

CHAPTER 72—H. F. No. 787

An act to clarify, rearrange, consolidate, and revise the laws relating to probate courts, the practice and procedure therein, descent and distribution, wills and the probate thereof, administration, guardianships, and commitments, to establish a probate code, and to repeal laws inconsistent therewith.

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

TABLE OF CONTENTS

<p>Article I.—Powers, Etc., of Court</p> <p>Sec.</p> <p>1. General Provisions</p> <p>2. Powers</p> <p>3. Books of Record</p> <p>4. Copies.</p> <p>Article II.—Personnel</p> <p style="padding-left: 40px;">A—Judge</p> <p>5. Bond</p> <p>6. Filing of Decisions</p> <p>7. Disqualification</p> <p>8. Substitution of Judges</p> <p>9. Insanity of Judge</p> <p>10. Delivery to Successor</p> <p>11. Annual Assemblage — Rules</p> <p>12. Not to be Counsel</p> <p>13. Salaries</p> <p style="padding-left: 40px;">B—Clerks</p> <p>14. Appointment—Powers</p> <p>15. Orders by Clerk</p> <p style="padding-left: 40px;">C—Referee</p> <p>16. Appointment—Bond</p> <p>17. Compensation, Etc.</p> <p>18. Reference</p> <p>19. Delivery of Books, Etc.</p> <p style="padding-left: 40px;">D—Reporter</p> <p>20. Appointment and Duties</p> <p>21. Compensation—Transcript Fees</p>	<p>E—Auditor</p> <p>Sec.</p> <p>22. Appointment</p> <p>23. Powers</p> <p>24. Compensation</p> <p>Article III.—Intestate Succession</p> <p>25. Definition of Estate</p> <p>26. Descent of Cemetery Lot</p> <p>27. Descent of Homestead</p> <p>28. Allowances to Spouse, Etc.</p> <p>29. Descent of Property</p> <p>30. Degree of Kindred</p> <p>31. Posthumous Child</p> <p>32. Illegitimate as Heir</p> <p>33. Heirs of Illegitimate</p> <p>Article IV.—Wills</p> <p>34. Requisites</p> <p>35. Competency of Witnesses</p> <p>36. Nuncupative Wills</p> <p>37. Wills Made Elsewhere</p> <p>38. Beneficiary a Witness</p> <p>39. Revocation</p> <p>40. Revocation by Marriage or Divorce</p> <p>41. After-Born Child</p> <p>42. Omitted Child</p> <p>43. Apportionment</p> <p>44. Deceased Beneficiary</p> <p>45. Quantity Devised</p> <p>46. After-Acquired Property</p>
--	---

Sec.		Sec.	
47.	Renunciation and Election	78.	Final Account and Discharge
48.	Deposit of Wills		Article X.—Determination of Descent
49.	Duty of Custodian	79.	Essentials
50.	Probate Essential	80.	Contents of Petition
	Article V.—Probate of Wills	81.	Decree of Descent
51.	Petitioners		Article XI.—Bonds
52.	Contents of Petition	82.	Condition
53.	Hearing and Proof	83.	Joint or Separate Bonds
54.	Objections	84.	Approval and Prosecution
55.	Secondary Evidence	85.	Increase and Reduction
56.	Certificate of Probate	86.	Discharge on Surety's Application
57.	Will in Opposition		Article XII.—Management of Estate
58.	Appointment of Representative		A—Inventory and Appraisal
59.	Named Executor a Minor	87.	Contents of Inventory
60.	No Executor of Executor	88.	Appraisal
	Article VI.—Lost and Destroyed Wills		B—Collection of Assets
61.	Petition and Hearing	89.	Possession
62.	Sufficiency of Proof	90.	Liability
63.	Certification	91.	Accord with Debtor
	Article VII.—Estates of Non-Residents	92.	Foreclosure of Mortgages
64.	Wills Proved Elsewhere	93.	Realty Acquired
65.	Allowance	94.	Property Set Apart
66.	Administration	95.	Property Fraudulently Conveyed
67.	Foreign Representatives	96.	Property Converted
	Article VIII.—General Administration	97.	Disposal by Coroner
68.	Persons Entitled	98.	Continuation of Business
69.	Contents of Petition	99.	Abandonment of Property
70.	Hearing		C—Claims
71.	Subsequent Admission of Will	100.	Notice to Creditors
72.	Administrator D. B. N.	101.	Filing of Claims
73.	Administrator C. T. A.	102.	Joint Debtor
	Article IX.—Special Administration	103.	Claims Barred
74.	Appointment	104.	Adjudication on Claim
75.	Powers	105.	Execution on Offset
76.	Inventory and Appraisal	106.	Actions Pending
77.	Termination of Powers		

- | | | | |
|--|--|--|-----------------------------------|
| Sec. | | -Sec. | |
| 107. | Actions Precluded | 139. | Adjudication on Account |
| 108. | Priority of Debts | 140. | Succeeding Guardian |
| 109. | Secured Debts | 141. | Special Guardian |
| 110. | Encumbered Assets | 142. | Termination |
| 111. | Preferences Prohibited | 143. | Restoration to Capacity |
| 112. | Payment Under Will | | |
| Article XIII.—Accounting and Distribution | | Article XVI.—Sales, Etc., of Realty | |
| 113. | Duration of Administration | 144. | Definitions |
| 114. | Filing of Account | 145. | Lease for Three Years or Less |
| 115. | Hearing and Decree | 146. | Reasons for Sale, Mortgage, Lease |
| 116. | Partial Distribution | 147. | Petition, Notice, Hearing |
| 117. | Recording Decree | 148. | Order for Sale, Mortgage, Lease |
| 118. | Allowances to Representative | 149. | Terms of Sale |
| 119. | Attorney's Lien | 150. | Public Sale |
| 120. | Resignation of Representative | 151. | Private Sale |
| 121. | Removal of Representative | 152. | Additional Bond |
| 122. | Discharge upon Resignation or Removal | 153. | Sale of Contract Interest |
| 123. | Account of Deceased or Insane Representative | 154. | Sale Subject to Charges |
| 124. | Discharge of Representative | 155. | Confirmation |
| 125. | Summary Proceedings | 156. | Eminent Domain Proceedings |
| 126. | Unclaimed Money | 157. | Platting |
| Article XIV.—Advancements | | 158. | Conveyance of Vendor's Title |
| 127. | Definition | 159. | Mortgage Extension |
| 128. | Valuation | 160. | Liability on Mortgage Note |
| Article XV.—Guardianships | | 161. | Title Free from Tax Lien |
| 129. | Persons Subject | 162. | Validity of Proceedings |
| 130. | Petitioners | 163. | Limitation of Action |
| 131. | Contents of Petition | | |
| 132. | Lis Pendens | Article XVII.—Appeals | |
| 133. | Notice of Hearing | 164. | Appealable Orders |
| 134. | Hearing—Appointment | 165. | Venue |
| 135. | Guardian's Duties | 166. | Requisites |
| 136. | Transfer of Venue | 167. | Return |
| 137. | Filing of Accounts | 168. | Suspension by Appeal |
| 138. | Notice of Hearing on Account | 169. | Trial |

Sec.		Sec.	
170.	Affirmance—Reversal	183.	Restoration of Feeble-minded and Epileptic
171.	Judgment—Execution	184.	Appeal
172.	Direct Appeal to Supreme Court		
	Article XVIII.—Commitments		Article XIX.—Miscellaneous
173.	Voluntary Hospitalization	185.	Definitions
174.	Institution of Proceedings	186.	Petition
175.	Examination	187.	Venue
176.	Commitment	188.	Notice
177.	Payment of Fees, Etc.	189.	Erroneous Escheat
178.	Release Before Commitment	190.	Escheat Returned
179.	Release After Commitment	191.	Disclosure Proceedings
180.	Detention	192.	No Abatement
181.	Commissioner May Act	193.	Murderer Disinherited
182.	Malicious Petition	194.	State Patents
		195.	Federal Patents
		196.	Repeal
		197.	G. S. Defined
		198.	Constitutionality
		199.	Name of Act
		200.	Date of Effect

ARTICLE I.—POWERS, ETC., OF COURT.

