

PART III

ESTATES OF DECEDENTS AND GUARDIANSHIPS

CHAPTER 525

PROBATE CODE

POWERS OF COURT

525.01 PROBATE COURT; PROVISIONS.

1. Jurisdiction in general
2. Jurisdiction of estates of deceased persons
3. Nature and object of administrative proceedings
4. Necessity of administration
5. Jurisdiction over persons under guardianship
6. Held to have jurisdiction
7. Held not to have jurisdiction
8. Presumption of jurisdiction

1. Jurisdiction in general

Plaintiff sued to recover a sum of money held by defendant bank as representative of the estate of Ristine, founding its cause upon an assignment by Mullin, a beneficiary under the will of the said Ristine, of all his right, title, and interest as a residuary legatee. Mullin later died testate, defendant executrix being appointed to administer his estate under the will. (a) The district court is under Minnesota Constitution, Article 6, Section 5, vested with "original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds \$100"; (b) the probate court, while having jurisdiction of the estates of deceased persons, possesses only powers granted to it by the constitution, these being to take charge of, preserve, and distribute according to law the property of decedents, but not to determine as between the representative of an estate and a third person the right to such property claimed by each; and (c) the district court has plenary jurisdiction of the instant suit. *Marquette Bank v Mullin*, 205 M 562, 287 NW 233.

The probate court's final decree of distribution, if general in its terms, and not confined to the property listed in the inventory, passes title to assets whether or not specified in the inventory; and the district court has jurisdiction to compel distributees to account to their co-distributees for property decreed them by probate court. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

Prohibition will not lie to restrain probate court from entertaining petition for probate of a purported will by the proponent of another instrument who has already commenced proceedings for its probate in a different county. The county in which proceedings are first commenced has jurisdiction to decide questions of venue; and its decision thereof is reviewable by appeal or certiorari. Proceedings in the second county should be stayed. *State ex rel v Probate Court*, 215 M 322, 9 NW(2d) 765.

The probate court's constitutional jurisdiction may not be interfered with by the district court, by injunction or otherwise, except by virtue of its appellate and remedial jurisdiction. The probate court has exclusive original jurisdiction over the estates of decedents, and this embraces absolute control over administrators and

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executors, and includes the necessary power to call them to proper accounting. Estate of Hauge, 219 M 192, 17 NW(2d) 305.

Municipal court of Minneapolis is without jurisdiction of the subject matter of action brought by ward after reaching his majority to recover of his former guardian money belonging to the ward which the guardian had failed to pay over and for which he had made no accounting to the probate court, jurisdiction of the probate court over estates of persons under guardianship being entire, exclusive and plenary. Kemmetmueller v Zachman, 220 M 44, 18 NW(2d) 590.

Federal courts, exercising jurisdiction over executors and administrators of estates of decedents within a state, are administering the laws of the same and are bound by the same rules which govern the local tribunal. An action in federal court cannot be maintained on a claim against estate of decedent barred because not presented to the probate court for allowance as required by the Minnesota probate code. Orth v Mehlhouse, 36 F(2d) 367.

The office hours of the probate judge and the hours within which the court may be in session are not fixed by the county board. The hours are for the judge to determine provided the office is open during reasonable hours. OAG July 26, 1945 (104-A-10).

Presumptions on sales of land in probate court. 8 MLR 514.

Introduction to wills and administration. 14 MLR 1.

Must there be an order of the probate court before a legacy "may be legally demanded." 16 MLR 231.

Summary probate proceedings. 19 MLR 833.

Analysis of the new probate code. 20 MLR 1.

Conveyances under the probate code. 20 MLR 106.

Minnesota probate practice. 20 MLR 707.

Ancillary administrations; insolvent estates. 21 MLR 331.

1937 amendments to the probate code. 21 MLR 877.

Jury trial in will cases. 22 MLR 513.

1939 amendments to the probate code. 23 MLR 997.

525.02 POWERS.

A probate court has no jurisdiction to grant specific performance of a contract to make a will or to determine property rights as between third parties and the representatives, heirs, legatees, and devisees. It has jurisdiction to administer estates of deceased persons and determine the rights of property so far as they depend on devolution, testate or intestate, but has no general jurisdiction. Jannetta v Jannetta, 205 M 266, 285 NW 619.

Once a court of competent jurisdiction acquires jurisdiction of the subject matter and parties to a cause its authority continues until the matter is finally disposed of. No court of coordinate authority is at liberty to interfere with its action. Shapiro v Larson, 206 M 440, 289 NW 48.

An order adjusting and allowing the final account of an executor is the equivalent of a judgment or decree adjudging the amount due the estate from the executor, and may not be vacated, after the expiration of the time for appeal therefrom, except under the provisions of sections 544.32 or 548.14. Estate of Woodworth, 207 M 563, 292 NW 192.

The district, and not the probate, court has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against the estate of a deceased person. Bulau v Bulau, 208 M 529, 294 NW 845.

In response to an application seasonably made, the probate court vacated a previous appealable order after time for appeal had expired upon the ground that its failure to notify the party of the order constituted excusable neglect within the statute. On appeal from such order to the district court, that court should decide the

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merits of the application, and it was error to vacate the probate court's vacating order upon the ground that the probate court acted without jurisdiction in entertaining the application. *Estate of Showell*, 209 M 539, 297 NW 111.

The probate court's final decree of distribution, if general in its terms and not confined to the property listed in the inventory, passes title to assets whether specified in the inventory or not; and in the instant case distributees were not barred by the statute of limitations from asserting their rights to recover from co-distributees their share of such assets. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

Claims of non-resident as well as resident creditors are barred by section 525.431 unless presented within five years after the decedent's death. The probate court has no power to allow a claim after the five years have expired. A state has the power to regulate the transmission, administration, and distribution of property, real and personal, situated within its borders regardless of the domicile of the owner. *In re Hencke's Estate*, 212 M 407, 4 NW(2d) 353.

The probate court has jurisdiction under section 525.54 to appoint a guardian for an infant residing in this state and having her domicile in another state, and the district court has like power under another statute. *In re Pratt*, 219 M 414, 18 NW(2d) 147.

Municipal court of Minneapolis is without jurisdiction of the subject matter of action brought by the ward after reaching his majority to recover of his former guardian money belonging to the ward, the jurisdiction of the probate court over estates of persons under guardianship being entire, exclusive, and plenary. *Kemmetmueller v Zachman*, 220 M 44, 18 NW(2d) 590.

Summary probate proceedings. 19 MLR 833.

Probate practice in Minnesota. 20 MLR 718.

525.03 BOOKS OF RECORD.

The presumption of jurisdiction on collateral attack is conclusive unless the want of jurisdiction affirmatively appears from the record itself. The probate court being one of superior jurisdiction, its records import verity and can be impeached only in direct proceedings. *Shapiro v Larson*, 206 M 440, 289 NW 48.

PERSONNEL

525.04 ELECTION OF PROBATE JUDGE; BOND.

A judge of probate may also serve as: (1) city attorney. OAG March 7, 1930 (297); (2) member school board. 1936 OAG 265, April 7, 1936 (358-f); (3) veterans' service officer. OAG July 7, 1945 (358-B-3).

525.05 JUDGE OR REFEREE; GROUNDS FOR DISQUALIFICATION.

It is immaterial that the legislature has not expressly included bias as a ground for disqualifying a probate judge in its statutory enactments. The provisions of the constitution in this respect are self-executing. *Payne v Lee*, 222 M 269, 24 NW(2d) 264.

Bias disqualifies a judge, whether it be born of a selfish or pecuniary interest in the outcome of the suit or of an overpowering personal spleen directed toward one of the litigants. Neither the cause of, nor the motive for, the bias is of any consequence. It is enough if bias from any cause deprives a judge of his impartial status; and if bias be present, a probate judge has no power to exercise his jurisdiction in violation of the constitution or in violation of any statute pursuant thereto. *Payne v Lee*, 222 M 269, 24 NW(2d) 262.

Bias or prejudice disqualifies a probate judge from hearing a case and imperatively requires that a probate judge from another county be summoned to act in his stead. *Payne v Lee*, 222 M 269, 24 NW(2d) 262.

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525.051 SUBSTITUTION OF JUDGES.

Determination of inheritance tax under section 291.06, Anderson substituting for Fosseen. Commissioner v Bennett, 219 M 449, 18 NW(2d) 238.

This section confers upon the resident probate judge a judicial, and not arbitrary, discretion, which requires him, in the event of bias toward any party in interest, to recognize his disqualifications. Payne v Lee, 222 M 269, 24 NW(2d) 262.

A non-resident judge of probate is entitled to traveling and sustenance expenses from county in which the court is held and he recovers salary from his own county only. OAG March 19, 1945 (347-I).

525.06 ANNUAL ASSEMBLAGE; RULES.

Validity of court rules when in opposition to the statute. 5 MLR 73.

Rules of practice. 8 MLR 268; 9 MLR 307; 12 MLR 206.

Rules relating to inheritance procedure. 23 MLR 134.

525.07 ACTING AS COUNSEL PROHIBITED.

Except that one may appear in his own behalf as a party thereto, only persons admitted to the bar to practice as attorneys may appear in probate court. OAG July 20, 1934 (346-A).

A judge of probate is prohibited from drawing wills. He cannot keep his official office together with another practicing attorney. OAG Jan. 16, 1942 (347-F).

525.08 SALARIES.

NOTE: Provisions relating to salaries of probate judges may be found in chapter 526.

Judges of probate are among those for whose removal the constitution gives the legislature authority to provide, and under the statute the governor has the power to remove or suspend judges of probate for malfeasance. Suspension may be made without a hearing. Upon reinstatement the judge who was removed cannot recover of the county the salary for the period during which the appointee performed the duties and occupied the office. Martin v County of Dodge, 146 M 129, 178 NW 167.

525.09 CLERKS; APPOINTMENT; POWERS.

A clerk of the probate court may also serve as justice of the peace. OAG March 3, 1947 (358-D).

525.092 CLERK MAY DESTROY CERTAIN PAPERS.

HISTORY. 1947 c. 117 ss. 1, 2.

INTESTATE SUCCESSION

525.13 ESTATE.

NOTE: First English law dealing with intestate succession.

"And if anyone depart this life intestate, be it through his neglect, be it through sudden death; then let not the lord draw more from his property than his lawful heriot. And according to his direction let the property be distributed very justly to the wife and children and relations, to everyone according to the degree that belongs to him." Witenagemot, 1016, Canute, Cap. 71.

Recognition by state of situs of personal property of decree of distribution by state in which intestate was domiciled. 14 MLR 810.

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525.145 DESCENT OF HOMESTEAD.

The inchoate interests given to a wife in her husband's real estate by L. 1875, c. 40, in place of dower, which was abolished by that act, cannot, by reason of their being purely inchoate, become vested or come into being unless the wife remains the "surviving spouse" of her husband. *Larsen v Erickson*, 222 M 363, 24 NW(2d) 711.

A note taken in renewal of a prior note secured by a mortgage is presumed to have been accepted as conditional payment only, and the burden is upon one who claims that it discharged and extinguished the original note to prove an expressed or implied agreement to that effect. The mere acceptance of a renewal note, even though it recites a settlement or payment, is only conditional, and does not effect an absolute discharge. *Holden v Farwell*, 223 M-550, 27 NW(2d) 641.

Where neither the creditor, nor the debtor, has seasonably exercised his power to apply a payment to one of several debts and where one of the debts that has matured is secured by a mortgage on the homestead, the court, as an exception to the general rule, will apply the payment to such mortgage debt on homestead in preference to an unsecured debt. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

In the absence of a specific appropriation of payments by the parties, the court will apply them to the unsecured or least secured debts in preference to those secured or more adequately secured. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Adverse possession as against a remainderman. 2 MLR 139.

Inheritance tax and statutory interest of surviving spouse. 2 MLR 380.

Fraudulent conveyances; homestead exemption. 2 MLR 392.

Summary probate proceedings. 19 MLR 833; 20 MLR 105.

Probate practice. 20 MLR 709, 713.

Statutory limitations on jurisdiction of probate courts. 21 MLR 211.

Inheritance tax procedure. 23 MLR 125.

Payments in satisfaction of duty support; validity of contracts between husband and wife not having separation in mind. 23 MLR 979.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale. 24 MLR 807.

Descent of homestead. 25 MLR 73.

Necessity of filing claim in probate court when decedent's only property is a homestead. 25 MLR 385.

Old age pension; validity of homestead lien law. 25 MLR 520.

1943 amendment. 31 MLR 64.

525.15 ALLOWANCES TO SPOUSE.

Amended by L. 1947 c. 45 s. 1.

Inheritance tax and statutory share to surviving spouse. 2 MLR 377.

