for reassessment and redetermination. Within thirty days after service of notice of the filing of such order, the appellant shall serve a notice of appeal upon all parties adversely interested or upon their attorneys and upon the probate judge. An appellant, other than the State, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, pay all costs and disbursements and abide the order of the court therein. The notice of appeal with proof of service and the bond, if required, shall be filed in the probate court within ten days after the service of such notice and the appellant shall pay to such court the sum of fifteen dollars of which ten dollars shall be transmitted to the clerk of the supreme court, as provided by law for appeals in civil actions.

Such appeal shall stay all proceedings on the order appealed from. Whenever a party in good faith gives due notice of appeal from such order and omits through mistake to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just. Upon perfection of the appeal, the probate court shall transmit to the clerk of the supreme court the ten dollars aforementioned together with a certified copy of the notice of appeal and bond, if required. The filing thereof shall vest in the supreme court jurisdiction of the cause, and records shall be transmitted to the supreme court, and records and briefs shall be printed, served, and filed, and such appeal shall be heard and disposed of as in the case of appeals in civil actions from the district court. If a settled case be necessary, the probate court may settle a case upon the application of any party. The notice of the hearing upon such application and the case proposed to be settled shall be served on all other parties interested in the appeal at least eight days prior to the hearing. (Act Mar. 29, 1935, c. 72, §172.)

State appealing direct to supreme court from order of probate court determining inheritance taxes may not pay fee to the supreme court. Op. Atty. Gen. (6m), Aug. 3, 1936.

On appeal by the state to the supreme court from probate court, state need not pay the $10 to cover fees in supreme court but must pay $5 covering return of certified copy of notice of appeal and bond, and must pay fees for transcript, certified copies, etc., such fees not going to the state. Op. Atty. Gen. (346c), Aug. 12, 1936.

ARTICLE XVIII.—COMMITMENTS.

8992–173. Voluntary hospitalization.—Any insane, inebriate, feebleminded, or epileptic person desiring to receive treatment at a state institution may be admitted upon his own application, in such manner and upon such conditions as the state board of control may determine. During the time of such treatment and until the expiration of three days after such person in writing demands his release, the superintendent of such institution is authorized and empowered to detain him as though he had been duly committed. If any such person demands his release, the superintendent if he deems such release not to be for the best interest of such person, his family, or the public, shall file a petition for commitment in the probate court of the county wherein such institution is located, within three days after such demand. (G. S. 8954, 8955) (Act Mar. 29, 1935, c. 72, §173.)

Annotations under former act, see ante, §§8954, 8955.

Municipal court has no authority to commit inebriates to or to release them from state hospital. Op. Atty. Gen. (306b-12), July 7, 1937.

8992–174. Institution of proceedings. — Unless otherwise indicated by the context, the word "patient" as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state,

all proceedings shall be stayed until the state board of control shall have consented thereto. (G. S. 8956, 8957, 8963) (Act Mar. 29, 1935, c. 72, §174; Apr. 15, 1939, c. 270, §10.)

Annotations under former act, see ante, §§8956, 8957.
"Psychopathic personality" defined. Laws 1939, c. 369.

8992-175. Examination.—The patient shall be examined at such time and place and upon notice to such persons and served in such manner as the court may determine. If he be obviously inebriate, feebleminded, or epileptic, and if the county attorney consent thereto in writing, the examination may be made by the court; otherwise the court shall appoint two duly licensed doctors of medicine, or in feebleminded proceedings two persons skilled in the ascertainment of mental deficiency, to assist in the examination. Upon the filing of a petition for the commitment of a feebleminded or epileptic patient, the court shall fix the time and place for the hearing thereof, of which ten days' notice by mail shall be given to the state board of control, and to such other persons and in such manner as the court may direct.

The examiners and the court shall report their findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. The court shall determine the nature and extent of the property of the patient committed and of the persons upon which liability is imposed by law for his care and support, making such findings upon any such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. (G. S. 8958, 8959, 8970, 8975) (Act Mar. 29, 1935, c. 72, §175.)

Annotations under former act, see ante. §8959.
If judge is convinced that he cannot obtain two skilled examiners from residence of his county, it is necessary that he appoint examiners from another county, but determination of a judge that a local physician is capable of acting as an examiner is final. Op. Atty. Gen. (579r), Aug. 14, 1935.

A coroner who is not a salaried officer can act on examining board at insane hearing. Op. Atty. Gen. (390b-2), July 6, 1936.