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

Sec. 2. **Powers.**—In addition to its general powers, the probate court shall have power.

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

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

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

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

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

6. To punish for contempt, including contempt committed in proceedings before the referee, clerk, or auditor. (G. S. 8701)

Sec. 3. Books of Record.—The court shall keep the following books of record:

1. An index in which files pertaining to estates of deceased persons shall be indexed under the name of the decedent, those pertaining to guardianships under the name of the ward, those pertaining to an insane, inebriate, feebleminded, or epileptic person under the name of such person, those pertaining to wills deposited pursuant to Section 48, under the name of the testator. After the name of each file shall be shown the file number, the book and page of the register in which the documents pertaining to such file are listed, and the date of the filing of the first document.

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

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

4. A record of bonds, properly indexed, in which shall be recorded all bonds filed.

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

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

7. A record of orders, properly indexed, in which shall be recorded all orders, judgments, and decrees, except orders allowing or disallowing claims and nonappealable orders. (G. S. 8693)

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

ARTICLE II.—PERSONNEL.

A.—JUDGE.

Sec. 5. **Bond.**—There shall be elected in each county a probate judge who before he enters upon the duties of his office shall execute a bond to the State in the amount of one thousand dollars, approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with his oath shall be recorded in the office of the register of deeds and filed in the office of the county auditor. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. (G. S. 8691)

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

Upon the filing of any appealable order, judgment, or decree, except in uncontested matters or where the final de-

cision was announced at the hearing, the court shall give notice by mail of such filing to each party, or his attorney, who appeared of record at the hearing. (G. S. 8705, 8716)

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

Sec. 8. Substitution of Judges.—Whenever the disqualification, absence, or illness of the resident judge exists, or whenever in his opinion the interest of the public or of any person interested in any matter requires that the probate judge of another county act in the stead of the resident judge, any other judge may act upon the request of the resident judge, or in the event of his incapacity, upon the request of the presiding judge of the district court in the county wherein such matter is pending. Any order, judgment, decree, or other writing signed by such acting judge shall have the same force and effect as if signed by the resident judge. The reasonable and necessary expenses of the acting judge shall be paid by the county in which he is called to act. (G. S. 8697)

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

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

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

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

Sec. 13. Salaries.—The salaries of the judges, referees, clerks, reporters, and employees shall be as provided by law, but the salaries of the clerks and employees shall be fixed by the judge within the limits provided by law, notwithstanding the provisions of Section 196.

B.—CLERKS.

Sec. 14. Appointment—Powers.—The judge may appoint a clerk, deputy clerks, and employees as provided by law, to hold office during his pleasure, who shall perform the duties

imposed by law and such judge. Such appointments shall be in writing and filed in such court. Before entering upon the duties of his office, each clerk and deputy clerk and, if ordered by the court, any employee shall execute a bond to the State in the amount of one thousand dollars approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the county auditor. The premiums on such bonds and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. A clerk or deputy clerk may take acknowledgements, administer oaths, authenticate, exemplify, or certify copies of instruments, documents, or records of the court, and when so ordered may hear and report to the court the testimony of any witness and the interrogatories and objections of counsel. (G. S. 8699)

Sec. 15. Orders by Clerk.—The judge may authorize the clerk or any deputy clerk to issue orders for hearing petitions for general administration, for the probate of any will, for determination of descent, for sale, lease, mortgage, or conveyance of real estate, for the settlement and allowance of any account, for partial or final distribution, orders limiting the time to file claims and fixing the time and place for the hearing thereon, and to issue notice of the entry of any order. The issuance of any such order or notice by the clerk or deputy clerk shall be prima facie evidence of his authority to issue it. (G. S. 8711)

C.—REFEREE.

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

An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. (L. '29 c. 271, L. '31 c. 302)

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

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

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

D.—REPORTER.

Sec. 20. Appointment and duties.—The judge may appoint a competent stenographer as reporter and secretary in all matters pertaining to his official duties to hold office during his pleasure. Such reporter shall make a complete record of all testimony given and all proceedings had before the court upon the trial of issue of fact except in commitment proceedings. He shall inscribe all questions in the exact language thereof, all answers thereto precisely as given by the witness or sworn interpreter, all objections made and the

grounds thereof as stated by counsel, all rulings thereon, all exceptions taken, all admissions made, all oral stipulations, and all oral motions and orders. When directed by the judge, he shall make a record of any matter or proceeding and without charge shall read to or transcribe for such judge any record made by him. Upon completion of every trial or proceeding, such reporter shall file his stenographic record in the manner directed by the judge. Upon request of any person and payment of his fees by such person, he shall furnish a transcript. The reporter may take acknowledgments, administer oaths, and certify copies of his stenographic record or transcript thereof.

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

E.—AUDITOR.

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

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

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

ARTICLE III.—INTESTATE SUCCESSION.

Sec. 25. Definition of Estate.—As used in this article, the word "estate" shall include every right and interest of a decedent in property, real or personal, except such as are terminated or otherwise extinguished by his death.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 28. Allowances to Spouse, Etc.—When any person dies, testate or intestate,

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

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

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

4. In the administration of an estate of a nonresident decedent, the allowances received in the domiciliary administration shall be deducted from the allowances under this section. (G. S. 8726 (1, 2, 3))

Sec. 29. Descent of Property.—Except as provided in Sections 26 and 27, and subject to the allowances provided in Section 28, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and

debts, the estate, real and personal, shall descend and be distributed as follows:

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

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

3. If a spouse and only one child or the issue of a deceased child survive, the share of the spouse under the provisions of Subsections 1 and 2 hereof shall be one-half instead of one-third.

4. Subject to the provisions of Subsections 1, 2, and 3 hereof, the whole estate, real and personal, except as otherwise disposed of by will shall descend and be distributed as follows:

- (1) In equal shares to the surviving children and to the issue of deceased children by right of representation.
- (2) If there be no surviving child and no issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse.
- (3) If there be no issue nor spouse, the estate shall descend to the father and mother in equal shares, or if but one survive, then to such survivor.
- (4) If there be no surviving issue, spouse, father, nor mother, the estate shall descend in equal shares to the surviving brothers and sisters, and to the lawful issue of any deceased brother or sister by right of representation.
- (5) If there be no issue, spouse, father, mother, brother, nor sister, the estate shall descend in equal shares to the next of kin in equal degree, except that when

there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

5. If a minor dies leaving no spouse nor issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend in equal shares to the other children of the same parent and to the issue of any deceased child of such parent by right of representation; failing all such it shall descend by intestate succession as in other cases.

6. If the intestate leaves no spouse nor kindred, the estate shall escheat to the state. (G. S. 8720, 8726, [6], [7])

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

Sec. 31. **Posthumous Child.**—A posthumous child shall be considered as living at the death of its parent. (G. S. 8718)

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

Sec. 33. **Heirs to Illegitimate.**—If any illegitimate child dies intestate and without spouse or issue who inherit under the law, his estate shall descend to his mother, or in case of her prior decease to her heirs other than such child. (G. S. 8724)

ARTICLE IV.—WILLS.