Allowance to non-resident widow. 2 MLR 391.

Life estate of widow in homestead; inheritance tax. 5 MLR 156.

Compensation for death of minor child. 16 MLR 416.

Summary probate proceedings. 19 MLR 838.

Inheritance tax; deductions. 23 MLR 124.

525.16 DESCENT OF PROPERTY.

1. **Wife's interest in husband's realty**
2. **Husband's interest in wife's realty**
3. **Title vests on death of ancestor**

- 4. Liability for debts
- 5. Sale to pay legacies
- 6. Assent to disposition
- 7. Election
- 8. Generally

1. Wife's interest in husband's realty

NOTE: See annotations under sections 525.14, 525.145, and 525.15.

The inchoate interests given to the wife in her husband's real estate by L. 1875, c. 40, in place of dower, which was abolished by that act, cannot, by reason of their being purely inchoate, become vested or come into being unless the wife remains the "surviving spouse" of her husband. *Larsen v Erickson*, 222 M 363, 24 NW(2d) 712.

3. Title vests on death of ancestor

Absent clear tokens of contrary intention, the statute of descent is to be taken as the standard of division where "next of kin" is named in a will as a substituted class to take in case there be no children surviving a life tenant donee. *Coss v Goembel*, 210 M 32, 297 NW 114.

The inchoate and contingent interest of a wife in her husband's property remains inchoate and contingent although the property is sold and the proceeds thereof are invested by the husband in other property. *Knox v Knox*, 222 M 478, 25 NW(2d) 225.

6. Assent to disposition

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. *Estate of Butler*, 205 M 60, 284 NW 889.

7. Election

Upon renouncing her rights to take under her husband's will and electing to take under the statute, a widow takes an undivided interest in all the real estate of which her husband was seized or possessed during their marriage, to the disposition whereof by will or otherwise she has not consented in writing or by election to take under his will, with the exceptions noted in section 525.16. *Estate of Taylor*, 213 M 509, 7 NW(2d) 320.

8. Generally

The issue of intestates take per stirpes and not per capita, except when the property descends to the next of kin, in which case those in equal degree take per capita. *Estate of Thompson*, 202 M 648, 279 NW 574.

Absence of probate proceedings in the estate of the owner of a leasehold interest did not bar the heir from asserting her rights to such interest, she having been accepted as a tenant in place of the original lessee. *Justen v Oxboro*, 209 M 327, 296 NW 169.

Husband's right to transfer personal property. 1 MLR 370.

Equitable interests; land contracts. 2 MLR 62.

Inheritance tax and statutory one-third interest in surviving spouse. 2 MLR 378.

Future interests; possibility of reverter. 3 MLR 327.

Right of an alien enemy to take land by descent. 5 MLR 373.

Descent of estate by entireties on death of owners in same disaster, presumption of survivorship. 6 MLR 322.

Election of remedies; between property and devise. 6 MLR 344.

Escheat, tenure, time when title vests in state. 7 MLR 168.

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Dower, effect of wife's bigamous marriage on interest in husband's property 8 MLR 66.

Right of dower in estates terminated by death. 8 MLR 256.

Equality of property interests between husband and wife. 8 MLR 579.

Protection of the inchoate right of dower. 11 MLR 355.

Compensation for the death of a minor child. 16 MLR 416.

Summary probate proceedings. 19 MLR 833.

Confusion of descent and dower rights. 20 MLR 10, 11, 13.

Guardianship and commitments under the code. 20 MLR 334.

Probate practice. 20 MLR 707.

Minnesota inheritance procedure. 23 MLR 125.

Right of state to contest will. 23 MLR 250.

Administration right of set-off against a decedent of a pre-deceased heir apparent of an intestate. 23 MLR 976.

Probate code amendments. 23 MLR 997.

Ancestral estates; preference of kindred of the half-blood not of the blood of the ancestor to kindred of the whole blood of a more remote statutory class. 27 MLR 313, 314.

Abatement or indemnity for outstanding inchoate dower interest. 29 MLR 283.

Adoption, descent and distribution, right to inherit in a dual capacity when adoptive parent is blood relative. 30 MLR 395.

525.17 DEGREE OF KINDRED.

Right of mother to recover for death by wrongful act of an illegitimate child. 6 MLR 171.

"Next of kin" construed. 16 MLR 452.

Minnesota probate code. 20 MLR 1.

Confusion of descent and dower rights. 20 MLR 10.

Blood-grouping tests and the law. Problem of "cultural lag." 21 MLR 671.

Ancestral estates; preference of children of the half blood of the ancestor to kindred of the whole blood of a more remote statutory class. 27 MLR 313.

525.172 ILLEGITIMATE AS HEIR.

In conferring the right of inheritance upon an illegitimate child, it was not the intention of the legislature to abrogate the common law rule in regard to illegitimate children generally. A legislative modification of the common law is limited in application and by its necessary implication to the removal of the particular mischief against which the statute is directed. *Jung v St. P. Fire Dept. Relief Ass'n*. 223 M 402, 27 NW(2d) 152.

There is a strong presumption of the validity of a marriage and of the legitimacy of the children of that marriage, notwithstanding a former wife of the husband to such marriage is living at the time. The presumption of the continuance of the first marriage is not as strong as the presumption of legitimacy of the children of the second marriage. *Modern Woodmen v Barnes*, 61 F. Supp. 660.

525.173 HEIRS TO ILLEGITIMATE.

See, *Modern Woodmen v Barnes*, 61 F. Supp. 660, noted under section 525.172.

Right of mother to recover for the death of an illegitimate child. 6 MLR 171.

Dower rights. 20 MLR 15.

Probate practice. 20 MLR 709.

WILLS

525.18 EXECUTION OF WILL.

1. Requisites of execution
2. Interpretation
3. Capacity; undue influence
4. Contract to will
5. Distribution
6. Agreement between beneficiaries

1. Requisites of execution

Wills of soldiers and seamen. 2 MLR 261.

Revival of revoked will; effect of express revocation in subsequent will. 7 MLR 158.

Devolution of lapsed and void devises. 7 MLR 392.

Is signature at beginning of will sufficient? 12 MLR 307.

Incorporation by reference. 17 MLR 527.

Drafting of wills and trusts. 18 MLR 27; 20 MLR 707.

Formal changes by L. 1935, c. 72. 20 MLR 3.

Animus testandi; nature and necessity. 26 MLR 417.

2. Interpretation

The duty of the court is to give effect to the intention of the testator as expressed in the language used in the will. Such intention is to be gathered from the whole will and is to be read in the light of surrounding circumstances. It is apparent the testator intended each of his grandnephews and grandnieces to be entitled to the specified bequest immediately upon reaching a specified age. *Rodintz v Northwestern National*, 207 M 56, 289 NW 777.

It is the duty of the court to bear in mind that when the creator of a trust intentionally and unmistakably reposes discretion in his trustee, he does so because he desires the trustee's honest judgment; and the court will not substitute its discretion for that of the trustee except where necessary to prevent abuse of discretion. *Pritchard v Carpenter*, 212 M 233, 3 NW(2d) 226.

A testamentary trust considered and found not to be ambiguous or equivocal. An absolute interest in the corpus of Katherine's trust passes to Charlotte and Charles equally. *Foreman v Silverson*, 214 M 313, 8 NW(2d) 21.

In construing a will providing for the creation of a trust, the entire instrument must be considered, aided by surrounding circumstances, due weight being given to all its language, with some meaning given, if possible, to all parts, expressions, and words used, discarding and disregarding no part as meaning less if any meaning can be given them consistently with the rest of the instrument. *Comstock's Will*, 219 M 326, 17 NW(2d) 656.

In construing a will, the primary object is to ascertain the intent of the testator, and the will must be read as a whole and all its separate clauses considered, and disconnected provisions must not be permitted to destroy its meaning. Rules of construction will not be overlooked, but they are not technical guides which will be followed to a result contrary to the intent derived from reading the will as a whole. *Hencke's Estate*, 220 M 414, 19 NW(2d) 718.

There having been no showing that authority to deviate from the terms of this trust is necessary to effectuate the ultimate intention of the testator; and it appearing that authority to deviate is being sought solely with a view to increasing the income of life tenants, it would be improper for the court to substitute its judgment for that of the testator, and permit the trustee to invest in corporate stocks. *Rowell v First Minneapolis Trust*, 221 M 524, 22 NW(2d) 635.

In construing a will the court may take into consideration that it was drawn by one learned in the law and of experience in exact phrasing; technical terms have the meaning usual with those who chose the language; and no words should be cast aside as without meaning. Words should be given their usual and accepted meanings without enlargement or restriction. *Crosby v Atmore*, 224 M 173, 28 NW(2d) 175.

Absent a contrary intention, beneficiary of income from fund or property bequeathed or devised in trust is entitled to income from date of testator's death, and effect must be given to testator's dominant intention, to be gathered from the instrument as a whole and not from certain isolated words or phrases. *Crosby v Atmore*, 224 M 173, 28 NW(2d) 175.

Time at which next of kin are to be ascertained; holder of intervening life estate excluded from gift over to next of kin. 6 MLR 601.

Devolution of lapsed and void devises. 7 MLR 392.

Effect of valid codicil upon improperly executed will. 12 MLR 769.

Failure of devise or bequest on trust; effect on resulting trust. 13 MLR 749.

Validity of bequests conditioned upon legatee obtaining a divorce. 14 MLR 104.

Validity of provision for forfeiture by contesting beneficiary. 14 MLR 198.

Validity of incorporation in will by reference to an amendable inter vivos trust. 25 MLR 254.

Animus testandi; nature and necessity. 26 MLR 417.

3. Capacity; undue influence

The existence of undue influence in a particular case is to be determined by ascertaining the effect of the influence which was in fact exerted upon the mind of the testatrix, considering her physical and mental condition, the person by whom it was exerted, the time and place and all the surrounding circumstances; and not by determining the effect which such influence would have had upon the mind of the ordinarily strong and intelligent person. *Cole v Healy*, 207 M 597, 293 NW 90.

A testator has testamentary capacity if, at the time of making the will, he comprehends his relation to those who would naturally have claims on his bounty, the extent and situation of his property, and the effect of the will in disposing of it, and is able to hold these things in his mind long enough to form a rational judgment concerning them. Testator's condition may sustain a will, though he may be unequal to more exacting business transactions. *Lind v Moilan*, 208 M 19, 292 NW 622.

Mere mental and physical weakness, caused by age or sickness, does not amount to mental incapacity, provided the party is capable of fairly and reasonably understanding the matter in hand. *Estate of Geske*, 211 M 449, 1 NW(2d) 423.

An objection made in probate court that a will "was not duly and legally executed" is broad enough to include an objection that the will was forged, so as to authorize an amendment to the propositions of law and fact upon appeal to include specifically the objection of forgery. *Boese v Langley*, 213 M 440, 7 NW(2d) 355.

In pleading fraud the material facts constituting the fraud must be specifically alleged; a general charge of fraud is unavailing. Fraud is not presumed but must be affirmatively proved, and one who alleges fraud carries the burden of proof throughout the trial. *Parrish v Peoples*, 214 M 589, 9 NW(2d) 225.

To invalidate a will, undue influence must be such as to substitute the will of the person exercising it for that of the testator; it must be equivalent to moral coercion or constraint overpowering the will of the testator at the time the will is made. *Marsden v Puck*, 217 M.1, 13 NW(2d) 765.

There was no reversible error in permitting lay witnesses to testify as to the mental competency of the testator. The privilege attaching to the testimony of a testator's physician may be waived by the executor named in the will. *Payne v Fegan*, 219 M 80, 17 NW(2d) 85.

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Opportunity for undue influence in itself is not sufficient to sustain verdict of "undue influence," particularly where the provisions of the will do not constitute an unnatural disposition of property. *Ryan v Meehan*, 220 M 1, 18 NW(2d) 781.

Testamentary capacity depends upon whether testator comprehended the effect of his will in disposing of his property and whether he was able to hold those things in his mind long enough to perceive their obvious relations to each other and to form a rational judgment in relation to them. *Luke's Estate*, 220 M 104, 19 NW(2d) 5.

Proponents of a will bear the burden of proof in establishing testamentary capacity. Mental capacity of a testatrix sufficient to make a valid will requires that at the time of making the will she must understand the nature, situation, and extent of her property and the claims of others upon her bounty or her remembrance, and she must be able to hold these things in her mind long enough to form a rational judgment concerning them. *Estate of Forsythe*, 221 M 303, 22 NW(2d) 19.

Among the factors important as bearing upon the fact of undue influence are the opportunity to exercise it, active participation in preparation of the will by the party exercising it, a confidential relation between the person making the will and the party exercising the influence, disinheritance of those whom the decedent probably would have remembered in his will, singularity of the provisions of the will, and the exercise of influence or persuasion to induce him to make the will. *Teschendorf v Strangeway*, 223 M 409, 27 NW(2d) 429.