County coroner may act as medical examiner in insanity hearing and receive fee. Op. Atty. Gen. (248b-5), Aug. 1, 1938.

A judge of probate, as an incident to feeble-minded proceedings, may order an examination of a mentally defective person outside court room, provided the alleged incompetent has an opportunity to be fairly heard. Op. Atty. Gen. (679e), March 9, 1939.

8992-176. Commitment.—If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate, committing the patient to the custody of the superintendent of the proper state hospital, or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons; provided, however, that such patients are required to pay the necessary hospital charge. If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate, committing him to the joint custody of the superintendents of the proper state and federal institution. If such federal institutions be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feebleminded or epileptic, the court shall appoint the State Board of Control guardian of his person and commit him to its care and custody.

Whenever a defendant in a criminal proceedings has been examined in the probate court, pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court but there shall be no petition, property or report, nor commitment, unless otherwise ordered. (G. S. 8960, 8961, 8962) (Act Mar. 29, 1935, c. 72, §176; Apr. 26, 1937, c. 435, §23.)

Annotations under former act, see ante, §§8960, 8961.
Proceedings for commitment to a state asylum are not evidence of incapacity to execute a particular contract, and it is proper to inquire into business acts at or about time of instrument involved in particular case, and declarations, oral or written, tending to show comprehension or noncomprehension of daily occurrences in business are proper elements to be considered. Schultz v. O., 202M237, 277NW918. See Dun. Dig. 4519.

A feeble-minded, dependent child which had been committed to state board of control for specialized care under §§8689-1 to 8689-5, and thereafter adjudged to be feeble-minded and ordered committed to the custody of the state board of control but not admitted to a state institution, is not a charge of the state. County of Stearns v. F., 203M11, 279NW707. See Dun. Dig. 4249.

Sheriff is not obligated to obey an order of state board of control to transport an epileptic to a state institution in the same way as is now done for feeble-minded. Op. Atty. Gen. (88a-26), Sept. 20, 1935.

All inebriates are to be committed to Willmar Hospital. Op. Atty. Gen. (248b-6), Nov. 26, 1937.

Provision in §4535-4 that no inebriate shall be committed for treatment except as may be authorized and committed by state board of control was superseded by §8992-176. Id.

If patient is received by veterans' hospital his commitment to state institution becomes discharged, and if patient escapes and it later apprehended by sheriff, state hospital has no authority to receive him. Op. Atty. Gen. (248b-10), Mar. 30, 1938.

Board of Control need not name sheriff to transport a feeble-minded ward to institution designated, but may designate an agent of county welfare board or some other person to qualify by it for service. Op. Atty. Gen. (679e), March 9, 1939.

Court is not required to name sheriff as person to convey an insane person or an inebriate to an institution. Op. Atty. Gen. (248a-4), April 10, 1939.

Guardianship and commitments under probate code. 20 MinnLawRev 333.

8992-177. Payment of fees, etc.—In each proceedings the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law, to each examiner the sum of five dollars per day for his services and fifteen cents for each mile traveled, to the person to whom the warrant of apprehension is issued the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself, and of authorized assistants, and to the person conveying the patient to the place of detention the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself and of authorized assistants, and to the patient's counsel when appointed by the court, the sum of ten dollars per day. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof.

Whenever the settlement of the patient is found to be in another county, the court shall transmit to the county auditor a statement of the expenses of the apprehension, confinement, examination, commitment, and conveyance to the place of detention. Such auditor shall transmit the same to the auditor of the county of the patient's settlement and such claim shall be paid as other claims against such county. If the auditor to whom such claim is transmitted shall deny the same, he shall transmit it with his objections to the state board of control which shall determine the question of settlement and certify its findings to each auditor. If the claim be not paid within thirty days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. (G. S. 8966, 8967, 8968) (Act Mar. 29, 1935, c. 72, §177.)

Annotations under former act, see ante, §§8966, 8967.
Settlement of mother of illegitimate at date of its birth determines county responsible for care of feeble-minded child. Op. Atty. Gen. (840a-6), Aug. 14, 1935.

Expenses of commitment of insane person or feeble-minded person in institution should be paid by county of legal settlement, and not by institution or out of state funds. Op. Atty. Gen. (679e), June 5, 1936.