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

Sec. 35. **Competency of Witnesses.**—If a witness to a will is competent at the time of his attestation, his subsequent

incompetency shall not prevent the admission to probate of such will, nor shall a mere charge on the real estate of the testator for the payment of his debts prevent a creditor from being a competent witness to his will. (G. S. 8736)

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

Sec. 37. Wills Made Elsewhere.—A will made out of this state may be admitted to probate if executed according to the laws of this state, or if in writing, signed by the testator and valid according to the laws of the state or country in which it was made or of the testator's domicile. (G. S. 8738)

Sec. 38. Beneficiary a Witness.—A beneficial devise or bequest made in a will to a subscribing witness thereto shall be void unless there be two other competent subscribing witnesses who are not beneficiaries thereunder. If such witness would have been entitled to any share of the testator's estate in the absence of a will, then so much of such share as will not exceed the value of the devise or bequest shall be assigned to him from the part of the estate included in the void devise or bequest. (G. S. 8739)

Sec. 39. Revocation.—No will in writing shall be revoked or altered otherwise than by some other will in writing; or by some other writing of the testator declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself or by another person in his presence by his direction and consent. When so done by another person, the direction and consent of the testator and the facts of such injury or destruction shall be proved by at least two witnesses. Nothing in this section shall prevent the revocation implied by law from subsequent change in the condition or circumstances of the testator. (G. S. 8741)

Sec. 40. Revocation by Marriage or Divorce.—If after making a will the testator marries, the will is thereby revoked. If after making a will the testator is divorced, all provisions in such will in favor of the testator's spouse so divorced are thereby revoked. (G. S. 8742)

Sec. 41. After-Born Child.—If any child of the testator, including a posthumous child, born after the making of a will has no provision made for him by the testator by will or otherwise, he shall take the same share that he would have taken if the testator had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake. (G. S. 8744)

Sec. 42. Omitted Child.—If a testator omits to provide in his will for any of his children or the issue of a deceased child, they shall take the same share of his estate which they would have taken if he had died intestate unless it appears that such omission was intentional and not occasioned by accident or mistake. (G. S. 8745)

Sec. 43. Apportionment.—If a person takes a portion of a testator's estate under the provisions of Section 41 or 42, such portion shall first be taken from the estate not disposed of by the will; if that be insufficient, so much as is necessary shall be taken from all the devisees and legatees in proportion to the value of what they respectively receive under such will. But if the obvious intention of the testator in relation to some specific devise, bequest, or other provision of the will would thereby be defeated, then such specific devise, bequest, or provision may be exempted from such apportionment, and a different apportionment adopted in the discretion of the court. (G. S. 8746)

Sec. 44. Deceased Beneficiary.—If a devise or bequest be made to a child or other blood relative of the testator who dies before the testator leaving issue who survive the testator, such issue shall take the same estate which such devisee or legatee would have taken if he had survived, unless a different disposition be made or required by the will. (G. S. 8747)

Sec. 45. Quantity Devised.—Every devise of real estate shall convey all the estate of the testator therein subject to liens and encumbrances thereon unless a different intention appears from the will. (G. S. 8748)

Sec. 46. After-acquired Property.—All property acquired by the testator after making his will shall pass thereby in like manner as if possessed by him at the time when he made his will, unless a different intention clearly appears from the will. (G. S. 8749)

Sec. 47. Renunciation and Election.—If a will make provision for a surviving spouse in lieu of the rights in the estate secured by statute, such spouse shall be deemed to have elected to take under the will, unless he shall have filed an instrument in writing renouncing and refusing to accept the provisions of such will within six months after the filing of the certificate of probate. For good cause shown, the court may permit an election within such further time as the court may determine. No devise or bequest to a surviving spouse shall be considered as adding to the rights in the estate secured by Article III, Sections 27 and 29 to such spouse, unless it clearly appears from the contents of the will that such was the testator's intent. (G. S. 8722)

Sec. 48. Deposit of Wills.—A will in writing inclosed in a sealed wrapper upon which is indorsed the name and address of the testator, the day when, and the person by whom it is delivered, may be deposited in the probate court of the county where the testator resides. The court shall give a certificate of its deposit and shall retain such will. During the testator's lifetime, such will shall be delivered only to him or upon his written order witnessed by at least two subscribing witnesses and duly acknowledged. After the testator's death, the court shall open the will publicly and retain the same. Notice shall be given to the executor named therein and to such other persons as the court may designate. If the proper venue is in another court, the will shall be transmitted to such court; but before such transmission a true copy thereof shall be made by and retained in the court in which the will was deposited. (G. S. 8750)

Sec. 49. Duty of Custodian.—After the death of a testator, the person having custody of his will shall deliver it to the court which has jurisdiction thereof. Every person who neglects to deliver a will after being duly ordered to do so shall be guilty of contempt of court. (G. S. 8743)

Sec. 50. Probate Essential.—No will shall be effectual to pass either real or personal estate unless duly admitted to probate. Such probate shall be conclusive as to the due execution of a will. (G. S. 8740)

ARTICLE V.—PROBATE OF WILLS.

Sec. 51. Petitioners.—At any time after the death of the testator, any executor, devisee, or legatee named in a will, or any other person interested in the estate may petition the court of the proper county to have the will admitted to probate, whether the same is in his possession or not, is lost, is destroyed, or is without the state. (G. S. 8751)

Sec. 52. Contents of Petition.—Every petition for the probate of a will shall show:

1. The jurisdictional facts.
2. The names, ages, and addresses of the heirs, legatees, and devisees of the decedent so far as known to the petitioner.
3. The probable value and general character of the real and personal property, and the probable amount of the debts.
4. The name and address, if known, of the person named as executor, and the name and address of the person for whom letters are prayed. (G. S. 8752)

Sec. 53. Hearing and Proof.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX Section 188. If probate is not contested, the court may admit the will on the testimony of one of the subscribing witnesses; but if contested, all the subscribing witnesses who are within the state and competent and able to testify shall be produced and examined. If the instrument is not allowed as the last will and if the estate should be administered, the court shall grant administration to the person or persons entitled thereto. (G. S. 8753, 8756)

Sec. 54. Objections.—No person may contest the validity of a will unless the grounds of objection thereto are stated in writing and filed at or before the time of the hearing. (G. S. 8755)

Sec. 55. Secondary Evidence.—If no subscribing witness competent to testify resides in the state at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the capacity of the testator and the execution of the will, and as evidence of such execution may admit proof of the handwriting of the testator and of the subscribing witnesses. (G. S. 8754)

Sec. 56. Certificate of Probate.—When proved as herein provided, every will shall have indorsed thereon or annexed thereto a certificate by the court of such proof. Every will so certified and the record thereof, or a duly-certified transcript of such record may be read in evidence in all the courts within this state without further proof. (G. S. 8757)

Sec. 57. Will in Opposition.—If, after a petition for the probate of a will has been filed, another instrument in writing purporting to be the last will or codicil shall be presented, proceedings shall be had for the probate thereof, and there-

upon the hearing on the petition theretofore filed shall be adjourned to the time fixed for the hearing of the subsequent petition. At such time proof shall be had upon all of such wills, codicils, and all matters pertaining thereto, and the court shall determine which of such instruments, if any, should be allowed as the last will. (G. S. 8758)

Sec. 58. Appointment of Representative.—Upon the admission of the will to probate, the court shall appoint a representative and fix the amount of his bond as required by law. If any executor named in the will is found by the court to be suitable and competent to discharge the trust, he shall be appointed. If no executor was named in the will, or if no named executor is found by the court to be willing, suitable, and competent, the court shall appoint the person entitled to administration in case of intestacy as administrator with the will annexed. If any person appointed does not qualify within twenty days, the court may vacate his appointment and grant letters to the other executors. Upon the filing of the oath, acceptance and bond as required by law, letters shall issue. (G. S. 8768, 8769)

Sec. 59. Named Executor a Minor.—When a person named as executor is a minor at the time of the admission of the will to probate, any other representative appointed and qualifying may administer the estate. When the minor attains majority, he may be appointed co-representative. (G. S. 8770)

Sec. 60. No Executor of Executor.—The executor of an executor shall not administer as such executor on the estate of the first testator. (G. S. 8771)

ARTICLE VI.—LOST AND DESTROYED WILLS.