Fraud as avoiding will. 5 MLR 403.

4. Contract to will

In an action for specific performance of an oral promise to make a will, the fact that decedent was a lawyer does not impeach evidence of his oral contract. Where plaintiff's services were of such peculiar and personal nature that they are not measurable in money, a remedy at law is not adequate. *Downing v Maag*, 215 M 506, 10 NW(2d) 778.

No consideration is necessary to support an agreement by a creditor to accept less than the amount due on a liquidated past-due indebtedness in discharge of the whole. *Brack v Brack*, 218 M 503, 16 NW(2d) 557.

Joint and mutual wills; contract to devise. 19 MLR 95, 136.

Contracts to transfer property on death of promisor. 23 MLR 112.

Satisfaction of debt by legacy to creditor where parties "agreed" payment was to be made by testamentary disposition. 25 MLR 122.

5. Distribution

Under section 525.53, any estate, whether real or personal, given by an intestate in his life time, 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 descendant, shall be deemed an advancement to such heir and treated as part of the estate of the intestate. *Kohn v Beier*, 205 M 43, 284 NW 833.

Under Minnesota Constitution, Article 6, Section 5, the district court is vested with "original jurisdiction in all civil cases, both law and equity"; the probate court, while having jurisdiction of the estates of deceased persons, does not determine as between the representative of an estate and a third person the right to property claimed by each; and in the instant case the district court has plenary jurisdiction of the cause of action. *Marquette National v Mullin*, 205 M 562, 287 NW 233.

The testator intended each of his grandnephews and grandnieces to be entitled to the specific bequest immediately upon reaching the specified age. *Rodintz v Northwestern National*, 207 M 56, 289 NW 777.

Where property is given in trust to pay the income to a beneficiary for life with remainder to the "lawful issue" of the life beneficiary, the gift in remainder is to a class, which absent context or circumstances to show a contrary intention, includes adopted children. *Holden v First National*, 207 M 211, 291 NW 104.

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Where services are rendered upon the understanding that they are to be compensated for by testamentary disposition, the value of the legacy, unless otherwise stated in the will, shall be applied upon the reasonable value of such services either in full satisfaction or pro tanto as the case may be. In the instant case any verdict in excess of the legacy left to the claimant would be excessive. *Kalschener v Allen*, 207 M 437, 292 NW 96; *Sidmon v Allen*, 207 M 452, 292 NW 95.

Absent adoption pursuant to statute, a child received into the home of foster parents and by them reared as their natural child is allowed to share in the estate of such foster parents only where a contract to adopt or to give it a share in such estate is clearly proved. *Olson v Tubbs*, 209 M 19, 295 NW 63.

In the absence of clear tokens of contrary intention, the statute of descent is to be taken as the standard of division where "next of kin" is named in a will as a substituted class to take in case there be no children surviving a life tenant donee. *Coss v Goembel*, 210 M 32, 297 NW 114.

Although the interest of a contingent beneficiary under a testamentary trust is remote, he may upon reasonable cause apply to the court to have his interest properly secured. *Northwestern National v Pirich*, 215 M 313, 9 NW(2d) 773.

There was no abuse of discretion in refusing to remove a trustee whose trust account had been surcharged only as a result of mistakes made in good faith and upon the advice of counsel, but who had otherwise administered the trust in a careful, prudent, honest, and intelligent manner. In re trust under Will of Comstock, 219 M 325, 17 NW(2d) 656.

A judgment in rem reaches only within the jurisdiction of the court rendering it; and a decision of a California probate court, which was the testator's domicile, that the will worked a conversion into personalty of real estate, wherever situated, was not conclusive upon the courts of Minnesota in respect to effect of will upon title to real property within Minnesota. *Hencke's Estate*, 220 M 414, 19 NW(2d) 718.

Devolution of lapsed and ineffectual legacies and devises under residuary clause. 6 MLR 532.

Revival of revoked will; effect of express revocation in a subsequent will. 7 MLR 158.

Trusts created by savings bank deposits. 14 MLR 701.

Insurance trust as non-testamentary disposition. 18 MLR 391; 19 MLR 135.

Reservation of control by settlor as rendering a trust testamentary. 19 MLR 821.

6. Agreement between beneficiaries

A gift, devise, or bequest to a named person as the primary taker and to others as substitute takers in the event of the primary taker's death contemplates that the primary taker's death shall occur during the donor's lifetime, and hence the words of substitution become inoperative by the vesting of the gift, devise, or bequest in the primary taker. *First & American Bank v Higgins*, 208 M 295, 293 NW 585.

An agreement by defendant to convey her life estate in realty if plaintiffs, who were acting in good faith, would not contest the will on the ground that testatrix was mentally incompetent, was not contrary to "public policy" of the law protecting and enforcing wills. *Thayer v Knight*, 210 M 171, 297 NW 625.

Conditions against contest by beneficiary. 5 MLR 294.

525.181 COMPETENCY OF WITNESSES.

Validity of will where attesting witness signs before the testator. 10 MLR 76.

Formal changes in new probate code. 20 MLR 3.

525.182 NUNCUPATIVE WILLS.

Wills of soldiers and seamen. 2 MLR 261.

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525.183 WILLS MADE ELSEWHERE.

Conveyances under the present probate code. 20 MLR 106.

525.184 BENEFICIARY A WITNESS.

Director of charitable corporation receiving a legacy under a will has an interest rendering him incompetent to witness the will. 14 MLR 197.

Formal changes by L. 1935, c. 72. 20 MLR 3.

525.19 REVOCATION OF WILL.

While wills are revocable, contracts to make wills, except by consent, are not. *Jannetta v Jannetta*, 205 M 266, 285 NW 619.

The attempted revocation of the will was procured through the exercise of undue influence on the testatrix. The will of May 6, 1940, is admitted to probate. *Estate of Marsden*, 217 M 1, 13 NW(2d) 765.

Revocation by cancelation. 3 MLR 541.

Revocation implied by law. 4 MLR 298.

Revival of revoked will; effect of express revocation in a subsequent will. 7 MLR 158.

Fraudulent destruction of will. 8 MLR 51.

Divorce as implied revocation. 9 MLR 169.

Revocation of wills. 20 MLR 16.

Conveyances under the probate code. 20 MLR 106.

Probate practice. 20 MLR 707.

Implied revocation of will by subsequent invalid codicil; revocation by act of dependent relative. 24 MLR 298.

525.191 REVOCATION BY MARRIAGE OR DIVORCE.

Implied revocation by divorce. 9 MLR 169.

Revocation of Wills. 20 MLR 16.

525.20 AFTER-BORN CHILD.

The 1935 code provisions. 20 MLR 17.

Probate practice. 20 MLR 712.

525.201 OMITTED CHILD.

The fact that the testator may have had some unfriendly feeling toward his daughter and only willed her five dollars of a \$20,000 estate did not necessarily invalidate the will. *Estate of Bergquist*, 211 M 380, 1 NW(2d) 418.

Testator's intention not to provide for after-born child may be established by extrinsic evidence. 11 MLR 564; 15 MLR 255; 19 MLR 398.

Code of L. 1935, c. 72. 20 MLR 1.

Anti-lapse statute. 23 MLR 398.

525.202 APPORTIONMENT.

The sole province of the court in construing the terms of a will is to ascertain and give effect to the intention of the testator. In order to take, the beneficiaries by the terms of the will must survive the trust. Neither of Henley's wives survived the homestead trust, and the first wife had no issue. Her mother, of necessity, could not survive the trust. The children of the son, Paul D. Berrisford, the respond-

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ents here, are the only surviving beneficiaries of the trust. *First Trust Co. v Berrisford*, 223 M 446, 27 NW(2d) 412.

Gift by will to a class; tenancy in common. 5 MLR 367.

Minnesota probate code. 20 MLR 1, 8, 15.

525.203 DECEASED BENEFICIARY.

Bequest of one who predeceases testator. 18 MLR 606.

Set-off against substituted legatee of debt owed testator by original legatee. 23 MLR 400.

525.21 QUANTITY OF ESTATE DEvised.

Section 525.21 provides that fee may pass without words of inheritance or equivalent expression of intention. This reverses the common law rule. A beneficiary is not prevented from taking a vested interest in a trust by section 501.17 under which the whole trust, in law or equity, vests in the trustee and the beneficiary takes no estate or interest in the lands, but may enforce performance of the trust in equity. *First & American Bank v Higgins*, 208 M 295, 293 NW 585.

Satisfaction of debt by legacy to creditor where parties "agreed" payment was to be made by testamentary disposition. 25 MLR 122.

525.211 AFTER-ACQUIRED PROPERTY.

Effect of residuary clause. 7 MLR 396.

After-acquired real property. 9 MLR 691.

Time at which class described as heirs is to be ascertained. 18 MLR 486.

525.212 RENUNCIATION AND ELECTION.

Testator when executing his will is presumed to know of the widow's right to renounce it. And a childless widow, renouncing the will and electing to take under the statute, is entitled to an undivided one-half interest in all realty, even though devised to others, and her right cannot be satisfied out of the personalty. *Taylor's Estate*, 213 M 509, 7 NW(2d) 320.

Where beneficiary named in a will which provided for establishment of a trust fund for beneficiary made motion for appointment of an additional trustee and for the establishment of said fund, which motion was stricken from the calendar by the court, such motion did not constitute an election to take under the terms of the will so as to bar beneficiary from subsequently maintaining an action to determine adverse claims to real estate which had been by terms of will devised in trust. *LeBorius v Reynolds*, 222 M 31, 23 NW(2d) 1.

Conditions against contest by beneficiary. 5 MLR 294.

Election of remedies. 6 MLR 341.

L. 1935, c. 72; formal changes. 20 MLR 3.

Probate practice. 20 MLR 717.

525.221 DUTY OF CUSTODIAN.

May an executor recover attorney's fees and expenses incurred in an unsuccessful attempt to sustain legacies of a valid will. 4 MLR 282.

525.222 PROBATE ESSENTIAL.

Construction of statute governing admission to probate of lost or destroyed wills. 8 MLR 51.

PROBATE OF WILLS

525.23 PETITION FOR PROBATE.

Where a party has a complete remedy by mandamus, a writ of prohibition should, though discretionary, be denied. Mandamus lies to compel a judge of probate to fix the time and place of hearing on a petition for the probate of a will that notice may be given pursuant to section 525.83. A defect as to names of parties in the title of the petition and alternate writ of mandamus should be disregarded under section 544.34 where the defect is remedied by allegations in the body of the pleadings. *State ex rel v Kreger*, 210 M 509, 299 NW 2.

Attorney's fees incurred in an unsuccessful attempt to sustain legacies. 4 MLR 282.

Existence of will at time of testator's death. 8 MLR 51, 74.

Wills and administration. 14 MLR 1.

Drafting of wills and trusts; lessons from the depression. 18 MLR 27.

Minnesota probate code. 20 MLR 1.

Probate practice. 20 MLR 711.

Omission of libelous matter from probate. 21 MLR 870.

Testamentary trustee as party in probate proceedings. 25 MLR 120.

525.24 HEARING AND PROOF.

An objection made in probate court that a will "was not duly and legally executed" is broad enough to include an objection that the will was forged, so as to authorize an amendment to the propositions of law and fact upon appeal to include specifically the objection of forgery. It is proper to submit to the jury the issue of forgery along with issues of mental capacity and undue influence. *Boese v Langley*, 213 M 440, 7 NW(2d) 355.

A prior will, together with relevant declarations of purpose, dating from a time not too remote, and tending to show the fixed and settled purpose of the testatrix and any sudden or unexplained change in such purpose, are proper evidence to be considered by the trier of fact in determining the presence or absence of testamentary capacity in the making of a later will. *Estate of Forsythe*, 221 M 305, 22 NW(2d) 19.

Impeachment of attesting witnesses by proponent of will. 12 MLR 661.

Minnesota probate code. 20 MLR 1.

Guardianships and commitments. 20 MLR 340.

Probate practice. 20 MLR 711.

525.244 WILL IN OPPOSITION.

Prohibition will not lie to restrain probate court from entertaining petition for probate of a purported will by the proponent of another instrument who has already commenced proceedings for its probate in a different county. The county in which proceedings are first commenced has jurisdiction to decide the question of venue, and its decision thereon is reviewable by appeal or certiorari. *State ex rel v Probate Court*, 215 M 322, 9 NW(2d) 765.

525.25 APPOINTMENT OF REPRESENTATIVE.

The executor named in the will was competent but the probate and trial court properly held him not suitable because pending litigation placed him in a position of hostility to numerous legatees named in the will. An administrator with will annexed was properly appointed. *Hegna v Westcott*, 203 M 519, 282 NW 132.