Welfare board is not responsible for support of feeble-minded, epileptic and insane persons receiving institutional care. Op. Atty. Gen. (125a-64), July 28, 1937.

Feeble-minded ward of board of control may lose pauper settlement in the state, but this does not terminate guardianship of board. Op. Atty. Gen. (88a-14), Oct. 4, 1937.

8992–178. Release before commitment.—Before the delivery of the warrant of commitment, the court may release an insane or inebriate patient to any person who files a bond to the State in such amount as the court may direct, conditioned upon the care and safekeeping of the patient; but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released. (G. S. 8964) (Act Mar. 29, 1935, c. 72, §178.)

8992–179. Release after commitment.—Any insane, inebriate, feebleminded, or epileptic patient committed to the state board of control or any institution under its control, may be released to any person if such board consent thereto or if a bond to the State be filed with such board in such amount as it may fix, conditioned upon the care and safekeeping of the patient and the payment of all expenses, damages, and other items arising from any act of such patient. (G. S. 8960) (Act Mar. 29, 1935, c. 72, §179.)

Annotations under former act, see ante, §8960.

8992–180. Detention.—Upon delivery of an insane or inebriate patient to the institution to which he has been committed, the superintendent thereof shall retain the duplicate warrant and endorse his receipt upon the original which shall be filed in the court [of] commitment. Upon such filing, the court shall transmit a copy of the warrant with all endorsements of the state board of control. After such delivery, the patient shall be under the care, custody, and control of such board until discharged by it or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public shall be released from custody by such board or any institution except upon order of a court of competent jurisdiction. Whenever a patient is paroled, discharged, transferred to another institution, dies, escapes, or is returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Upon commitment of a feebleminded or epileptic patient, the state board of control may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state outside any institution through any child welfare board or other appropriate agency thereto authorized by said board of control. (G. S. 8973, 8974) (Act Mar. 29, 1935, c. 72, §180; Feb. 17, 1937, c. 31, §1.)

The word "of" in brackets was omitted from Act Feb. 17, 1937, cited.

Feebleminded cannot be placed in home, hospital or institution not under control of board of control. Op. Atty. Gen. (679h), May 8, 1936.

Conclusion of court committing person as insane could be amended by court by inserting a specific finding that patient was dangerous to the public, and patient could be detained under amended warrant. Op. Atty. Gen. (346), May 4, 1938.

Person committed to state hospital for dangerous insane cannot be transferred to St. Peter. Op. Atty. Gen. (248a-7), Nov. 19, 1938.

Probate court may authorize direct commitment of a person with psychopathic personality to the asylum at St. Peter if considered dangerous to the public. Op. Atty. Gen. (248B-3), July 7, 1939.

8992–181. Commissioner may act.—Whenever the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge. (G. S. 8969) (Act Mar. 29, 1935, c. 72, §181.)

Annotations under former act, see ante, §8969.

8992–182. Malicious petition.—Whoever for a corrupt consideration or advantage, or through malice, shall make or join in or advise the making of any false petition or report, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made, shall be guilty of a felony and punished by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars. (G. S. 8971) (Act Mar. 29, 1935, c. 72, §182.)

8992–183. Restoration of feebleminded and epileptics.—The state board of control may petition the court of commitment, or the court to which the venue has been transferred, for the restoration to capacity of a feebleminded or epileptic patient. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition, the court shall restore the patient to capacity.

Upon the filing of such petition by any person other than the state board of control and upon payment by the petitioner to such board all expenses in connection with the hearing in such amount as may be fixed by such board for the transportation, board, and lodging of the patient and authorized attendants, the court shall fix the time and place for the hearing thereof, ten days' notice of which shall be given to the state board of control and to such other persons and in such manner as the court may direct. Any person may oppose such restoration. Upon proof that the patient is not feebleminded or epileptic, the court shall order him restored to capacity at the expiration of thirty days from the date of service of such order upon the state board of control. If restoration be denied, the patient shall be remanded to the state board of control; if restoration be granted, he shall be so remanded for the thirty days aforesaid.

The court may appoint two duly licensed doctors of medicine or two persons skilled in the ascertainment of mental deficiency to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each person so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts. (G. S. 8960) (Act Mar. 29, 1935, c. 72, §183; Apr. 15, 1939, c. 270, §11.)

Annotations under former act, see ante, §8960.