Sec. 61. Petition and Hearing.—The petition for the probate of a lost or destroyed will, or one which is without the state and cannot be produced in court shall set forth the provisions of the will in addition to the requirements of Article V, Section 52. Such provisions in such particularity as the court may direct shall be embodied in the notice of hearing, which notice shall be given pursuant to Article XIX, Section 188. (G. S. 8764)

Sec. 62. Sufficiency of Proof.—No such will shall be established (unless the same is proved to have been in existence at the time of the testator's death or to have been fraudulently destroyed in his lifetime) nor unless its provisions are clearly and distinctly proved. (G. S. 8765)

Sec. 63. Certification.—When such will is established, the provisions thereof shall be distinctly stated and certified by the court and filed and recorded. Letters shall issue thereon as in the case of other wills. (G. S. 8766)

ARTICLE VII.—ESTATES OF NONRESIDENTS.

Sec. 64. Wills Proved Elsewhere.—Any will duly proved and allowed outside of this state in accordance with the laws in force in the place where proved, may be filed and allowed in any county in which the testator left property upon which such will may operate. (G. S. 8759)

Sec. 65. Allowance.—Upon the filing of a duly authenticated copy of such will and of the order, judgment, or decree admitting it to probate, with the petition of the executor or any person interested in the estate for its allowance and for letters, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. If such will was admitted to probate by a court of competent jurisdiction and if the order, judgment, or decree of admission to probate is still in force, the court shall allow the will and appoint a representative as if the will were originally proved and allowed in such court. (G. S. 8760, 8761, 8762)

Sec. 66. Administration.—The estate of a nonresident decedent shall be administered in the same manner as an estate of a resident decedent. Upon the payment of the expenses of administration, of the debts and other items here proved, and of the inheritance taxes, the residue of the personalty shall be distributed according to the terms of the will applicable thereto; or if the terms of the will be not applicable thereto, or if there be no will, it shall be distributed according to the law of the decedent's domicile; or the court may direct that it be transmitted to the domiciliary representative to be disposed of by him. The real estate not sold in the course of administration shall be assigned according to the terms of the will applicable thereto, or if the terms of the will be not applicable thereto, or if there be no will, it shall descend according to the laws of this state. (G. S. 8763)

Sec. 67. Foreign Representative.—Upon the filing for record in the office of the register of deeds of the proper county of an authenticated copy of his letters or other record of his authority and a certificate that the same are still in force, a representative appointed by a court of competent jurisdiction in another state or county may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any

debt secured thereby belonging to the estate represented by him. Real estate acquired by a foreign representative on foreclosure or execution sale shall be held, sold, mortgaged, or leased pursuant to Section 93. (G. S. 8792, 8944)

ARTICLE VIII.—GENERAL ADMINISTRATION.

Sec. 68. Persons Entitled.—General administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, suitable and competent to discharge the trust, and in the following order:

The surviving spouse or next of kin or both, as the court may determine, or some person or persons selected by them or any of them.

If all such persons are incompetent or unsuitable or do not accept, or if the surviving spouse or next of kin do not file a petition therefor within thirty days after the death of the intestate, administration may be granted to one or more of the creditors, or to the nominee or nominees of such creditor or creditors. If the decedent was born in any foreign country or left heirs in any foreign country, and the surviving spouse or next of kin do not file a petition therefor within thirty days after his death, administration may be granted to the consul or other representative of such country, if he resides in this state and has filed a copy of his appointment with the secretary of state, or to the nominee or nominees of such consul or representative.

Whenever the court determines that it is for the best interest of the estate and all persons interested therein, administration may be granted to any other person suitable and competent to discharge the trust whether interested in the estate or not.

If the person appointed does not file the required oath, acceptance, and bond within ten days after notice of such appointment, served in such manner as the court may direct, the court with or without notice may vacate the appointment and appoint such other person or persons as may be entitled to administer such estate. (G. S. 8772)

Sec. 69. Contents of Petition.—Every petition for general administration shall show:

1. The jurisdictional facts.
2. The names, ages, and addresses of the heirs so far as known to the petitioner.

3. The probable value and general character of the real and personal property and the probable amount of the debts.

4. The name and address of the person for whom administration is prayed. (G. S. 8773)

Sec. 70. Hearing.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Any person interested in the estate may contest the petition or oppose the appointment of the person for whom letters are prayed by filing written objections stating the ground thereof, at or before the time of the hearing. Upon proof of the petition, the court shall appoint an administrator and fix the amount of his bond as required by law. Upon the filing of the oath, acceptance, and bond as required by law, letters shall issue. (G. S. 8774)

Sec. 71. Subsequent Admission of Will.—If, after the appointment of a general administrator, a will is admitted to probate, the powers of such administrator shall cease, and he shall proceed to a final accounting according to law. The new representative shall continue the administration. (G. S. 8775)

Sec. 72. Administrator D. B. N.—If the sole or surviving representative dies or his authority is otherwise terminated before the estate is fully administered, the court with or without notice shall appoint a successor to administer the estate not already administered. Such successor shall have the same powers and duties as his predecessor. (G. S. 8777)

Sec. 73. Administrator C. T. A.—Where a will is admitted to probate and a representative other than the person named therein as executor has been appointed and has qualified, such representative shall have all the powers and perform all the duties of an executor including the power to sell, convey, mortgage, and lease real estate where the executor is empowered to do so by the terms of the will. (G. S. 8776)

ARTICLE IX.—SPECIAL ADMINISTRATION.

Sec. 74. Appointment.—Upon a showing of necessity or expediency, the court with or without notice may appoint a special administrator whether a petition for general administration or proof of will has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special administrator. (G. S. 8778, 8779)

Sec. 75. Powers.—A special administrator shall collect the assets and conserve the estate, unless his powers are limited

by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special administrator power to perform any or all acts in the administration of the estate, not exceeding the powers conferred by law upon general administrators. (G. S. 8784)

Sec. 76. Inventory and Appraisal.—Within fourteen days after appointment, a special administrator shall file an inventory and appraisal of the personal property according to the requirements of Article XII A. (G. S. 8780, 8785)

Sec. 77. Termination of Powers.—Upon the granting of letters testamentary or of general administration, the power of a special administrator shall cease unless otherwise expressly ordered by the court. (G. S. 8785)

Sec. 78. Final Account and Discharge.—Upon the termination of his power, a special administrator shall file his final account with his petition for the settlement and allowance thereof. The court with or without notice shall adjust, correct, settle, and allow or disallow such account. Upon allowance of the account and upon the filing of vouchers for all disbursements, and the balance, if any, having been paid to the person entitled thereto, the court shall discharge such special administrator and his sureties. (G. S. 8782, 8783)

ARTICLE X.—DETERMINATION OF DESCENT.