A probate court under section 525.54 may appoint a guardian of an infant residing in this state though having her domicile in another state; and the district

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court has similar power and jurisdiction under another statute. In re Pratt, 219 M 414, 18 NW(2d) 147.

Appointment of executor by testator. 19 MLR 709.

LOST AND DESTROYED WILLS.

525.26 PETITION AND HEARING.

Admission to probate of lost or destroyed will. 8 MLR 51, 74.

525.261 SUFFICIENCY OF PROOF.

Existence of will at time of testator's death; statute governing admission to probate of lost or destroyed will. 8 MLR 51.

Minnesota probate code. 20 MLR 17.

ESTATES OF NON-RESIDENTS

525.27 WILLS PROVED ELSEWHERE.

Claim for damages for causing death not "assets" upon which to found an appointment of a non-resident decedent. 6 MLR 246.

525.271. ALLOWANCE.

Conveyances under the probate code. 20 MLR 115.

Guardianships. 20 MLR 335.

Probate practice. 20 MLR 712.

525.272 ADMINISTRATION.

Under constitutional provision ordaining that a probate court shall have jurisdiction over estates of deceased persons, jurisdiction of probate court includes administration of estate and distribution of what remains after administration is concluded to persons entitled thereto, and it necessarily requires an adjudication as to who is an heir, devisee, or legatee. Hencke's Estate, 220 M 414, 19 NW(2d) 718.

Distribution where assets are in several jurisdictions; ancillary proceedings. 6 MLR 410.

Ancillary administration of insolvent estates. 21 MLR 331.

Situs of chose in action on insurance policy as an asset for purposes of administration. 23 MLR 221.

525.273 FOREIGN REPRESENTATIVE.

Suit on negotiable paper by foreign administrator. 8 MLR 544.

Summary proceedings. 19 MLR 833.

Conveyances under the probate code. 20 MLR 115.

Guardianships and commitments. 20 MLR 336.

Statutory right of foreign executors or administrators to sell property. 23 MLR 373.

GENERAL ADMINISTRATION

525.28 PERSONS ENTITLED.

A petition for administration may be granted whenever an estate is left unadministered in whole or in part; and a delay of four and one-half years without

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resulting prejudice was no bar to an appointment. *Whitney v Daniel*, 208 M 420, 294 NW 465.

Effect of merger or consolidation of bank on right to qualify in fiduciary capacity. 15 MLR 816.

Executors and administrators, disqualification of. 18 MLR 85.

525.281 CONTENTS OF PETITION.

Guardianships and commitments. 20 MLR 340.

525.282 HEARING.

Under the provisions of section 259.02 the district court has the power in an adoption proceeding to waive the requirements of that statute for notice of the proceedings to the director of social welfare, investigation and report of that official, and the six months residence of the adopted child in the home of the adoptive parents prior to the hearing. *Adoption of Pratt*, 219 M 414, 18 NW(2d) 147.

Right to contest will of deceased spouse; interested party within meaning of the statute. 8 MLR 455.

Guardianship. 20 MLR 340.

Probate practice. 20 MLR 711.

Right of the state to contest. 23 MLR 250.

525.29 SUBSEQUENT ADMISSION OF WILL.

The statute must be followed when filing a petition to probate a will. *Mandamus* lies to compel a probate judge to fix a time and place for hearing. Under the provisions of section 544.34 a defect in names of parties may be disregarded if the defect is remedied in the allegations of the *mandamus* proceeding. *State ex rel v Kreger*, 210 M 509, 299 NW 2.

Bona fide purchasers from heirs; effect of subsequent will. 12 MLR 768.

Probate practice. 20 MLR 712.

525.291 ADMINISTRATOR D.B.N.

The representative of the estate of a decedent represents the estate, the heirs, and all persons interested in the estate in suing to enforce a claim due the estate; and a judgment in such action, whether upon the claim or a set-off asserted by the defendant, is binding and conclusive upon the representative, the heirs, and such interested persons even though the latter are not parties to the action. *Beckman v Beckman*, 202 M 328, 277 NW 355.

Evidence sustains the court's finding that the distribution of an estate made according to a final decree and prior to expiration of time for appeal from such decree was not made in good faith by the administrator de bonis non. *Krzyzaniak v St. Paul Mercury Co.* 210 M 373, 298 NW 365.

Guardianships and commitments. 20 MLR 340.

525.292 ADMINISTRATOR C.T.A.

If no executor be named in a will or if an executor be named therein but dies or refuses to act, letters of administration with the will annexed will issue to the person who would be entitled to act as representative of decedent's estate if such decedent had died intestate. *Long v Christopher*, 194 M 238, 260 NW 314.

SPECIAL ADMINISTRATION

525.30 APPOINTMENT.

Short form of administration. 9 MLR 176.

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Summary proceedings. 19 MLR 836.

Guardianships. 20 MLR 335, 340.

525.301 POWERS.

Summary probate proceedings under the code. 19 MLR 836.

Guardianships. 20 MLR 340.

525.304 FINAL ACCOUNT AND DISCHARGE.

In accounting, the burden is on an administrator to prove that his actions have conformed to the standard of his duties and one remiss in performance of his duty is subject to denial or reduction of his compensation. *Palm's Estate*, 210 M 87, 297 NW 765.

DETERMINATION OF DESCENT

525.31 ESSENTIALS.

Summary proceedings. 19 MLR 841.

Probate practice. 20 MLR 719.

Blood-grouping tests and the law; problem of "cultural lag." 21 MLR 671; 22 MLR 836.

Effect of second adoption on child's right to inherit from first adoptive parents. 26 MLR 114.

Legitimation of illegitimate children in foreign state; issue of common law marriage. 31 MLR 94.

525.312 DECREE OF DESCENT.

Right to inherit in dual capacity when adoptive parent is blood relative. 30 MLR 395.

BONDS

525.32 CONDITION.

A joint control agreement by an administrator, his surety, and the depository by its terms limited to special administrator covers the administrator's bank account as general administrator, there being a showing that such was the intention of the parties. *Fidelity and Casualty v People's National*, 207 M 184, 290 NW 305.

Distribution by administrator de bonis non not in good faith. *Krzyzaniak v St. Paul Mercury Co.* 210 M 373, 298 NW 365.

In an action by a surety to recover of the principals on the bond the value of attorney's fees expended by the surety for the purpose of appearing in opposition to a petition by an heir of the estate to set aside the final account of the executor's, the attorney's fees are not recoverable under the application agreement. *U.S.F. & G. v Falk*, 214 M 138, 7 NW(2d) 398.

Debts owing to testator by executor. 9 MLR 74.

Probative effect of judgment against administrator in action against surety on administrator's bond. 14 MLR 829.

Guardianships and commitments. 20 MLR 336.

MANAGEMENT OF ESTATE; INVENTORY AND APPRAISAL

525.33 CONTENTS OF INVENTORY.

Summary proceedings. 19 MLR 837.

Procedural rules. 20 MLR 5.

Guardianships and commitments. 20 MLR 336.

Probate practice. 20 MLR 718.

Where estate of deceased owner is entitled to United States savings bonds as against the beneficiary named in the bonds. 27 MLR 401.

525.331 APPRAISAL.

An inventory in probate proceedings in the administration of a decedent's estate showing the value for purposes of inheritance tax determination of property acquired before January 1, 1933, by a taxpayer by devise, bequest, or inheritance from the decedent is not an inventory within the meaning of section 290.15, for purposes of determining gain or loss from a sale or disposition of such property. *State v Stickney*, 213 M 89, 5 NW(2d) 351.

Inheritance tax procedure. 23 MLR 120.

COLLECTION OF ASSETS

525.34 POSSESSION.

The administrator de bonis non did not administer the estate in such good faith as is the duty of his office. The grandchildren are entitled to judgment for the amount granted by the trial court. *Krzyzaniak v St. Paul Mercury Co.* 210 M 374, 298 NW 365.

Where the will appoints an executor and a trustee and defines the duties and powers of each, the executor has no right and cannot be compelled to exercise discretionary power of sale devised exclusively to the trustee. Real property of a non-resident, not sold, should under section 525.272 be assigned according to the terms of the will and should not be sold and the proceeds transmitted by the ancillary to the domiciliary representative. *Forster v First & American Bank*, 212 M 407, 4 NW(2d) 353.

A son's agreement to support his parents and to render to and for them the personal services implicit in the family relationship of parents and child is of such a purely personal nature that a breach thereof did not pass a cause of action to the representative of the estate of the parent who died. *Moline v Kotch*, 213 M 326, 6 NW(2d) 462.

As a matter of law defendants have acted in good faith and have exercised honest and efficient discretion in the discharge of all their duties. Plaintiff, as a representative of the testator's estate, can claim no rights greater than those possessed by the decedent at the time of his death. *Droege v Brockmeyer*, 214 M 182, 7 NW(2d) 538.

It is the duty of an administrator to proceed promptly with collection of claims due the estate. *Fife v Jayne*, 214 M 388, 8 NW(2d) 222, 10 NW(2d) 481.

Instalments of compensation accruing prior to the death of the workman but not paid before his death do not become a part of his estate nor vest in his dependents, but are to be paid as the industrial commission may order. *Fehland v City of St. Paul*, 215 M 94, 9 NW(2d) 349.

While the representative of a decedent's estate who has obtained possession of the decedent's personal property is accountable to the probate court therefor, the widow may not, in the first instance, bring an action in the district court to receive such property, or its value, since the probate court controls the property through the administrator, and its jurisdiction over him and over the estate is exclusive. *Jewell v Jewell*, 215 M 190, 9 NW(2d) 513.

While a representative is not a trustee in the strict sense of that term so far as his title to the property of the estate is concerned; he is a trustee in the sense that he occupies a fiduciary relation toward those interested in the estate. *Hauge's Estate*, 219 M 192, 17 NW(2d) 305.

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Where a federal civil service employee files a designation of beneficiary with the retirement and disability fund of the civil service commission prior to his death, his designated beneficiary is entitled to the fund, and not the representative of his estate. *Anderson v Nelson*, 219 M 433, 18 NW(2d) 140.

One holding an unpaid check of a decedent has a valid claim against the drawer's estate. *Hore's Estate*, 220 M 365, 19 NW(2d) 779.

Right to personal assets when not needed to pay claims or expenses. 2 MLR 544.

Agreement under seal to reveal undiscovered assets of decedent's estate. 10 MLR 433.

Commingling of funds with money belonging to executor, administrator, or trustee; interest. 13 MLR 521.

Guardianships and commitments. 20 MLR 336.

Statutory right of foreign executor or administrator to sue; right to recover possession of real property. 23 MLR 374.

525.35 LIMITATION; LIABILITY OF REPRESENTATIVE.

Fees of \$1,000 to the representative and \$1,500 to his attorneys were not inadequate. *Estate of Fitzgerald*, 205 M 57, 285 NW 285.

Self or double-dealing by a beneficiary renders the transaction voidable by the beneficiary; but where, as here, the facts were fully disclosed to the court, and the action of the guardian was on advice of independent counsel, and the transfer was approved by the court, it cannot thereafter be disaffirmed by the ward. *Fiske v First National*, 207 M 44, 291 NW 289.

Every representative is entitled to the possession of and is charged with all the property of the decedent which has not been set apart for the surviving spouse or children; and in the discharge of his duties he must exercise that degree of care which men of common prudence ordinarily exercise in their own affairs, and tested by that rule the court was justified in refusing compensation to an administrator who neglected to protect property from foreclosure, and a substantial loss to the estate resulted. *Baker's Estate*, 208 M 379, 294 NW 222.

Liability for debt owed by executor to testator. 9 MLR 74.

Procedural rules. 20 MLR 5.

Conveyances under the probate code. 20 MLR 111.

Guardianships and commitments. 20 MLR 336.

Liability of an administrator in his representative capacity for wrongful detention of chattels belonging to a third person. 25 MLR 648.

Constructive trusts. 25 MLR 667, 700.

525.36 ACCORD WITH DEBTOR.

In the absence of evidence establishing that real estate loans might have been obtained on behalf of corporation, trial court did not err in finding executor free from negligence in connection with forfeiture of corporation's real estate for tax delinquencies, where no corporate funds were available for taxes. *Lund v First National*, 217 M 617, 15 NW(2d) 426.

525.38 REALTY ACQUIRED.

Summary proceedings. 19 MLR 833.

Conveyances under probate code. 20 MLR 115.

Guardianships and commitments. 20 MLR 336.

Creditors claim against homestead. 25 MLR 385.

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525.39 PROPERTY SET APART.