Where a person is committed to guardianship of state board of control as feeble-minded in certain county and she is paroled and goes to live in another county, any interested person may petition probate court of committing county to change venue to residence of the ward for the purpose of making a petition for restoration to capacity. Op. Atty. Gen. (679b), July 18, 1935.

Petitioner need not advance expenses of probate court, such as cost of medical examiners. Op. Atty. Gen. (88a-14), Oct. 11, 1935.

Guardianship of board of control over a feeble-minded ward can only be terminated in manner provided in this section, and cannot be terminated by adoption. Op. Atty. Gen. (679b-1), Jan. 17, 1938.

8992–184. Appeal.—Notwithstanding the provisions of Article XVII, there shall be no appeal from an order granting or denying the petition of any person other than the state board of control for the restoration to capacity of a feebleminded or epileptic patient, except as provided in this section. The state board of control may appeal to the district court in the manner prescribed by Article XVII for appeals by the State. Such appeal shall suspend the operation of the order appealed from until final determination of the appeal.

Any person aggrieved other than the state board of control, upon payment by him to such board of all expenses in connection with the hearing in the district court in such amount as may be fixed by such board for the transportation, board, and lodging of the patient and authorized attendants, may appeal to the district court in the manner prescribed by Article XVII. Such appeal shall not suspend the operation of the order appealed from until reversed or modified by the district court. Upon perfection of the appeal, the return shall be filed forthwith. The district court shall give the appeal precedence over every other proceeding therein, and shall hear the matter de novo, without a jury, and in a summary manner. Upon determination of the appeal, judgment shall be entered pursuant to the provisions of Article XVII. (G. S. 8960) (Act Mar. 29, 1935, c. 72, §184.)

Annotations under former act, see ante, §8960.

8992-184a. Psychopathic personality—Definition.—The term "psychopathic personality" as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons. (Act Apr. 21, 1939, c. 369, §1.)

§1.

Act is constitutional. State v. Probate Court, 287NW 297.

Act is intended to include those persons who, by a habitual course of misconduct in sexual matters, have evidenced lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain or other evil on objects of their uncontrolled and uncontrollable desire. Id. See Dun. Dig. 4523.

Statute may not be applied to every person guilty of sexual misconduct or even to persons having strong sexual propensities. Id. See Dun. Dig. 4523.

A "psychopathic personality" is one characterized by a mental disorder. Id. See Dun. Dig. 4523.

§3.

While public welfare requires that persons with psychopathic personalities be treated before they have opportunity to injure others, it does not necessarily follow that their malady must excuse them from criminal conduct occurring in the past. State v. Probate Court, 287 NW297. See Dun. Dig. 2406, 4523.

8992-184b. Same—Laws relating to insane persons, etc., to apply to psychopathic personalities.—Except as otherwise herein or hereafter provided, all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane, and to persons found to be insane, shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Provided however, before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if he is satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts, and shall file the same with the judge of the probate court of the county in which the "patient", as defined in such statutes, has his settlement or is present. The judge of probate shall set the matter down for hearing and for examination of the "patient". The judge may at his discretion exclude the general public from attendance at such hearing. The "patient" may be represented by counsel; and if the court determines that he is financially unable to obtain counsel, the court may appoint counsel for him. The "patient" shall be entitled to have subpoenas issued out of said court to compel the attendance of witnesses in his behalf. The court shall appoint two duly licensed doctors of medicine to assist in the examination of the "patient". The proceedings had shall be reduced to writing and shall become part of the records of said court. From a finding made by such court of the existence of psychopathic personality, the "patient" may appeal to the district court upon compliance with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 8992-166, 8992-167, 8992-169, 8992-170. (Act Apr. 21, 1939, c. 369, §2.)

§2.

Provisions incorporating by reference all laws now in force or hereafter enacted relating to insane persons, to persons alleged to be insane and to persons found to be insane, is valid and plain and definite. State v. Probate Court, 287NW297. See Dun. Dig. 4523.

Probate court may authorize direct commitment of a person with psychopathic personality to the asylum at St. Peter if considered dangerous to the public. Op. Atty. Gen. (248B-3), July 7, 1939.

8992-184c. Same—Not to constitute defense.—The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure. (Act Apr. 21, 1939, c. 369, §3.)

8992-184d. Same—Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 21, 1939, c. 399, §4.)

ARTICLE XIX.—MISCELLANEOUS.