Sec. 79. Essentials.—Whenever any person has been dead for more than five years and has left real estate or any interest therein, and no will has been admitted to probate nor administration had in this state; or whenever real estate or any interest therein has not been included in a final decree, any person interested in the estate or claiming an interest in such real estate may petition the probate court of the county of the decedent's residence or of the county wherein such real estate or any part thereof is situated to determine its descent and to assign it to the persons entitled thereto. (G. S. 8729)

Sec. 80. Contents of Petition.—Such petition shall show so far as known to the petitioner:

1. The name of the decedent, the date and place of his death, his age and address at such date, and whether testate or intestate.

2. The names, ages, and addresses of his heirs, executors, legatees, and devisees.

3. That no will has been admitted to probate nor administration had in this state; or if a will has been admitted to probate or administration had, that real estate or some interest therein was not included in the final decree.

4. A description of the real estate, and if a homestead, designated as such, the interest therein of the decedent, the value thereof at the date of his death, and the interest therein of the petitioner.

5. If the decedent left a will which has not been admitted to probate, such will shall be filed and the petition shall contain a prayer for its admission to probate. If a will has been admitted to probate or if administration has been had, certified copies of such instruments in the prior administration as the court may direct shall be filed. (G. S. 8730)

Sec. 81. Decree of Descent.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Upon proof of the petition and of the will if there be one, the court shall allow the same and enter its decree assigning the real estate to the persons entitled thereto pursuant to the will if there be one, otherwise pursuant to Article III. No decree shall be entered until after the determination and payment of inheritance taxes. (G. S. 8731, 8732)

ARTICLE XI.—BONDS.

Sec. 82. Condition.—Every representative, except as provided by Section 134 and G. S. 7733, before entering upon the duties of his trust shall file a bond in such amount as the court directs, with sufficient sureties, conditioned upon the faithful discharge of all the duties of his trust according to law. (G. S. 8907)

Sec. 83. Joint or Separate Bonds.—When two or more persons are appointed joint representatives, the court may approve a separate bond from each or a joint bond from all. (G. S. 8909)

Sec. 84. Approval and Prosecution.—Except as otherwise expressly provided, all bonds in proceedings in the probate court shall be approved by the judge and shall run to such judge and his successors in office. In case of breach of any condition thereof, an action on such bond may be prosecuted by leave or such court in the name and for the benefit of any person interested. (G. S. 8912)

Sec. 85. Increase and Reduction.—The court on its own motion, or upon the petition of any person interested in the estate, may require a bond in addition to or in lieu of any bond on file. Upon the settlement and allowance of an account, the liability under the new bond shall be limited to the property with which the representative is chargeable at the time of such settlement and allowance, and to the acts and omissions of the representative occurring thereafter. Whenever an account is settled and allowed and the bond is found to be more than sufficient, the court may reduce the amount of the bond or cancel any bond found to be unnecessary. (G. S. 8911, 8913)

Sec. 86. Discharge on Surety's Application.—Upon application of any surety, the court shall order the representative to account and to file a new bond. Upon the settlement and allowance of the account and the filing of the new bond, the surety shall be discharged. (G. S. 8914)

ARTICLE XII.—MANAGEMENT OF ESTATE.

A.—INVENTORY AND APPRAISAL.

Sec. 87. Contents of Inventory.—Within one month after his appointment unless a longer time has been granted by the court, every representative shall make and exhibit to the court a verified inventory of all the estate of the decedent or ward which shall have come to his possession or knowledge. Such property shall be classified therein as follows: (1) real estate, with plat or survey description, and if a homestead, designated as such, (2) furniture and household goods, (3) wearing apparel, (4) corporation stocks described by certificate numbers, (5) mortgages, bonds, notes, and other written evidence of debt, described by name of debtor, recording data, or other identification, (6) all other personal property accurately identified. All encumbrances, liens, and other charges on any item shall be stated. (G. S. 8794)

Sec. 88. Appraisal.—If the inventory lists no property other than moneys of the United States, no appraisal shall be required; otherwise, the property shall be appraised at its full and fair value as of the date of death, or in a guardianship as of the date of the appointment of the guardian, by two or more disinterested persons appointed by the court. Within two months after appointment unless a longer time has been granted by the court, the appraisers shall set down in figures opposite each item after deducting the encumbrances, liens, and charges, the net value thereof and show the total amount of each class, and of all classes, and forthwith deliver such

inventory and appraisal certified by them, to the representative who shall immediately file the same. Such appraisers shall be allowed such reasonable fees, necessary disbursements and expenses as may be fixed by the court and shall be paid by the representative as expenses of administration or guardianship. (G. S. 8795)

B.—COLLECTION OF ASSETS.

Sec. 89. Possession.—Every representative shall be entitled to the possession of and be charged with all property of the decedent which has not been set apart for the surviving spouse or children. He shall collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the heirs, legatees, or devisees. He shall keep in tenable repair all buildings and fixtures under his control. He may by himself or with the heirs or devisees maintain an action for the possession of the real estate or to quiet title to the same. (G. S. 8786)

Sec. 90. Liability.—No representative shall make a profit by the increase, nor suffer loss by the decrease or destruction without his fault, of any part of the estate, but he shall account for the excess when he sells for more than the appraisal and shall not be responsible for the loss when he sells for less if such sale appears to be beneficial to the estate. He shall not be accountable for debts due the decedent which remain uncollected without fault on his part; but if he neglects or unreasonably delays to raise money by collecting debts or selling property, or neglects to pay over the money in his hands and by reason thereof the value of the estate is lessened, or unnecessary costs, interest, or penalties accrue, or the persons interested suffer loss, the same shall be deemed waste and the representative shall be charged in his account with the damages sustained. He shall not purchase any claim against the estate nor shall he purchase directly or indirectly or be interested in the purchase of any property sold by him. (G. S. 8787, 8847)

Sec. 91. Accord with Debtor.—Whenever it appears for the best interest of the estate, the representative may on order of the court effect a fair and reasonable compromise with any debtor or other obligor. (G. S. 8798)

Sec. 92. Foreclosure of Mortgages.—The representative shall have the same right to foreclose a mortgage, lien, or pledge, or collect the debt secured thereby as the decedent would have had if living or the ward would have had if competent, and he may complete any such proceeding commenced by such decedent or ward. (G. S. 8799)

Sec. 93. Realty Acquired.—When a foreclosure sale, or a sale on execution for the recovery of a debt due the estate is had, or redemption is made, the representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the representative, or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship without redemption the real estate shall be treated as personal property, but any sale, mortgage, or lease thereof shall be made pursuant to Article XVI, unless otherwise provided in the will. If not so sold, mortgaged, or leased the real estate, or leased the real estate, or if so sold, mortgaged, or leased, the proceeds, shall be assigned or distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, unless otherwise provided in the will. (G. S. 8800, 8801)

Sec. 94. Property Set Apart.—After the inventory and appraisal has been filed, the surviving spouse, or in case there be none, the children, or when they are minors, their guardian may petition the court to set apart the homestead and the personal property allowed in Article III, Section 28. Such petition shall show the names, ages, and relationship of the parties, a description of the homestead claimed and of the personal property selected, and the appraised value thereof. Upon proof of such petition, the court shall set apart such homestead and personal property. The property so set apart shall be delivered by the representative to the persons entitled thereto, and shall not be treated as assets in his hands, but the homestead shall be included in the partial or final decree of distribution. (G. S. 8796, 8797)

Sec. 95. Property Fraudulently Conveyed.—Whenever the property available for the payment of debts is insufficient to pay the same in full, the representative may recover any property which the decedent may have disposed of with intent to defraud his creditors, or by conveyance or transfer which for any reason is void as to them. Upon the application of any creditor and upon making the payment of or providing security for the expenses thereof as directed by the court, the representative shall prosecute all actions necessary to recover the property. (G. S. 8802, 8803)