Upon death of the record owner, the homestead title vests in his children subject to a life estate in the widow and is not an asset for administration. Application of Lee, 171 M 183, 213 NW 736.

525.391 PROPERTY FRAUDULENTLY CONVEYED.

Uniform fraudulent conveyance act. 7 MLR 539.

Right of personal representative to avoid conveyance made by decedent in fraud of creditors. 14 MLR 297.

Procedural rules. 20 MLR 5.

525.392 PROPERTY CONVERTED.

Minnesota probate code. 20 MLR 5.

Guardianships and commitments. 20 MLR 333.

Liability of an administrator in his representative capacity for wrongful detention of chattels belonging to a third person. 25 MLR 648.

525.40 CONTINUATION OF BUSINESS.

Liability of executrix who carries on contract of testator. 3 MLR 357.

CLAIMS

525.41 NOTICE TO CREDITORS.

Section 525.431 withholds from the probate court jurisdiction to receive or allow, against an estate under administration, claims which remain contingent for more than five years after the death of the decedent. Estate of Borlaug, 201 M 407, 276 NW 732; Paulson v Swenson, 208 M 231, 293 NW 607.

Time within which claims may be filed against estates. 4 MLR 536.

When do legacies become payable? 16 MLR 228.

Summary proceedings. 19 MLR 834.

Procedural rules. 20 MLR 4.

Guardianships and commitments. 20 MLR 335, 338.

Creditor's claim against homestead. 21 MLR 212.

525.411 FILING OF CLAIMS.

1. Generally
2. Extension of time for cause
3. Contingent claims
4. Provable
5. Not provable against estate but otherwise recoverable
6. Effect of not presenting
7. Offset against claims

1. Generally

The representative of an estate in the performance of his official duties is by our statutes authorized to retain the services of attorneys and to incur reasonable expenses in that regard; but the allowance is to the representative as such and not to the attorney. Where there is a conflict between the representative and his attorney in respect to services rendered and the fees to be paid therefor, the issues presented thereby should be determined by a court of general jurisdiction. The

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probate court has no jurisdiction in such cases. *State ex rel v Probate Court*, 204 M 5, 283 NW 545.

The district, not the probate, court has jurisdiction of an action for damages for fraud in inducing a party not to file a claim against the estate of a deceased person. *Bulau v Bulau*, 208 M 529, 294 NW 845.

Debts to be allowed and paid out of the estate of a deceased person must be such as were incurred, or such as arise on obligations entered into, by him. A claim arising later, such as in the instant case, for goods sold by third party to the representative, must be worked out through the representative as an item of administrative expense. *Pittsburgh Coal Co. v Will*, 209 M 340, 296 NW 178.

No consideration is necessary to support an agreement by a creditor to accept less than the amount due on a liquidated past-due indebtedness in discharge of the whole. *Brack v Brack*, 218 M 503, 16 NW(2d) 557.

Gross and net inheritance tax values. 2 MLR 279.

Release of surety by failure to file claim against principal's estate within prescribed time. 6 MLR 417.

Summary proceedings. 19 MLR 833.

Procedural rules. 20 MLR 4.

Guardianships and commitments. 20 MLR 338.

Filing claim when decedent's only property is a homestead. 25 MLR 385.

4. Provable

Evidence sufficient to sustain a verdict for claimant for services to decedent during her lifetime; notwithstanding the rule that where one friend performs services to another, there must be a showing that compensation was expected or contemplated by the parties. *Sattinger v First Trust Co.*, 211 M 108, 300 NW 393.

6. Effect of not presenting

Where the United States failed to file its claim within the allowed time, the federal district court has jurisdiction to entertain a suit to impress a trust upon funds the defendant received as heir to the estate of a person who was maker of a note payable to federal housing administration. *U.S. v Anderson*, 66 F. Supp. 870.

525.412 JOINT DEBTOR.

Where the maker of a promissory note dies, the note, even though not due, is provable as a claim against the estate, presently payable as if past due; and in case where one of two or more makers of a joint and promissory note not due dies, it also becomes presently due. If the holder of such note files it as a claim and it is allowed and paid by the personal representative, a suit for contribution against the comakers accrues at once. *Bolles v Boyer*, 141 M 404, 170 NW 229.

525.413 CLAIMS BARRED.

Only claims arising on contract are to be determined by the probate court in administering estates of decedents. On July 9, 1937, plaintiff filed her verified claim against his father's estate based upon a check dated September 14, 1928. If the father was impliedly a trustee for the son in the amount of the check, the statute of limitations had run against it, and the claim was properly disallowed. *Burton v Burton's Estate*, 206 M 516, 289 NW 66.

Under the California law, here applicable, where it reasonably appeared that payment for service was to be made at termination thereof, and the jury so found, the statute of limitations did not begin to run until that time. *Sattinger v St. Paul Trust*, 211 M 108, 300 NW 393.

It is not an abuse of discretion to order the revocation of a tentative trust in order to use the money subject thereto for the ward's support and the expenses of her guardianship. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

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There is no right to retain a note owing by the guardian, which was outlawed prior to the guardian's appointment, and which later became the property of the ward, as against the guardian's claim for expenses for the care and support of the ward and the administrative expenses. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

Non-claim statute superseding statutes of limitation. 22 MLR 289.

Probate court amendments. 23 MLR 997.

525.42 ADJUDICATION ON CLAIM.

On a claim by a son against his mother's estate for improvements made to her farm, the evidence being insufficient to sustain a finding of a contract, the trial court properly directed a verdict for defendant. *Sickmann v Mathwig*, 207 M 65, 289 NW 832.

Where services are rendered upon the understanding that they are to be compensated for by testamentary disposition, the value of a legacy, unless otherwise stated in the will, shall be applied upon the reasonable value of such services either in full satisfaction or pro tanto as the case may be. *Kalscheuer v Allen*, 207 M 437, 292 NW 96.

Consent by the administratrix of an estate to the allowance of a claim filed by her against another estate in a definite amount does not prevent the heir in the former estate who contends that the claim should have been allowed in a larger sum from appealing to the district court from the order of allowance. *Owens v Owens*, 207 M 489, 292 NW 89.

The record does not sustain the administrator's contention that certain moneys received under a civil service disability and retirement certificate should be credited as payment on claimant's claim. *Hallock's Estate*, 221 M 25, 20 NW (2d) 883.

Where it is sought to make out a contract by resorting to two or more separate writings, the connection must appear from the writings themselves, without aid of extrinsic evidence. A deed and codicil, neither of which referred to the other, did not make a contract. In the instant case, the evidence was insufficient to establish a legal oral contract to make a will. *LeBorius v Reynolds*, 224 M 203, 28 NW(2d) 157.

Does the death of an offeror nullify the offer? 10 MLR 373.

Guardianships and commitments. 20 MLR 333.

525.43 ACTIONS PENDING.

Enforcement of right of action under statute of another state against administrator of deceased tort-feasor. 15 MLR 705; *Whitney v Daniel*, 208 M 420, 294 NW 465.

525.431 ACTIONS PRECLUDED.

An action against one in his representative capacity cannot be joined in the same complaint with one against him in his individual capacity. *Jewell v Jewell*, 215 M 190, 9 NW(2d) 513.

While the representative of a decedent's estate who has obtained possession of the decedent's personal property is accountable to the probate court therefor, the widow may not, in the first instance, bring an action in the district court to recover such property, or its value, since the probate court controls the property through the administrator, and its jurisdiction over him and over the estate is exclusive. *Jewell v Jewell*, 215 M 190, 9 NW(2d) 513.

Summary proceedings. 19 MLR 833.

Procedural rules. 20 MLR 4.

Summary proceedings as to homestead. 20 MLR 105.

Nonclaim statutes superseding statutes of limitation. 22 MLR 289.

Necessity of filing claim in probate court where decedent's only property is a homestead. 25 MLR 385.

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525.44 PRIORITY OF DEBTS.

By the common law, funeral expenses are a charge against the representative, and by Minnesota statute, "they are also a direct charge against the estate and may be presented and allowed as such. The creditor has alternative remedies." *Dampier v St. Paul Trust Co.* 46 M 526, 49 NW 286; *Prescott v Swanson*, 197 M 325, 267 NW 251; *Coleman v Kirschstein*, 212 M 4, 4 NW(2d) 633.

Where old age assistance is obtained through fraud, misrepresentation, or concealment, any proceeds preserved are a trust, and the state may bring action to enforce same. This may result in a preference over the claim of the federal government on their seed loan. OAG Aug. 21, 1946 (521-G).

Summary probate proceedings. 19 MLR 841.

Conveyances under the probate code. 20 MLR 111.

Ancillary administration. 21 MLR 333.

525.441 SECURED DEBTS.

Filing a claim in the probate court is not a waiver of a lien. 1944 OAG 320, Feb. 15, 1943 (521-P-4).

525.45 PREFERENCES PROHIBITED.

County agency should file claim against estate for entire amount of old age assistance. No priority on state's unsecured claim. United States has priority. Where estate consists of homestead only, no claim should be filed. 1944 OAG 304, Jan. 5, 1944 (521-G).

Ancillary administration. 21 MLR 333.

ACCOUNTING AND DISTRIBUTION

525.47 DURATION OF ADMINISTRATION.

When does interest begin to run on legacies? 16 MLR 227.

Procedural rules. 20 MLR 5.

525.48 FILING OF ACCOUNT.

It is the duty of a fiduciary such as an administrator to keep dependable and accurate accounts of his actions as such. In accounting, the burden is on him to prove that his actions have conformed to the standard of his duty. Where the issue is not whether the fiduciary should make an accounting but rather and only whether his account as presented is correct, he cannot aver laches on the part of the beneficiaries. *Palm's Estate*, 210 M 77, 297 NW 765.

Administrator's liability for money lost through failure of bank. 1 MLR 454.

Bequest of money to trustees to pay income therefrom to beneficiary for life. Subjection to debts and expenses of administration. 15 MLR 486.

When do legacies become payable? When does interest begin to run on legacies? 16 MLR 230.

525.481 HEARING AND DECREE.

1. Generally
2. Exclusive jurisdiction
3. Necessity for
4. Proceedings on hearing
5. Powers of the court
6. Decree
7. Enforcement

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1. Generally

There is no right to retain a note owing by the guardian to his ward, which was outlawed prior to the guardian's appointment, as against the guardian's claims for expenses for the care and support of the ward and expenses of administration. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

When a person who has made advancements to her children during her life-time subsequently executes a will and dies testate, such will precludes all consideration of such advancements unless expressly saved by the terms of the will. *Staples v Staples*, 214 M 337, 8 NW(2d) 45.

Under a will creating trust of property in Minnesota which directed payments of specified income to testator's daughter and sister during their lives, that property should not be disposed of during their lives and that trust should terminate upon death of survivor of daughter and sister and two-thirds of remainder and accumulative income should go to testator's blood relatives in accordance with the law of succession of California, remaining estate did not vest until death of surviving member of class to whom life interests had been bequeathed. *Hencke's Estate*, 220 M 414, 19 NW(2d) 718.

Disposition of net assets of the estate where the sole heir resides in an enemy country in time of war, and the estate is demanded by alien property custodian. 1944 OAG 76, Oct. 24, 1944 (349-E).

An outlawed debt of an heir of a deceased person to the deceased may be offset against the share of the estate to be received on final distribution to the person owing the debt or to his heirs. OAG Jan. 25, 1947 (349-a-9).

When may a legacy be demanded? When does interest begin to run? 16 MLR 230.

Guardianships and commitments. 20 MLR 340.

Probate practice. 20 MLR 712.

Inheritance taxes. 23 MLR 134.

Amendments to 1935 code. 23 MLR 997.

2. Exclusive jurisdiction

Decedent died intestate owning a one-half interest in a newspaper business. The probate court decreed one-third of the interest in the paper to the widow and the other two-thirds to the five children. After the administration had been closed nine years, the probate court having closed the estate, the district court had jurisdiction to determine liability of distributee and compel him to account to codistributees for that portion of an asset codistributees were entitled to as legal heirs. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

4. Proceedings on hearing

Probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing because of mistake and inadvertence on the part of the court. Such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. *Henry v Ringey*, 207 M 609, 292 NW 249.

6. Decree

An order adjusting and allowing the final account of an executor is the equivalent of a judgment or decree adjudging the amount due the estate from the executor, and may not be vacated, after the expiration of the time to appeal therefrom, except under the provisions of sections 544.32 and 548.14. *Estate of Woodworth*, 207 M 563, 292 NW 192.

Approval of the final account and discharge of an executor or administrator is not conclusive that the estate has been fully administered so as to preclude further administration upon unadministered assets. *Whitney v Daniel*, 208 M 420, 294 NW 465.

7. Enforcement

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 New Amsterdam Co.* 205 M 391, 285 NW 885.