8992-185. Definitions.—As used in this act, the word "representative" unless the context otherwise indicates, shall include executors, general administrators, special administrators, administrators with the will annexed, administrators de bonis non, general guardians, and special guardians. The word "minor" means a person under the age of twenty-one years. (G. S. 8706) (Act Mar. 29, 1935, c. 72, §185; Apr. 26, 1937, c. 435, §24.)

Annotations under former act, see ante, §8706.

The then existing statutory rule that women attain majority for all purposes at the age of 18 years was not changed by Rev. Laws 1905, §3636. The age of majority for both sexes is now 21 years. Vlasak v. V., 204M 331, 283NW489. See Dun. Dig. 4431.

Where either party intending to marry is under legal age as defined in Mason's Stat., §8992-185, clerk of court is unauthorized to issue a license for marriage of such persons under Mason's Stat., §8569, without consent of parents or guardian as case may be. Lundstrom v. M., 285NW83. See Dun. Dig. 5788.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. Op. Atty. Gen. (300a), May 13, 1937.

Delinquent girl over 18 years of age cannot be committed to home school. Op. Atty. Gen. (840a-5), Aug. 9, 1937.

Female under 21 is a minor, and a guardian must be appointed to minor receiving monthly compensation as a child of a deceased world war veteran, and conveyances of land must be by guardian. Op. Atty. Gen. (498c), Nov. 4, 1937.

Guardianship of female child had in probate court before passage of Laws 1937, c. 435 [§§8992-3(1) to 8992-185] is to be continued until she reaches age of twenty-one. Op. Atty. Gen. (346d), Dec. 9, 1937.

Marriage laws were not affected by amendment by Laws 1937, c. 435, §34. Op. Atty. Gen. (498c), May 3, 1938.

Person selling ammunition to one over age of 18 years need not secure written consent of parents or guardian. Op. Atty. Gen. (201a-8), Dec. 1, 1938.

County officer may not appoint person under 21 years of age as a deputy, but may appoint him as a clerk, though position requires a bond. Op. Atty. Gen. (126a-33), Dec. 19, 1938.

Clerk of court should not issue marriage licenses, without consent of parents or guardian of either party who is under 21 years of age. Op. Atty. Gen. (300a), Jan. 30, 1939.

Age of majority of both sexes is now 21 years for all purposes. Op. Atty. Gen. (33B-7), March 10, 1939.

Register of deeds may appoint as a deputy a woman 18 years of age. Op. Atty. Gen. (373a-2), August 8, 1939.

8992-186. Petition.—Every application shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or in the statement of facts in any petition shall invalidate any proceedings. (G. S. 8708) (Act Mar. 29, 1935, c. 72, §186.)

Annotations under former act, see ante, §8708.

Application to file claim after expiration of time fixed should be by application provided by this section. Daggett's Estate, 204M513, 283NW750. See Dun. Dig. 3598.

8992-187. Venue.—Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his death; if the decedent was not a resident of this state, proceedings may be had in any county wherein he left any property or into which any property belonging to his estate may have come. Proceedings for the appointment of a guardian shall be had in the county of the ward's residence, or if he be a nonresident of this state, proceedings may be had in any county in which his property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or ward in this state.

If proceedings are instituted in more than one county, they shall be stayed except in the county where first legally commenced until final determination of venue. If the proper venue be determined to be in another county, the court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county and proceedings shall be commenced anew in such proper county. (G. S. 8694, 8695) (Act Mar. 29, 1935, c. 72, §187.)

Annotations under former act, see ante, §§8694, 8695.

8992–188. Notice.—Whenever notice of hearing is required by any provision of this act by reference to this section, such notice shall be given once a week for three consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending; or if no such designation be made, in any legal newspaper in such county; or if the city or village of the decedent's residence is situated in more than one county, in any legal newspaper in such city or village. The first publication shall be had within two weeks after the date of the order fixing the time and place for the hearing.

At least fourteen days prior to the date fixed for the hearing, the petitioner, his attorney, or agent, shall mail a copy of the notice to each heir, devisee, and legatee whose name and address are known to him; and if the decedent was born in any foreign country, or left heirs, devisees, or legatees in any foreign country, to the consul or representative referred to in Section 68, or if there be none, to the chief diplomatic representative of such country at Washington, D. C., or to the secretary of state at St. Paul, Minnesota, who shall forward the same to such representative.

