

justice of the peace or constable elected in the county or counties in which such village is situated. The village justice and constable shall take the same oath of office, and execute before entering upon the discharge of their duties as such officers, the same bonds as township justices of the peace and constables, and file their bonds with the same officers as justices of the peace and constables elected elsewhere in the state are now or hereafter may be required to do, and shall receive the same fees for their services as justices of the peace and constables elected elsewhere in the state are allowed under the general statutes of the state, now or hereafter in force, and in all cases where a village is situated in more than one county, the justice of the peace and constable of such village shall have and possess all the powers and jurisdiction conferred by this act in each of the counties in which such village is situated, and shall file their bonds in each of said counties.

Relating to justices of the peace and constables.

SEC. 3. This act shall take effect, and be in force from and after its passage.

When act to take effect.

Approved February 28, 1876.

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XXXVII.

AN ACT RELATING TO TITLE TO REAL PROPERTY BY DESCENT.

*Be it enacted by the Legislature of the State of Minnesota :*

SECTION 1. When any person dies seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, they shall descend in the following manner:

Homestead.

SEC. 2. The surviving husband or wife shall also be entitled to hold for the term of his or her natural life, free from all claims on account of the debts of the deceased, the homestead of such deceased, as such homestead is or may be defined in the statutes relating to homestead exemptions.

SEC. 3. Such surviving husband or wife shall also be entitled to and shall hold in fee simple or by such inferior tenure as the deceased was at any time during coverture seized or possessed thereof, one equal, undivided one-third of all other lands of which the deceased was at any time during coverture seized or possessed, free from any testamentary or other disposition thereof, to which such survivor shall not have assented in writing, but subject in its just proportion with the other real estate, to the payment of such debts of the deceased as are not paid from the personal estate, the residue of such real estate; or if there be no

Lands not homestead.

surviving husband or wife of such intestate, then the whole thereof shall descend, subject to the debts of the intestate, in the manner following:

Descending to whom.

*First.*—In equal shares to his children, and to the lawful issue of any deceased child, by right of representation.

*Second.*—If there be no child, and no lawful issue of any deceased child of the intestate living at his death, his estate shall descend to his father.

*Third.*—If the intestate leaves no issue nor father, his estate shall descend, one equal one-third to his mother, and the residue in equal shares to his brothers and sisters.

*Fourth.*—If the intestate leaves no issue nor father, and no brother nor sister living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of the deceased brothers and sisters.

*Fifth.*—If the intestate leaves no issue nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right of representation.

*Sixth.*—If the intestate leaves no issue, and no father, mother, brother or sister, his estate shall descend to his next of kin, in equal degree; excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors, shall be preferred to those claiming through an ancestor more remote.  
*Provided, however—*

*Seventh.*—If any person dies leaving several children, or leaving one child, and the issue of one or more other children, any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

*Eighth.*—If at the death of such child who dies under age and not having been married, all the other children of his said parent are also dead, and any of them has left issue, the estate that came to said child by inheritance from his said parent, shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to said child, they shall have the said estate equally; otherwise they shall take according to the right of representation.

*Ninth.*—If the intestate leaves surviving a husband or wife, and no kindred, his or her estate shall descend to such survivor.

*Tenth.*—If the intestate leaves no husband or wife, or kindred, his or her estate shall escheat to the state. *Provided,* That no debt or claim against any deceased person, which had not become a lien upon his real estate before his death, shall continue to be a lien upon any such real estate after the lapse of three years from the date of such death.

SEC. 4. This act shall take effect and be in force from and after its passage. When act to take effect.

Approved March 2, 1876.

### XXXVIII.

AN ACT TO AMEND CHAPTER 40 OF THE GENERAL STATUTES, BEING CHAPTER 34 OF THE STATUTES AT LARGE, RELATING TO DEEDS, MORTGAGES AND OTHER CONVEYANCES.

*Be it enacted by the Legislature of the State of Minnesota :*

SECTION 1. That chapter 40 of the general statutes, (being chapter 34 of statutes at large,) be and the same is hereby amended by adding thereto the following additional section :

Sec. 38. In all cases where an action has been or may be hereafter brought, and the mortgage which is sought therein to have declared satisfied and discharged of record has been foreclosed prior to the final determination thereof, the mortgagor, his heirs, representatives or assigns may before the time of redemption expires for the purpose of saving his right of redemption, in case he should fail in such action, deposit with the sheriff of the proper county, the amount for which the mortgaged premises were sold, together with lawful interest thereon to the time of such deposit. In making such deposit with the sheriff, said mortgagor, his heirs, representatives or assigns shall notify said sheriff in writing that he claims said mortgage to be satisfied, and is entitled to have the same discharged of record, and that he has commenced an action to have the same declared satisfied and discharged of record, and that said sheriff is to hold and retain said money as hereinafter provided; and he shall also execute a bond on undertaking to the purchaser at such mortgage sale with one or more sureties, and in such reasonable sum as the sheriff may fix, conditioned that he will pay all interest that may accrue and become due to said purchaser, in case such action shall fail, and deposit said bond with said sheriff; and thereupon said sheriff shall hold and retain such redemption money and bond until the final determination of such action, and such deposit shall be deemed and held to be and is a redemption from such foreclosure. If upon the final determination of such action, the plaintiff fails to have said mortgage declared satisfied, in whole or in part, such sheriff shall pay over said money so deposited with him, or so much thereof as he may have been adjudged to be entitled to, and deliver said bond to the

Deposit with sheriff.

Such deposit a redemption from foreclosure.