The trial court properly found that the administrator de bonis non did not act in good faith when he made an improper distribution of the estate before the time to appeal from the order had expired. *Krzyzaniak v St. Paul Mercury Co.* 210 M 373, 298 NW 365.

525.482 PARTIAL DISTRIBUTION.

When may a legacy be legally demanded and when does it begin to draw interest? 16 MLR 231.

525.484 PROPERTY OF DECEASED PERSONS TO BE TRANSFERRED TO REPRESENTATIVES OF FOREIGN COUNTRIES IN CERTAIN CASES.

The term "licensed by federal authority" means official recognition by the president by issuance of an exequatur, a certified copy of which must be filed with the secretary of state of Minnesota. OAG May 25, 1944 (349-E).

525.49 ALLOWANCE TO REPRESENTATIVE.

Defendant as representative of her mother's estate and as representative of the estate of her brother occupied two distinct positions. Hence she cannot, at least in her representative capacities, cast into a hotchpot expenditures or obligations created or suffered by her in the two proceedings. *Shapiro v Larson*, 206 M 440, 289 NW 48.

A representative of an estate is a fiduciary; and while he is not an insurer, he must honestly exercise in the discharge of his duties that degree of care which men of ordinary prudence exercise in the exercise of their own affairs. In the instant case, the court was justified in refusing any compensation to a representative who neglected foreclosing a mortgage, whereby the estate suffered loss. *Reed v Goblirsch*, 208 M 379, 294 NW 222.

A personal representative who is negligent, grossly careless or remiss or dishonest in the discharge of his duties may be denied compensation for his services. *Baker's Estate*, 208 M 379, 294 NW 222; *Palm's Estate*, 210 M 87, 297 NW 765.

When an administrator comes into court with a charge for compensation for services, he should present a bill of particulars specifying time and dates and character of services rendered. *Fife v Jayne*, 214 M 388, 8 NW(2d) 222, 10 NW(2d) 481.

May an executor recover attorney's fees and expenses incurred in an unsuccessful attempt to sustain legacies of a valid will. 4 MLR 282, 299.

Executor, though a practicing attorney, may employ an attorney. 6 MLR 325.

Right to extra compensation for extraordinary services. 14 MLR 568.

Recovery by administratrix in probate accounting of fee paid attorney under champertous contract. 14 MLR 823.

Bequest of money to trustees to pay income to beneficiary for life may be subject to decedent's debts and to the expenses of administration. 15 MLR 486.

Additional compensation for services as testamentary trustee. 17 MLR 212.

Domiciliary and ancillary administration. 18 MLR 601.

Guardianships and commitments. 20 MLR 336.

Amendments to the probate code. 23 MLR 997.

525.491 ATTORNEY'S LIEN.

Summary proceedings. 19 MLR 834.

Controversy between attorney and representative over fee. 23 MLR 677.

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Probate code amendments. 23 MLR 997.

525.50 RESIGNATION OF REPRESENTATIVE.

An order accepting the resignation of a guardian is void because of his failure to present and have allowed his final account. *Southern Surety Co. v. Tessum*, 178 M 495, 228 NW 326.

525.503 ACCOUNT OF DECEASED OR INSANE REPRESENTATIVE.

Where after the death of the ward the probate court has finally settled the guardian's account and determined the amount remaining to be paid to representative of the ward's estate, and the guardian dies before payment is made, it devolves on the administrator of the guardian's estate to complete the settlement of the guardian's account and make the payments. *Winjum v Jesten*, 191 M 294, 253 NW 881.

525.504 DISCHARGE OF REPRESENTATIVE.

The sureties on the bond of a special administrator are not liable for costs and disbursements awarded against him in an action brought by him in his representative capacity where there were no assets in the estate. *Minneapolis Street Ry. v Rosenbloom*, 208 M 187, 293 NW 256.

Approval of the final account and discharge of an executor or administrator is not conclusive that the estate has been fully administered so as to preclude further administration upon unadministered assets. *Whitney v Daniel*, 208 M 420, 294 NW 465.

Probate court's denial of petition to reopen the estate does not constitute res judicata on issue of fraud between the parties because the probate court did not have jurisdiction to determine such issue. *Bulau v Bulau*, 208 M 529, 294 NW 845.

525.51 SUMMARY PROCEEDINGS.

Approval of the final account and discharge of the executor or administrator is not conclusive that the estate has been fully administered so as to preclude further administration upon unadministered assets, in the instant case, a claim for death by wrongful act. *Whitney v Daniel*, 208 M 420, 294 NW 465.

Where there are no creditors or where their claims are barred by the statute of limitations because not presented to the probate court in time, the heirs entitled to the estate may dispense with the formal administration by an amicable settlement of their rights and the distribution of their property. *Holtan v Fischer*, 218 M 81, 15 NW(2d) 206.

Summary proceedings. 19 MLR 834.

Procedural rules. 20 MLR 5.

Summary proceedings; homestead. 20 MLR 104, 118.

Probate practice. 20 MLR 718.

Creditor's claim against homestead. 21 MLR 212.

Necessity of filing claim in probate court where decedent's only property is a homestead. 25 MLR 385.

525.52 UNCLAIMED MONEY.

Money in hands of a county official is subject to attachment. Whether money directed by the probate court to be delivered to the county treasurer, and which is claimed by a newly found heir, and by a judgment creditor is for the court to decide upon the facts. OAG Dec. 11, 1946 (361-a).

Rights of persons disappearing. 9 MLR 89.

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ADVANCEMENTS

525.53 ADVANCEMENT.

Intestacy of donor as a prerequisite to application of doctrine of advancements. 8 MLR 543.

GUARDIANSHIPS

525.54 PERSONS SUBJECT TO GUARDIANSHIP.

What the law aims to do is to protect the property and estate of one who is in fact incapable of defending himself, but his incapacity cannot be changed from a shield of protection into a weapon of offense. *Schultz v Oldenburg*, 202 M 238, 277 NW 918.

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. In this case the person alleged to be incompetent was found by the probate court to be competent. On appeal the district court reversed, finding the person incompetent. We have determined that finding sustained by the evidence. Inasmuch as the probate court never passed upon or decided the question of who should be guardian of such incompetent person, it is held that the district court should have remanded the case to the probate court for appointment of guardian, as its jurisdiction is appellate only, not original. *Abrahamson v Strom*, 205 M 399, 286 NW 245.

The natural parents of a child have the first right to its care and custody unless the best interests of the child require that it be given to someone else. *State ex rel v Sorenson*, 208 M 226, 293 NW 241.

On conflicting testimony, the issue of insufficiency of consideration cannot be disturbed on review unless the finding is palpably contrary to the evidence. The test of competency to execute a deed is whether the grantor had sufficient mental capacity to know and understand the nature and effect of his act. *Parrish v Peoples*, 214 M 589, 9 NW(2d) 225.

The jurisdiction of the probate court over the accounting of a guardian appointed by it is exclusive, and that court is the proper one to pass on his accounting. *Hoverson v Hoverson*, 216 M 237, 12 NW(2d) 497.

The appointment of a guardian for an old age recipient is no concern or duty of the county board, so that when the county attorney acts to create the trust he may charge a fee. OAG Dec. 28, 1944 (121b).

Creditor's right to reach beneficiary's interest. 15 MLR 570.

Conflict of laws as to domicile. 15 MLR 679.

Spendthrift trusts in Minnesota. 18 MLR 493; 21 MLR 80.

Summary proceedings. 19 MLR 836.

Conveyancees under the probate code. 20 MLR 106.

Guardianships and commitments. 20 MLR 333.

Domicile of illegitimate child; appointment of guardian and adoption in jurisdiction other than that of domicile of deceased mother. 30 MLR 397.

525.543 LIS PENDENS.

Test of competency. *Schultz v Oldenburg*, 202 M 237, 277 NW 918; *Timm v Schneider*, 203 M 1, 279 NW 754.

525.55 NOTICE OF HEARING.

Under section 259.02 the district court has the power to waive the requirements of notice to the director of social security, investigation and report by that official, and the six months waiting period. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

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The legislature in section 525.55 prescribed the manner in which jurisdiction may be acquired, and compliance with the provisions thereof involves no nullification of section 525.543, as a *lis pendens* statute; and section 525.81 merely specifies the instrument to be used in invoking the court's jurisdiction, but does not govern the manner in which such instrument shall be used to be effective. *Jasperson v Jacobson*, 224 M 76, 27 NW(2d) 795.

Amendments recommended by probate judges. 9 MLR 306.

525.551 HEARING; APPOINTMENT.

A surety on a guardian's bond who holds a second mortgage as collateral security for the surety's liability on such bond owes his principal the duty of exercising ordinary care for the preservation of such security, provided it is in his possession and control; but this does not impose upon him the obligation of advancing substantial personal funds to prevent or to redeem from the foreclosure of the first mortgage. *Faunce v Schueller*, 214 M 412, 8 NW(2d) 523.

A person under guardianship as an incompetent may have capacity to contract a marriage. *Johnson v Johnson*, 214 M 462, 8 NW(2d) 620.

A guardian's consent to the adoption of a child is not nullified by the subsequent vacation and annulment by the probate court of the order appointing the guardian and the letters of guardianship. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

A decree of adoption rendered by a court of another state is void for lack of jurisdiction where the child was not physically present in that state and was domiciled in this state. The district court has jurisdiction to render a judgment of adoption of a child residing in this state and having its domicile in another state. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

525.56 GUARDIAN'S DUTIES.

Amended by L. 1947 c. 209 s. 1.

The court having jurisdiction of guardianships of incompetent persons has the power to order on behalf of the incompetent ward, and for his comfort and support and guardianship expense, the revocation of a tentative trust of a savings account. *Rickel v Peck*, 211 M 576, 2 NW(2d) 140.

Guardian's authority does not extend to the ward's marriage. *Johnson v Johnson*, 214 M 462, 8 NW(2d) 620.

The test of competency to execute a deed is whether the grantor had sufficient mental capacity to know and understand the nature and effect of his act. *Parrish v Peoples*, 214 M 589, 9 NW(2d) 225.

A guardian is accountable for the exercise of reasonable care of his ward's affairs, or such care and diligence as persons usually exercise in their own affairs of like nature. *Hoverson v Hoverson*, 216 M 237, 12 NW(2d) 497.

See, *Gale v Lee*, 219 M 414, 18 NW(2d) 147, under section 525.551.

Recommended change in code. 9 MLR 176.

Guardian's power to revoke deposit in trust for ward. 26 MLR 767.

525.57 TRANSFER OF VENUE.

Guardianships and commitments. 20 MLR 333.

525.58 FILING OF ACCOUNTS.

An order of the probate court settling and allowing an intermediate account of a guardian is final and conclusive as to all matters adjudicated. It is not an abuse of discretion to order the revocation of a tentative trust in order to use the money subject thereto for the ward's comfort and support and the expense of her guardianship. *Guardianship of Overpeck*, 211 M 577, 2 NW(2d) 140.

Recommendation by the probate judges association. 9 MLR 306.

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525.582 ADJUDICATION ON ACCOUNT.

A guardian appointed by the probate court must account to that court. On appeal the district court is vested with the power, and charged with the duty, of determining issues arising in a guardian's final account. *Hoverson v Hoverson*, 216 M 237, 12 NW(2d) 497.

Municipal court of Minneapolis is without jurisdiction of the subject matter of an action brought by the ward after reaching his majority to recover of his former guardian misappropriated money belonging to the ward's estate, there having been no accounting and the jurisdiction of the probate court over persons under guardianship being entire, exclusive, and plenary. *Kemmetmueller v Zachman*, 220 M 44, 18 NW(2d) 590.

Before accounting for funds to executor, the guardian's accounts should be adjusted and confirmed by the probate court. 2 MLR 230.

525.591 SPECIAL GUARDIAN.

Right of interested parties to appear for a ward upon a final accounting as the practice existed prior to the enactment of section 525.591. *Frederick v Koetter*, 197 M 524, 267 NW 473.

Summary proceedings. 19 MLR 836.

Guardianships and commitments. 20 MLR 338.

525.60 TERMINATION.

Upon the death of the ward, the guardian may retain possession until his account is passed on by the court from which he received his appointment; title to the ward's property vests in the remainderman or passes to the representative of the ward's estate. *Lyngen v Tessum*, 169 M 304, 211 NW 314; *Winjum v Jesten*, 191 M 294, 253 NW 881.

525.61 RESTORATION TO CAPACITY.

A special guardian has a right of appeal to the district court from an order of the probate court restoring an incompetent to capacity. In proceedings to determine the competency of an individual, much must be left to the discretion of the trial court. The duty of the appellate court is not to decide the facts, but whether there is reasonable evidence to support the findings of the trial court. *Corwin v Hudson*, 220 M 493, 20 NW(2d) 330.