Proof of such publication and mailing shall be filed before the hearing. No defect in any notice, nor in the publication or service thereof, shall invalidate any proceedings. (G. S. 8709, 8710, 8712) (Act Mar. 29, 1935, c. 72, §188.)

Annotations under former act, see ante, §8709.

8992–189. Erroneous escheat.—Whenever a final decree has been made determining that any property has escheated to the State because the decedent left surviving no spouse nor kindred, or because of the failure of a devisee or legatee to receive under a will admitted to probate, or whenever application is made to prove a will disposing of property escheated to the State, upon the petition of the representative or any person interested in the estate and upon twenty days' notice to the Attorney General and to such other persons as the court may direct, the court may vacate the final decree, admit the will to probate as provided by law, and enter a final decree assigning the escheated property to the persons entitled thereto. (G. S. 8727) (Act Mar. 29, 1935, c. 72, §189.)

In contest between two groups claiming to be heirs of escheated estate, testimony of one of petitioners as to what he had learned from his father respecting death of a near relative was properly received, relating to a matter of family history. Gravunder's Estate, 195M487, 263 NW458. See Dun. Dig. 2725a.

Each group seeking to establish relationship to decedent must carry burden of proof of showing such and cannot rely upon weakness of claims of opposing group. Id.

In a contest between two groups of claimants to an estate, evidence sustains finding that petitioners were decedent's next of kin and as such entitled to estate. Id.

8992–190. Escheat returned.—After the determination of the inheritance tax, the State Auditor shall recommend in writing to the Legislature an appropriation for payment, or if the escheat was of realty, a conveyance thereof to the persons designated in such final decree. After such appropriation or authorization for conveyance by the Legislature, and upon payment of the inheritance tax, the auditor shall draw his warrant on the State Treasurer, or execute a proper conveyance of the realty, to the persons designated in such final decree. (G. S. 8728) (Act Mar. 29, 1935, c. 72, §190.)

8992–191. Disclosure proceedings.—Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent, or of any instruments in writing relating to such property, the court, upon such notice as it may direct may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court. (G. S. 8804, 8805) (Act Mar. 29, 1935, c. 72, §191.)

8992–192. No abatement.—No action or proceedings commenced by a representative shall abate by reason of the termination of his authority. (Act Mar. 29, 1935, c. 72, §192.)

8992–193. Murderer disinherited.—No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organizations, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued. (G. S. 8734) (Act Mar. 29, 1935, c. 72, §193.)

8992–194. State patents.—Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life. (G. S. 8721) (Act Mar. 29, 1935, c. 72, §194.)

8992–195. Federal patents.—Whenever any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees," the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate insofar as the same may be applicable, shall pertain to and govern the procedure in the action provided for in this section. (G. S. 8733, 8733-1; L. 1921, c. 36, Sec. 2) (Act Mar. 29, 1935, c. 72, §195.)

8992–196. Repeal.—Chapter 74, Mason's Minnesota Statutes of 1927, Chapter 74, the 1934 Supplement to Mason's Minnesota Statutes of 1927 (except laws relating to salaries and clerk hire, curative laws, G. S. 8833, 8976 as amended by Laws 1931, c. 301, 8977, 8979, 8980, 8981, 8982), G. S. 7581, Laws 1931, c. 33, Laws 1931, c. 259, and all other laws inconsistent herewith are repealed. (Act Mar. 29, 1935, c. 72, §196.)

8992–197. G. S. Defined.—Unless the context otherwise indicates, the term "G. S." as used in this act means "Mason's Minnesota Statutes of 1927, Section." The term (G. S.—) or (L.— c.—) at the end of a Section indicates its origin only. (Act Mar. 29, 1935, c. 72, §197.)

8992–198. Constitutionality.—If any part of this act be declared unconstitutional, no other part shall be affected thereby. (Act Mar. 29, 1935, c. 72, §198.)

8992-199. Name of act.—This act may be cited as the Minnesota Probate Code. For convenience only, the table of contents immediately preceding Article I shall be appended to and printed with this act immediately preceding Article I. (Act Mar. 29, 1935, c. 72, §199.)

8992-200. Date of effect.—This act shall take effect and be in force from and after 12:01 A. M., July 1, 1935. (Act Mar. 29, 1935, c. 72, §200.)

CHAPTER 75

Courts of Justices of the Peace

GENERAL PROVISIONS

8993. Jurisdiction limited to county.

Justice of peace may hold also office of city assessor. Op. Atty. Gen., Apr. 18, 1932.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

8994. Place of holding court.

Does not authorize justice to regularly hold court in another town so as to usurp the office of the local justice. Op. Atty. Gen., Mar. 19, 1929.