Sec. 96. Property Converted.—If any person embezzles, alienates, or converts to his own use any of the personal estate of a decedent or ward before the appointment of a representative, such person shall be liable for double the value of the property so embezzled, alienated, or converted. (G. S. 8806)

Sec. 97. Disposal by Coroner.—Whenever personal property of a decedent comes into the hands of any coroner and no will has been admitted to probate or no administration has been had, he shall immediately file in the probate court a report containing all the information he has concerning the decedent and his death and an inventory of all such property. If no will is admitted to probate nor administration had within six months after death, the coroner shall sell the same at public auction upon such notice and in such manner as the court may direct. He shall be allowed reasonable expenses for the care and sale of the property, and shall deposit the remainder of the proceeds of such sale with the county treasurer in the name of the decedent, if known. The treasurer shall give the coroner duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. The coroner shall file in the court a finger print of each finger of each hand of the decedent in duplicate. If a representative shall qualify within six years from the time of such deposit, the treasurer upon order of the court shall pay the same to such representative. (G. S. 8807, 8808)

Sec. 98. Continuation of Business.—Upon a showing of advantage to the estate the court with or without notice may authorize a representative to continue and operate any business of a decedent or ward for the benefit of his estate, under such conditions, restrictions, regulations, and requirements, and for such period of time as the court may determine. (L. 1929, c. 188)

Sec. 99. Abandonment of Property.—Whenever any property is valueless, or is so encumbered, or is in such condition that it is of no benefit to the estate, the court, upon such notice as it may direct to be given, may order the representative to abandon the same.

C.—CLAIMS.

Sec. 100. Notice to Creditors.—In the order for hearing a petition for the probate of a will or for general administration or in a subsequent order; the court shall limit the time for creditors to file claims and fix the time and place for the hearing on such claims, notice of which shall be given pursuant to Article XIX Section 188. The time so limited shall be four months from the date of the filing of such order. If it appears from the petition that the decedent left no property except such as may be allowed to the spouse and children under Article III Section 28, or such as is exempt from the claims of creditors, or such as may be recovered in an action for death by wrongful act, or if more than five years have elapsed since

the decedent's death, no order in respect to claims need be made. (G. S. 8809, 8810).

Sec. 101. Filing of Claims.—All claims against a decedent arising upon contract, whether due or not due, shall be barred forever unless filed in court within the time limited. For cause shown and upon notice to the representative the court may receive, hear, and allow a claim presented before the final settlement and allowance of the representative's account and within one year after the date of the filing of the order to file claims.

Contingent claims arising upon contract which do not become absolute and capable of liquidation within the time limited shall not be filed. Any such contingent claim which becomes absolute and capable of liquidation after the expiration of the time limited but before the settlement and allowance of the final account may be filed and heard on notice to the representative, if the court in its discretion shall so order, notwithstanding the provisions of Section 107. If allowed it shall be paid as other claims, but only out of the assets with which the representative is chargeable at the time of the filing of such claim. No such claim shall be so filed or allowed unless administration of the estate was commenced within five years after the death of the decedent.

Claims shall be itemized and verified and shall show the address of the claimant and all payments and offsets known to the claimant. Any such claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the representative. On or before the hearing on claims, the representative shall file a statement of all offsets claimed. (G. S. 8811, 8812, 8813)

Sec. 102. Joint Debtor.—Whenever two or more persons are indebted on any joint contract, or upon a judgment founded on a joint contract, and one of them dies, his estate shall be liable therefor, and the amount thereof may be allowed by the court the same as though the contract had been joint and several or the judgment had been against him alone, but without prejudice to right to contribution. (G. S. 8820).

Sec. 103. Claims Barred.—No claim or offset thereto shall be allowed which was barred by the statute of limitations when filed. (G. S. 8814)

Sec. 104. Adjudication on Claim.—Upon the adjudication of any claim, the court shall make its order allowing or disallowing the same, which order shall have the effect of a judgment. Such order shall show the date of adjudication, the

amount allowed, the amount disallowed, and shall be attached to the claim and the offsets, if any. An allowed claim shall bear interest at the legal rate. (G. S. 8816)

Sec. 105. Execution on Offset.—When a balance is allowed against a claimant, the court may issue execution for such balance, which shall be collected in the same manner as an execution issued out of the district court. (G. S. 8817)

Sec. 106. Actions Pending.—All actions wherein the cause of action survives may be prosecuted to final judgment, notwithstanding the death of any party, and in such case the representative may be substituted therein in the stead of the deceased party. If judgment be rendered against the representative, it may be certified to the probate court and shall be then paid in the same manner as other claims against the estate. The defendant in any action commenced by a decedent or representative may set off a claim against the decedent's estate notwithstanding such claim has not been filed in the probate court. (G. S. 8818, 8819)

Sec. 107. Actions Precluded.—No action at law shall lie against a representative for the recovery of money upon any claim required to be filed by Section 101. Except as provided in Section 101 with reference to contingent claims, no claim against a decedent shall be a charge upon his estate unless filed in the probate court within five years after his death and within the time limited under Section 100 or extended under Section 101. Nothing in this section shall be construed as preventing an action to enforce a lien existing at the date of decedent's death nor as affecting the rights of a creditor to recover from the next of kin, legatees, or devisees to the extent of the assets received, upon any claim not required to be filed by Section 101, or upon any contingent claim arising upon contract which did not become absolute and capable of liquidation until after the time limited under Section 100 or extended under Section 101 or until five years after the death of the decedent. (G. S. 8815)

Sec. 108. Priority of Debts.—If the applicable assets of the estate be insufficient to pay the following in full, the representative shall make payment in this order:

1. Expenses of administration.
2. Funeral expenses.
3. Expenses of last illness.
4. Debts having preference by laws of the United States.

5. Taxes.

6. Other debts duly proved. (G. S. 8827)

Sec. 109. Secured Debts.—When a claimant holds any security for his debt, he may file his claim, which may be allowed conditioned upon the claimant surrendering the security to the representative or exhausting the security. In either case, a report thereof shall be filed within the time fixed by the court. Upon his failure to comply with the order, the claim shall be disallowed. Upon his compliance with the order, the court shall make a final order on such claim, either allowing it in full if the security has been surrendered, or for any remaining amount found to be due on the debt if the security has been exhausted. The claim so allowed shall be paid as other debts duly proved. (G. S. 8827)

Sec. 110. Encumbered Assets.—When any assets of the estate are encumbered by mortgage, pledge, or otherwise, the representative may pay such encumbrance or any part thereof, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate and if the court, with or without notice, shall have so ordered. No such payment shall increase the share of the devisee, legatee, or heir entitled to receive such encumbered assets, unless otherwise provided in the will. (G. S. 8831)

Sec. 111. Preferences Prohibited.—No preference shall be given in the payment of any debt over any other debt of the same class, nor shall a debt due and payable be entitled to preference over debts not due. (G. S. 8828)

Sec. 112. Payment Under Will.—When a will designates the property to be appropriated for the payment of debts or other items, it shall be applied to such purpose. (G. S. 8832)

ARTICLE XIII.—ACCOUNTING AND DISTRIBUTION.