SALES, LEASES, AND MORTGAGES OF REALTY

525.62 MORTGAGE AND LEASE.

Rents from real estate are subject to the same disposition as the land itself. *Forster v First & American Bank*, 212 M 407, 4 NW(2d) 353.

Conveyances under the probate code. 20 MLR 106.

525.621 LEASE FOR THREE YEARS OR LESS.

Right of guardian to lease the ward's property. *Martin v Smith*, 214 M 9, 7 NW(2d) 481.

525.63 REASONS FOR SALE, MORTGAGE, LEASE.

Where, because of an exigency endangering the rights of the owners of property given in present or future estates, it is necessary to preserve the property and protect such interests, courts have inherent equitable jurisdiction to order a judicial sale of the entire fee, and to appoint a trustee to conduct the sale and to reinvest the proceeds of the sale for the benefit of the holders of the respective interests in the property sold. Neither the absence of an express trust in the instrument

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creating the interests nor of statutory authorization for the judicial creation of a trust in such cases is any obstacle to such relief. *Beliveau v Beliveau*, 217 M 225, 14 NW(2d) 360.

Outline of proceedings in case of foreclosure of lien in case of death of an old age recipient. OAG Oct. 18, 1944 (521-p-4).

Summary proceedings. 19 MLR 840; 20 MLR 104.

Conveyances under the probate code. 20 MLR 106.

525.64 PETITION, NOTICE, HEARING.

Under section 502.09 the rights of creditors were made superior to any future estate limited on a debtor's particular estate. The proceedings to obtain leave to mortgage is substantially the same as under sections 525.63 and 525.64. *Beliveau v Beliveau*, 217 M 235, 14 NW(2d) 360.

If a guardian desires to waive the statutory provision for an appraisal in connection with a private sale under partition proceedings, it becomes necessary for him first to petition for, and to obtain, an order of sale from the probate court, to have the property duly appraised pursuant to such order, and otherwise to comply with the statutes pertaining to the sale of a ward's real estate. *Gelin v Hollister*, 222 M 339, 24 NW(2d) 497.

Summary proceedings. 19 MLR 840; 20 MLR 104.

Title, points and lines in lakes and streams. 24 MLR 340.

525.641 ORDER FOR SALE, MORTGAGE, LEASE.

A license, issued by a probate court to sell real estate of an incompetent, will not support a sale, by the guardian, made six years after the granting of such license. *Re Kuschel*, 161 M 219, 201 NW 319.

The representative of an estate was licensed to mortgage lands belonging to the estate, homestead not included. The petition for license to mortgage was defective in some particulars. The court granted the license, and the mortgage was made in conformity with its terms. The representative rendered her final account and accounted therein for the money received by virtue of this mortgage. The account was accepted and approved and a final decree issued. Therein the mortgaged property was assigned to the beneficiaries as being subject to this particular mortgage. No appeal or other review has been sought until more than five years after the license to mortgage had issued and more than four and one-half years had elapsed after final decree, when appellants sought to set aside the final decree, the order authorizing the mortgage, and all other proceedings in respect of the final account theretofore rendered. It is held that the probate court, upon its records and the facts shown thereby, was justified in dismissing the proceedings; likewise, that the district court did not err in sustaining such action by the probate court. *In re Estate of Mahoney*, 195 M 431, 263 NW 465.

If a guardian desires to waive the statutory provision for an appraisal in connection with a private sale under partition proceedings, it becomes necessary for him first to petition for, and to obtain, an order of sale from the probate court, to have the property duly appraised pursuant to such order, and otherwise to comply with the statutes pertaining to the sale of a ward's real estate. *Gelin v Hollister*, 222 M 340, 24 NW(2d) 496.

Where property was salable on May 16, 1924, and thereafter, and loss was met because no sale was made prior to May 16, 1934, the bonding company assuming liability as of May 1, 1933, was held liable for the default of the administratrix. *National Surety Co. v Ellison*, 88 F(2d) 399.

Conveyances under the probate code. 20 MLR 106.

525.65 PUBLIC SALE.

The order of license in the instant case required notice of the sale of the land to be given by publication, and it was not complied with. The administratrix, by vir-

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tue of the express terms of the statute, had no authority to make the sale until the notice was given. *Cater v Steeves*, 95 M 229, 103 NW 885.

Presumptions on sale of land in probate court. 8 MLR 514.

Conveyances under the probate code. 20 MLR 110.

Guardianships and commitments. 20 MLR 340.

525.652 ADDITIONAL BOND.

An administrator sold a parcel of land under license from the probate court and died 13 years later without having filed his final account. No action was taken until five years after his death. Plaintiff was guilty of laches. *Zimmerman v American Surety Co.* 178 M 401, 227 NW 355.

525.66 SALE OF CONTRACT INTEREST.

Record in case at bar justifies trial court's finding that the oral contract to convey land to plaintiff, made with his brother, who was an epileptic, for the expressed consideration that plaintiff would take care of the brother as long as he should live, was abandoned by the parties and not performed by plaintiff. Specific performance of the contract after the death of the brother was properly denied. *DeWenter v DeWenter*, 222 M 356, 24 NW(2d) 495.

Risk of loss, in equity, between the date of contract to sell real estate and transfer of title. 8 MLR 127.

Specific performance; oral contract to devise lands. 31 MLR 496.

Equity; statute of frauds; oral contract to convey land; unequivocal reference theory as the basis for the doctrine of part performance. 31 MLR 497.

525.662 CONFIRMATION.

The representative of a deceased old age recipient may, under license of the probate court sell the real estate, and the state may release its lien thereon when the purchaser has paid the amount of the lien to the state treasurer. OAG Feb. 8, 1945 (521-P-4).

525.70 VALIDITY OF PROCEEDINGS.

Presumptions on sales of land in probate court. 8 MLR 514.

Legislative changes recommended. 9 MLR 306.

APPEALS

525.71 APPEALABLE ORDERS.

1. An order admitting, or refusing to admit, a will to probate.

Where an administrator is conceded to have an interest in the question whether an appeal to the district court from an order of the probate court refusing probate of a will should be dismissed, the administrator is the proper party on the appeal to make a motion for such a dismissal. *Bowen v McDaniel*, 221 M 297, 22 NW(2d) 8.

7. An order determining, or refusing to determine, venue, and order transferring or refusing to transfer venue.

The county in which proceedings are first commenced has jurisdiction to decide the question of venue, and its decision thereof is reviewable by appeal or certiorari. Proceedings in the second county should be stayed. *State ex rel v Probate Court*, 215 M 322, 9 NW(2d) 765.

14. An order granting or denying restoration to capacity.

A district court order, denying incompetent's motion for amended findings or new trial after reversal of probate court's order restoring incompetent to capacity,

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was appealable. The probative value of testimony supporting incompetent's petition for restoration to capacity was for the trial court. *Corwin v Hudson*, 220 M 493, 20 NW(2d) 330.

18. Generally.

The right of appeal from orders and decisions of the probate court to the district court, and the trial there de novo is statutory, not constitutional. *Burton v Jerrel*, 206 M 516, 289 NW 66.

Commitments. 20 MLR 346.

Probate practice. 20 MLR 346, 712.

Recommended amendments. 23 MLR 997.

525.712 REQUISITES.

1. Who may appeal from allowance or disallowance of claims
2. Who may appeal in other cases
3. How and when is an appeal taken

1. Who may appeal from allowance or disallowance of claims

Upon the trial on the merits after an appeal from probate to district court, no appeal lies from the findings of the court. Appellant had the choice of appeal either from a judgment entered pursuant to the findings or from an order denying a new trial. *Corwin v Hudson*, 220 M 493, 20 NW(2d) 330.

Time of inception of testamentary trust; testamentary trustee as a necessary party in probate proceedings. 25 MLR 120.

3. How and when is an appeal taken

In response to an application, seasonably made, the probate court vacated a previous appealable order after time for appeal had expired upon the ground that its failure to notify the party of the order constituted excusable neglect within the statute. On appeal from such order to the district court, that court should decide the merits of the application. *Mpls. Branch v Saucier*, 209 M 539, 297 NW 111.

Where the appellant on appeal to the district court from an order of the probate court seeks relief from default in failing to file the statement of propositions of law and fact on which he relies for a reversal as required by section 525.712, upon the ground of mistake, it is the duty of the court to deny relief from the default if the existence of the mistake is not established. *Bowen v McDaniel*, 221 M 297, 22 NW(2d) 8.

Procedural rules. 20 MLR 5.

Probate practice. 20 MLR 712.

525.714 SUSPENSION BY APPEAL.

An administratrix who appeals from an order of the probate court removing her from office and appointing another in her place need not file an appeal bond under section 526.07. The order removing her is suspended until the determination of the appeal by section 525.714. *Johnson v Lundgren*, 194 M 300, 260 NW 295.

525.72 TRIAL.

In administering estates of decedents only claims arising on contract are determined by the probate court. The right of appeal from the probate to the district court and to trial there de novo is purely statutory, and not based on any constitutional provision. *Burton v Jerrel*, 206 M 516, 289 NW 66.

On a claim by a son against his mother's estate for improvements made on her farm, the evidence is insufficient there being no showing of a contract of reimbursement. *Sickmann v Mathwig*, 207 M 65, 289 NW 832.

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Failure to comply with a condition contained in an order permitting a party to serve and file propositions of law and fact on an appeal to district court from an order of the probate court is waived by answering the propositions of law and fact and failing to raise the question of omission to comply with the condition. *Owens v Owens*, 207 M 489, 292 NW 89.

In response to an application seasonably made, the probate court vacated a previous appealable order after time for appeal had expired, on the ground of lack of notice. On appeal from such order to the district court, that court should decide the merits of the controversy. *Mpls. Branch v Saucier*, 209 M 539, 297 NW 111.

Objection made in probate court that a will "was not duly and legally executed" is broad enough to include an objection that the will was forged, so as to authorize an amendment to the proposition of law and fact upon appeal to include specifically the objection of forgery. *Boese v Langley*, 213 M 440, 7 NW(2d) 355.

On appeal from the probate court to the district court, the latter court may render such judgment a probate court ought to have rendered, but its jurisdiction is appellate, not original, and it exercises probate rather than common-law jurisdiction. It has no greater or different jurisdiction than probate court had in the premises. The district court on such appeal is duty bound to try the case de novo and exercise its own discretion, not merely to review the exercise of the discretion of the probate court. *Hencke's Estate*, 220 M 414, 19 NW(2d) 718.

When a claim has been tried in the probate and district courts on the theory of reasonable value of services and, at the close of the district court trial, a motion is made to amend the claim to one for damages based on an oral contract to convey real estate, and when, subsequent to trial and before findings of fact are filed, a motion is made by claimant to withdraw the amendment, findings of fact allowing the claim on the theory of reasonable value of services constitute a granting of the motion to withdraw the amendment even though no formal order is filed permitting such withdrawal. *Nelson v Anderson*, 221 M 25, 20 NW(2d) 881.

Where the appellant on appeal to the district court from an order of the probate court seeks relief from default in failing to file the statement of propositions of law and fact on which he relies, as required by section 525.712, upon the ground of mistake, it is the duty of the court to deny relief from the default if the existence of the mistake is not established. *McDaniel's Estate*, 221 M 297, 22 NW(2d) 9.

Mental capacity of a testatrix sufficient to make a valid will requires that at the time of making the will she must understand the nature, situation, and extent of her property and claims of others on her bounty or her remembrance, and she must be able to hold these things in her mind long enough to form a rational judgment concerning them. *Clabots v Badeaux*, 221 M 303, 22 NW(2d) 19.

The district court, on appeal from the probate court, has jurisdiction only where the right of appeal has been exercised pursuant to statutory direction. Such jurisdiction is appellate, not original, and the right thereto is governed by the statute, not by the constitution. The statement of the law and of fact upon which one appealing from probate to district court relies is given the status of a pleading and no issue not presented thereby may be litigated in the district court against objection. *Stevens v Carlsen*, 224 M 102, 27 NW(2d) 872.

Minnesota probate court. 20 MLR 5.

Jury trial in will cases. 22 MLR 513.

Undue influence cases compiled. 22 MLR 520.

Testimony capacity cases listed. 22 MLR 521.

525.73 AFFIRMANCE; REVERSAL.

In case of an appeal from probate to district court, the district court renders such judgment as the probate should have rendered. The jurisdiction is appellate, not original. *Burton v Jerrel*, 206 M 516, 289 NW 66.

Guardianships and commitments. 20 MLR 346.

525.74 DIRECT APPEAL TO SUPREME COURT.

Minnesota probate code; procedural rules. 20 MLR 5.