If village of Deephaven does not adjoin city of Minneapolis a justice of the peace of the village is not authorized to hold court in Minneapolis. Op. Atty. Gen. (266b-23), Mar. 29, 1938.

8996. Powers—Laws applicable.

2. Practice generally.

A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct 4, 1934.

Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

9000. Docket—Contents.

1. In general.

Justice of peace records are open to inspection of public except illegitimacy proceedings. Op. Atty. Gen. (851), July 1, 1935.

COMMENCEMENT OF ACTIONS

9004. Requisites of process.

One appointed and commissioned by the commissioner of public safety of the city of St. Paul a special police officer, at the request of justice of the peace of 10th and 11th wards to serve process issued out of his court, is entitled to recover of an attorney, practicing in said court, for such process so served, at attorney's request, the fees therefor prescribed by Mason's Minn. St. 1927, §6996. Russ v. K., 285NW472. See Dun. Dig. 8753.

9005. Summons—Service.

174M608, 219NW452; note under §9110.

PLEADINGS AND TRIAL

9029. Title to real estate—Case certified.

Removal to district court from municipal court forcible entry and detainer case. 178M282, 226NW847.

In action in justice court under unlawful detainer statute, cause is not removable to district court, on ground that title to real estate is involved, unless and until such title comes in issue on evidence presented in that court. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig 3784.

EXECUTION

9069. Executions and transcripts where court discontinued.

On adoption of municipal court in city of Springfield all books and records of discontinued justice court are delivered to municipal court which may issue all necessary executions and transcripts. Op. Atty. Gen., Mar. 17, 1934.

REPLEVIN

9072. Writ—When returnable.

A writ of replevin issued pursuant to Laws 1895, c. 229, §22, is valid. 173M174, 226NW405.

ATTACHMENT

9084. Where defendant resides in another county.

See Laws Sp. Ses. 1935-36, c. 88, establishing municipal court for St. Cloud.

APPEALS

9092. May be taken, when.

Where an appeal is taken on questions of law and the judgment is reversed, the suit is no longer pending so as to bar a second suit on the same cause of action. 173 M29, 216NW252.

9093. Requisites.

½. Time for appeal.

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. Anderson v. G., 183M336, 236NW483. See Dun. Dig. 486(74).

2. Notice of appeal.

Notice of appeal from municipal court cannot be served by mail. 178M366, 227NW200.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justice of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

3. Miscellaneous.

Though notice of appeal served by mail was ineffective, the district court obtained jurisdiction where appellee moved there for judgment against garnishee. 178M366, 227NW200.

4. Fees.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

9096. Appeals, how tried—Judgment.

1. Appeals on questions of law and fact.

Where defendant appeals from a judgment rendered by a justice court to a superior court for trial de novo, such appeal constitutes a general appearance in action and amounts to a waiver of any previous want of jurisdiction. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig. 476, 479.

A party who appeals from justice court to district court upon questions of law and fact waives objections to irregularities in proceedings in justice court, including failure to file complaint. Schutt v. B., 201M106, 275 NW413. See Dun. Dig. 5331.

9099. Return or amendment compelled, when.

Amendment of defective record on appeal from municipal court. Op. Atty. Gen., Dec. 9, 1930.

CRIMINAL PROCEEDINGS

9110. Jurisdiction.

Justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in Minneapolis. 174M608, 219NW452.

Waiver gives no such jurisdiction. Id.

Village justices and constables have jurisdiction under criminal acts committed outside village boundaries except offenses committed within the limits of any city or village wherein a municipal court is organized and existing. Op. Atty. Gen., May 19, 1931.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

9111. Same—To try and determine.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of $100, or by imprisonment in excess of three months. State ex rel. Ryan v. M., 182M368, 234 NW453. See Dun. Dig. 6900b(63).

Justice court has no jurisdiction where penalty exceeds three months' imprisonment. Op. Atty. Gen. (266b-21), July 15, 1937.

9112. Complaint—Warrant.

Labeling complaint and warrant as though state of Minnesota were plaintiff was mere irregularity that did not affect jurisdiction of justice, and additional language "against the form of the statute in such case made and provided," when charging a violation of an ordinance, was mere surplusage. 177M617, 225NW286.