Sec. 113. Duration of Administration.—Every executor, general administrator, or administrator with the will annexed shall have one year from the date of his appointment for the settlement of the estate. A special administrator or an administrator de bonis non shall have such time not exceeding one year as the court may determine. For cause shown the period herein limited may be extended by the court, not exceeding one year at a time. The representative shall not be disqualified thereafter in any way, unless removed; but he shall not be relieved from any loss, liability, or penalty incurred by his failure to settle the estate within the time limited. (G. S. 8822, 8823, 8824)

Sec. 114. Filing of Account.—Within the time limited every representative shall file a verified account of his administration and petition the court to settle and allow his account and to assign the estate to the persons entitled thereto. The representative shall also account at such other times as the court may require; the hearing on such account shall be had upon such notice as the court may direct. (G. S. 8873, 8877)

Sec. 115. Hearing and Decree.—Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188, except as provided in Sections 78, 114, and 125. On the hearing, the representative shall, and other persons may, be examined relative to the account and the distribution of the estate. If all taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed. Upon such settlement and allowance, the court shall determine the persons entitled to the estate and assign the same to them by its decree. The decree shall name the heirs and the distributees, describe the property and state the proportion of part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all of the heirs be ascertained. No final decree shall be entered until after the determination and payment of inheritance taxes except as provided in Section 189.

If all the creditors have consented in writing, the court with or without notice may assign the estate, if insolvent, without conversion thereof into money, to such creditors in the proportions to which each is entitled.

Upon its own motion or upon the request of any party, without the determination or payment of inheritance taxes, the court may enter an interlocutory decree, determining the persons entitled to the estate, naming the heirs and distributees, describing the property, and stating the proportions or part thereof to which each is entitled. Such interlocutory decree shall be final as to the persons entitled to distribution, and as to the part or portion of the estate each is entitled to receive, but it shall not have the effect of assigning the estate to such persons. (G. S. 8879, 8880)

Sec. 116. Partial Distribution.—A partial distribution of an estate may be made before final settlement in the manner and upon the notice provided for final distribution. No decree of partial distribution shall be entered until after the deter-

mination and payment of inheritance taxes on the property thereby distributed. Such decree shall be final as to the persons entitled to such distribution and as to their proportions, and except where such decree includes only specific bequests or devises, as to the persons entitled to, and their proportions of the whole estate. No distribution shall be made until after the expiration of the time limited for the filing of claims, nor until a bond has been filed to secure the payment of unpaid claims and bequests, and the unpaid expenses of the administration, funeral, and last illness, and taxes. (G. S. 8874, 8875)

Sec. 117. Recording Decree.—A certified copy of any decree of distribution may be filed for record in the office of the register of deeds of any county. It shall not be necessary to pay real estate taxes in order to record such certified copy, but the same shall be first presented to the county auditor for entry upon his transfer record and shall have noted thereon "Transfer entered" over his official signature. Upon request, the court shall furnish a certified copy of any decree of distribution, omitting the description of any property except that specified in the request, but indicating omissions by the words "other property omitted." Such copy and its record shall have the same force and effect as to property therein described as though the entire decree had been so certified and recorded. (G. S. 8880)

Sec. 118. Allowances to Representative.—Every representative shall be allowed his necessary expenses incurred in the execution of his trust, and shall have such compensation for his services and those of his attorneys as the court shall deem just and reasonable; but if a decedent by will makes provision for the compensation of his executor, that shall be taken as his full compensation unless he files a written instrument renouncing all claim for the compensation provided for in the will. At any time during administration, the representative may apply to the court for an allowance upon his compensation and upon attorney's fees.

Whenever any person named as executor in a will or codicil defends it or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully opposes the allowance of any will or codicil, he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings together with such compensation for his services and those of his attorneys as the court shall deem just and proper. (G. S. 8788)

Sec. 119. Attorney's Lien.—When any attorney at law has been retained to appear for any heir, devisee, or legatee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the representative before the decree of distribution is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his services, and by filing such notice with proof of service thereof. The amount of such lien shall be determined on the hearing of the petition for partial or final distribution, and any property decreed therein to such heir, devisee, or legatee shall be subject to such lien. The representative shall satisfy such lien out of any property so decreed and by order of the court may sell so much of such property as will satisfy such claim and the expenses of sale. (G. S. 8876)

Sec. 120. Resignation of Representative.—A representative may resign his trust at any time, but his resignation shall not be operative until the court shall have examined and allowed his final account and has made an order accepting such resignation. (G. S. 8789)

Sec. 121. Removal of Representative.—Whenever a representative becomes insane or otherwise mentally incompetent, or unsuitable, incompetent, or incapable of discharging his trust, or has mismanaged the estate, or has failed to perform any duty imposed by law or by any lawful order of the court, or has absconded, or has ceased to be a resident of this state, the court may remove him. (G. S. 8790)

Sec. 122. Discharge upon Resignation or Removal.—Notwithstanding the resignation of a representative or his removal by the court, he and his surety shall not be discharged from liability until a successor has been appointed and qualified and has received for the unadministered property.

Sec. 123. Account of deceased or insane representative.—Whenever a sole or the last surviving representative dies, or becomes insane or otherwise mentally incompetent, his representative, upon appointment, shall file an account and petition for the settlement and allowances thereof, and if proper, for distribution. If the estate has not been fully administered, the surety shall not be discharged until a successor has been appointed and qualified and received for the unadministered property. (G. S. 8791)

Sec. 124. Discharge of Representative.—Whenever any representative has paid or transferred to the persons entitled

thereto all of the property in the estate, paid all taxes required to be paid by him and has filed proof thereof, and has complied with all the orders and decrees of the court and with the provisions of law, and has otherwise fully discharged his trust, the court shall finally discharge him and his sureties. Whenever any bequest or devise to a testamentary trustee amounts to more than five hundred dollars and the will contains no express waiver, the representative shall not be discharged until a trustee has qualified in a court of competent jurisdiction and until proof of such qualification and a receipt by the trustee have been filed. No representative who has received any funds for death by wrongful act shall be discharged until he has filed a certified copy of the order, judgment, or decree of distribution of the court wherein such funds were recovered and vouchers from the persons entitled to such funds, or copies thereof certified by the clerk of such court. (G. S. 8886, 8887)

Sec. 125. Summary Proceedings.—In a special administration, general administration, or in the administration of the estate of a person dying testate, if the court has determined that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in Section 28, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the representative by order of the court may pay the same in the order named, and file his final account with his petition for the settlement and allowance thereof. Thereupon the court with or without notice may adjust, correct, settle, allow, or disallow such account, and if the account be allowed, summarily determine the heirs, legatees, and devisees in its final decree assigning to them their share or part of the property with which the representative is charged upon the allowance of his final account, and close the administration.

If upon the hearing of a petition for special administration, general administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate

court, a final decree may be entered, with or without notice, assigning such property to the persons entitled thereto pursuant to the terms of the will, or if there be none pursuant to Article III.

Sec. 126. Unclaimed Money.—If any part of the money on hand has not been paid over because the person entitled thereto cannot be found or refuses to accept the same, or for any other good and sufficient reason the same has not been paid over, the court may direct the representative to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor and the other in the court. Money so deposited shall be credited to the county revenue fund. Upon application to the probate court within twenty-one years after such deposit, and upon notice to the county attorney and county treasurer, the court may direct the county auditor to issue to the person entitled thereto his warrant for the amount thereof. No interest shall be allowed or paid thereon, and if not claimed within such time no recovery thereof shall be had. (G. S. 8888, 8889)

ARTICLE XIV.—ADVANCEMENTS.