COMMITMENTS

525.749 DEFINITIONS.

Amended by L. 1947 c. 622 s. 1.

NOTE: L. 1945, c. 156, coded as Minnesota Statutes 1945, sections 255.01 et seq., and relating to senile persons, was repealed by L. 1947, c. 622, s. 1, and entirely superseded by the provisions of L. 1947, c. 622, coded as M.S.A., ss. 525.749 et seq. Prior to the enactment of L. 1945, c. 156, there was no authority authorizing the commitment of senile persons.

Should it appear that one committed to a state training school is insane within the meaning of sections 525.749 et seq., and is subject to commitment under those sections, proper proceedings should be instituted. But if an inmate of the training school is in need of medical care, such person may be transferred to a hospital for care, and so a person mentally ill, a psychiatric person, may be transferred for treatment only, and the hospital to which he is transferred may use the same degree of care in holding and restraining the patient as would be done to any patient. OAG Aug. 8, 1947 (88-a-26).

Tort liability of insane persons. 22 MLR 853.

525.75 VOLUNTARY HOSPITALIZATION.

Amended by L. 1947 c. 622 s. 1.

Persons who voluntarily enter state hospitals do so for no stated period. OAG April 6, 1945 (248-B-3).

525.751 INSTITUTION OF PROCEEDINGS.

Amended by L. 1947 c. 622 s. 3.

NOTE: L. 1947, c. 622, s. 3, subd. 4, defines the duty of a county attorney and provides for the employment or designation of counsel for the committee.

"Due process of law" requires notice and an opportunity to be heard in proceedings for the adjudication of a person as feeble-minded. *Teubner v State*, 216 M 553, 13 NW(2d) 487.

The question whether relator was a resident of the county or present therein when the petition to have him adjudged insane and committed was filed and whether the statute had been complied with in other respects were questions of fact, which could and should have been raised at the time of the original hearing, and, if relator felt aggrieved, the proceedings should have been reviewed as provided by statute. The trial court properly quashed the writ and dismissed the proceedings. *State ex rel v Probate Court*, 221 M 333, 22 NW(2d) 448.

City of Minneapolis, in maintaining a city hospital as empowered by its charter, was performing a "governmental function" and was therefore not liable for injuries to patient because of alleged assault of orderly employed by the city. *Gillies v City of Mpls.* 66 F. Supp. 467.

The determinative factor of an insane person's right to be committed to a state hospital is not legal residence or domicile, but settlement. OAG March 5, 1945 (248b-7).

The provision for appointment of counsel under section 525.751 is not mandatory unless the patient is financially unable to employ counsel, and this applies in case of a non-resident. OAG July 18, 1945 (345-a); OAG Aug. 17, 1945 (345-a); OAG Aug. 23, 1945 (345-a).

Where during the pendency of a petition to have the patient declared insane it is thought advisable to have him declared senile, the original petition should be

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dismissed, and a new petition asking commitment for senility should be filed and a new hearing, on due notice, should be had. OAG Sept. 27, 1945 (248-B-3).

Commitments. 20 MLR 344.

Amendments to the probate code. 23 MLR 998.

525.752 EXAMINATION.

Amended by L. 1947 c. 622 s. 4.

The record of proceedings in the probate court to commit an alleged insane person does not impeach itself, and show want of jurisdiction, by its own silence, but, in order to impeach the judgment collaterally, the want of jurisdiction must affirmatively appear by the record itself. *State ex rel v Kilbourne*, 68 M 320, 71 NW 396.

A doctor appointed by the court to act as examiner in an insanity proceeding and to report his findings to the court is a quasi judicial officer and as such immune from civil suit for acts performed by him in connection with such proceedings. *Linder v Foster*, 209 M 43, 295 NW 299.

L. 1943, c. 612, ss. 8, 9, and 12, outline what papers should be left in the files of the probate court, and what filed with the superintendent of the hospital upon commitment of an insane patient. 1944 OAG 335, July 11, 1944 (248-B-3).

Since the 1945 amendment to section 525.751 there must be two physicians employed to assist in the examination. OAG Aug. 27, 1945 (346-a).

Section 525.752 as amended by L. 1947, c. 622, s. 4, subd. 1, requires the court to appoint two doctors or persons skilled in the ascertainment of mental deficiency to assist in the commitment proceedings even though in the opinion of the court the patient appears to be obviously mentally deficient. OAG June 12, 1947 (679-E).

Insanity as a defense; tests for determining criminal responsibility. 17 MLR 630.

525.753 COMMITMENT.

Amended by L. 1947 c. 622 s. 5.

A judgment or order in proceedings for the appointment of a guardian of an incompetent person is admissible in evidence, but not conclusive, in any litigation, to prove the mental condition of the person at the time the order of judgment is rendered, or at any past time during which the order or judgment finds the person incompetent. *Schultz v Oldenburg*, 202 M 237, 277 NW 918.

A commitment is a judicial determination that relator should be subjected to restraint of liberty. He has not been deprived of his liberty without due process of law. Mandamus does not lie requiring the officers in control of the relator, to release him on bond, since such release is discretionary with the officials. *State ex rel v Carlgren*, 209 M 362, 296 NW 573.

This section as amended by L. 1945, c. 567, permits the transfer of veterans committed to the state hospital for the insane, other than those under sentence for crime and whose sentence has not been commuted, to a veterans' hospital upon certificate of a federal agency where there are proper facilities for his care. OAG June 18, 1945 (248-b-10); OAG July 20, 1945 (248-b-10).

There is no finding of mental incompetence when an epileptic is committed. OAG Feb. 18, 1946 (678).

A veteran insane person is discharged of his commitment to a state hospital, and the superintendent of the state institution relieved of his status as guardian, when the veteran is committed to a veterans' hospital. OAG March 6, 1946 (248-B-10).

Persons having a psychopathic personality are governed by the same laws as the dangerously insane. The power of commitment is entrusted to the probate court, which may thereafter modify the terms of the commitment. OAG July 17, 1946 (284b-11).

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Guardians and commitments under the probate code. 20 MLR 345.

525.754 PAYMENT OF FEES AND MILEAGE.

Amended by L. 1947 c. 622 s. 6.

Sections 246.31 and 525.75, as amended by L. 1947, cc. 534, 622, are to be construed together, and when the county committing a person from a state institution to a place of commitment pays the \$10 per month maintenance fee, it has recourse against certain persons. OAG July 3, 1947 (248).

525.76 RELEASE BEFORE COMMITMENT.

Amended by L. 1947 c. 622 s. 7.

525.761 RELEASE AFTER COMMITMENT.

Amended by L. 1947 c. 622 s. 8.

Release from commitment is provided for by sections 525.761 or 525.78. Marriage does not revoke the commitment. OAG June 16, 1943 (300).

While an insane person cannot vote, the mere fact that he has been adjudged insane is not conclusive, and if after release he can establish mental capacity he may be allowed to vote. OAG Jan. 22, 1945 (183r).

525.762 DETENTION.

Amended by L. 1947 c. 622 s. 9.

Section 525.762 is valid and constitutional. See note under section 525.753. State ex rel v Carlgren, 209 M 362, 296 NW 573.

An insane person under the care of the director of public institutions cannot be transferred in a prison or reformatory. OAG Jan. 16, 1945 (88a-26).

Having once discharged an inmate, the director of public institutions cannot rescind his order. OAG Nov. 29, 1945 (248-A-2).

525.763 COMMISSIONER MAY ACT.

Amended by L. 1947 c. 622 s. 10.

When the judge of probate is unable to act, the court commissioner may commit an insane person. OAG Aug. 20, 1946 (128b).

525.77 MALICIOUS PETITION.

Amended by L. 1947 c. 622 s. 11.

525.78 RESTORATION OF FEEBLE-MINDED AND EPILEPTICS.

Amended by L. 1947 c. 622 s. 12.

Guardianships and commitments. 20 MLR 333.

Amendments to the probate code. 23 MLR 997.

525.79 APPEAL.

Amended by L. 1947 c. 622 s. 13.

On appeal from a judgment denying a petition for restoration to capacity of one previously adjudged a feeble-minded person, the appellate court will not disturb the findings of the trial court on conflicting evidence, provided that in arriving at such findings the trial court has applied the correct rules as to burden and quantum of proof. Teubner v State, 216 M 553, 13 NW(2d) 487.

That a judgment is erroneous as a matter of law is ground for an appeal, writ of error, or certiorari, according to the case, but it is no ground for setting aside on motion. State ex rel v Probate Court, 221 M 337, 22 NW(2d) 448.

GENERAL PROVISIONS

525.80 REPRESENTATIVE AND MINOR.

A special guardian has a right to appeal to the district court from an order of the probate court restoring an incompetent to capacity. *Corwin v Hudson*, 220 M 493, 20 NW(2d) 330.

Decedent left his property and the income therefrom in trust for the benefit of his daughter, then approximately three years of age. The will provided that when the child reached the age of majority the trust was to be ended and the property conveyed to the daughter. At the time the will was made a female reached majority at the age of 18 years. Later the statute was amended to provide that females should remain minors until they had reached 21 years of age. It is held that the domiciliary legislature has the power not merely to fix but also to change the status of majority by postponing the age at which the disabilities of infancy shall be removed. In the instant case, it is held that the daughter does not reach the age of majority until she is 21 years of age. *Boyle v Kirby*, 223 M 268, 26 NW(2d) 223.

Guardianships and commitments under the probate code. 20 MLR 334.

Age of majority of females. 23 MLR 851.

Emancipation; earnings of child; care and custody. 28 MLR 275.

525.81 PETITION VERIFIED; DEFECT OF FORM SHALL NOT INVALIDATE.

The petition for the placing of a person not a minor under guardianship should show the person to be one coming within the provisions of sections 525.54, 525.541. In re *Kirsch*, 203 M 477, 281 NW 867.

Conveyances under the probate code. 20 MLR 109.

Guardianships and commitments. 20 MLR 335.

525.82 VENUE.

Testamentary disposition of personalty is governed by the laws of the state in which the decedent was domiciled. *Estate of Kimmel*, 193 M 233, 258 NW 304.

Prohibition will not lie to restrain probate court from entertaining petition for probate of a purported will by the proponent of another instrument who has already commenced proceedings for its probate in a different county. The county in which proceedings are first commenced has jurisdiction to decide the question of venue, and its decision thereof is reviewable by appeal or certiorari. *State ex rel v Probate Court*, 215 M 322, 9 NW(2d) 765.

Upon the death of an inmate, his will, if in charge of the secretary of the soldiers home board, should be delivered to the judge of the probate court. OAG Jan. 26, 1945 (394e).

Recommendations as to amendments to probate laws. 9 MLR 177.

The venue of actions as affecting the jurisdiction of courts. 11 MLR 260, 282.

Conflict of laws as to domicile. 15 MLR 671.

Probate practice. 20 MLR 713.

525.83 NOTICE.

The granting of a writ of prohibition is discretionary and ordinarily will be denied where the party has a complete remedy by mandamus. Mandamus lies to compel a judge of probate to fix by order the time and place of hearing on a petition for the probate of a will, that notice thereof might be given pursuant to section 525.83. *Estate of Stenzel*, 210 M 510, 299 NW 2.

Summary probate proceedings. 19 MLR 838.

Conveyances under the code. 20 MLR 108.

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Guardianships and commitments. 20 MLR 340.

Probate practice. 20 MLR 712.

525.84 ERRONEOUS ESCHEAT.

Escheat was originally a future interest at common law, but is not classified as such under Minnesota law. 3 MLR 324.

525.85 DISCLOSURE PROCEEDINGS.

Minnesota probate code. 20 MLR 5.

525.87 MURDERER DISINHERITED.

Murder by beneficiary; accident insurance; recovery by estate. 1 MLR 66, 92.

Statutes of inheritance; right of heir to inherit from a person whose life he has taken. 5 MLR 76, 11 MLR 680; 17 MLR 759.

Escheat of proceeds of life policy where insured is murdered by beneficiary. 18 MLR 599.

Murder of one joint tenant by another as affecting the rights of survivorship. 24 MLR 430.

525.89 CITATION.

Minnesota probate code. 20 MLR 1, 707.

525.90 DISPOSITION OF PROPERTY OF PERSONS DYING SIMULTANEOUSLY.

NOTE: Section 525.90, cited as the uniform simultaneous death act, was released and recommended for passage by the national conference of commissioners on uniform state laws in 1940. It was adopted and enacted in Minnesota by L. 1943, c. 248. It has been adopted by the following 28 states: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Dakota, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

Citation of cases interpreting the law as it existed prior to the passage of L. 1943, c. 248, coded as section 525.90. *Miller v McCarthy*, 198 M 497, 270 NW 559; *Vaegemast v Hess*, 203 M 207, 280 NW 641.