Sec. 127. Definition.—Any property given by an intestate in his lifetime to a child or other lineal descendant when expressed in the gift or grant as an advancement or charged in writing by the intestate as such, or so acknowledged by the child or other descendant, shall be deemed an advancement to such heir, and treated as part of the estate of such intestate in the distribution of the same, and shall be taken by such heir toward his share of the estate. When the amount advanced exceeds the share of such heir, he shall receive nothing in the distribution, but he shall not be required to refund any part of such advancement. When the amount so received is less than his share, he shall be entitled to enough more to make up his full share. When a child or other lineal descendant to whom an advancement has been made dies before the intestate, leaving issue, such advancement shall be deducted in the distribution of the estate as though made directly to such issue. (G. S. 8895, 8897)

Sec. 128. Valuation.—When such advancement is made in real estate, the value thereof for the purpose of distribution shall be considered a part of the real estate to be divided, and when it is in personal estate, as a part of the personal estate; and when in either case it exceeds the share of real or personal estate, respectively, that would have come to such heir,

he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to that of other heirs entitled to a like amount with him. When the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment of the heir receiving it, that shall be its value in the distribution; otherwise, it shall be estimated according to its value when given, as nearly as can be ascertained. All questions as to advancements made, or alleged to have been made, by the intestate to any heir shall be heard and determined by the court at the time of settlement, and every such advancement shall be specified in the decree distributing and assigning the estate. For the purpose of determining what proportion any one who has received an advancement is entitled to the court shall ascertain the value of the entire residue of such estate, by ordering an appraisal or in such other manner as it may deem best. (G. S. 8896, 8898)

ARTICLE XV.—GUARDIANSHIPS.

Sec. 129. Persons Subject.—The court may appoint one or two persons suitable and competent to discharge the trust as guardians of the person or estate or of both of any person who is a minor, or who because of old age, or imperfection or deterioration of mentality is incompetent to manage his person or estate, or of any person who because of excessive intoxication, gambling, idleness, or debauchery, so spends or wastes his estate or injures his person as to be likely to expose himself or his family to want or suffering, provided such person is a resident of the county or being a non-resident of this state has property in the county. No guardian of the person of any minor shall be appointed while proceedings for his care and custody are pending in any juvenile court of this state. Nothing herein contained shall diminish the power of any court to appoint a guardian to serve or protect the interest of any minor or other person under disability in any proceedings therein, nor abridge the rights of the father and mother, if suitable and competent, as the natural guardians of their minor children. (G. S. 8916, 8920, 8923, 8924, 8931, 8933)

Sec. 130. Petitioners.—Any person may petition for the appointment of a guardian or guardians for any person believed to be subject to guardianship, provided that the petition of a person over the age of fourteen years for the appointment of a guardian or guardians of his own person or estate, and the petition of any person nominated by the will of a deceased parent with the written consent of the other parent if living and not under disability, for the appointment of a

guardian or guardians for their minor child shall have priority over the petition of any other person. When any minor under guardianship attains the age of fourteen years, he may petition for the appointment of a guardian or guardians nominated by him in lieu of the guardians theretofore appointed. (G. S. 8916, 8917, 8918, 8919, 8924, 8931)

Sec. 131. Contents of Petition.—The petition shall show (1) the name and address of the person for whom a guardian is sought, (2) the date and place of his birth, (3) if he be a minor, the names and addresses of his parents, or if the parents be dead or have abandoned the minor, the names and addresses of his custodians and of any person named as testamentary guardians in the will of a decedent, (4) if he be not a minor, the names and addresses of his nearest kindred, (5) if he be married, the name and address of his spouse, (6) the reasons for the guardianship, (7) the probable value and general character of his real and personal property and the probable amount of his debts, (8) the names, ages, addresses, and occupation of the proposed guardians.

Sec. 132. Lis Pendens.—After the filing of the petition, a certified copy thereof may be filed for record in the office of the register of deeds of any county in which any real estate owned by the ward is situated and if a resident of this state, in the county of his residence. If a guardian be appointed on such petition, all contracts except for necessities, and all transfers of real or personal property made by the ward after such filing and before the termination of the guardianship shall be void. (G. S. 8927)

Sec. 133. Notice of Hearing.—If the petition be made by the person for whom a guardian is sought, or by a parent, custodian, or testamentary guardian of a minor under the age of fourteen years, the court may hear the same with or without notice. In all other cases, upon the filing of the petition the court shall fix the time and place for the hearing thereof. At least fourteen days prior to such time, personal service shall be made upon the ward. If he have a spouse, custodian, or if there be a testamentary guardian named in the will of a decedent, notice shall be given to such persons and to such of the nearest kindred and in such manner as the court may direct. If he be an inmate of any hospital or asylum, notice by mail shall be given to the superintendent thereof. If he be a non-resident or if after diligent search he cannot be found in this state, notice shall be given in such manner and to such persons as the court may determine. (G. S. 8925, 8926)

Sec. 134. Hearing—Appointment.—Upon proof of the petition, the court shall appoint one or two persons suitable and competent to discharge the trust as general guardians of the person or estate or of both. Upon the filing of a bond in such amount as the court may direct and an oath according to law, or upon the filing of an acceptance of the trust pursuant to G. S. 7733, letters of guardianship shall issue. If there be no personal property, the court may waive the filing of a bond, but if the guardian receives or becomes entitled to any such property, he shall immediately file a report thereof and a bond in such amount as the court may direct. (G. S. 8926)

Sec. 135. Guardian's Duties.—A guardian shall be subject to the control and direction of the court at all times and in all things. A general guardian of the person shall have charge of the person of the ward. A general guardian of the estate shall (1) pay the reasonable charges for the support, maintenance, and education of the ward in a manner suitable to his station in life and the value of his estate; but nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children, (2) pay all just and lawful debts of the ward and the reasonable charges incurred for the support, maintenance, and education of his wife and children, and upon order of the court for the support of any person unable to earn a livelihood who is or may become legally entitled to support from the ward, (3) possess and manage the estate, collect all debts and claims in favor of the ward, or with the approval of the court compromise the same, and invest all funds, except such as may be currently needed for the debts and charges aforesaid and the management of the estate, in such securities as are authorized by G. S. 7714 and approved by the court, except as provided in G. S. 7735. (G. S. 8920, 8933, 8935, 8937 to 8943, 8946, 8947)

Sec. 136. Transfer of Venue.—When it is for the best interest of the ward or his estate, the venue may be transferred to another county. Upon the filing of a petition by any person interested in the ward or in his estate, the court shall fix the time and place for the hearing thereof, notice of which shall be given to such persons and in such manner as the court may direct. Upon proof that a transfer of venue is for the best interest of the ward or his estate, and upon the settlement and allowance of the guardian's accounts to the time of such hearing, the court shall transmit the entire file to the court of such other county in which all subsequent proceedings shall be had. (G. S. 8927-1-2)

Sec. 137. Filing of Accounts.—Except where expressly waived by the court, every guardian annually shall file a verified account covering the period from the date of appointment or his last account. At the termination of the guardianship, or upon the guardian's removal or resignation, he or his surety, or in the event of his death or disability, his representative or surety shall file a verified final account with a petition for the settlement and allowance thereof. Every account shall show in detail all property received and disbursed, the property on hand, the present address of the ward and of the guardian, and unless the guardian be a corporation, the amount of the bond, the names and addresses of all sureties thereon, that each unincorporated surety is a resident of this state, is not under disability, and is worth the amount in which he justified. (G. S. 8948, 8949)

Sec. 138. Notice of Hearing on Account.—The court on its own motion may, or upon the petition of the guardian or any person interested in the ward or his estate shall, fix the time and place for the hearing on any account, notice of which shall be given in such manner and to such persons as the court may direct. Wherever any funds have been received from the Veterans' Administration, notice by mail shall be given to the Regional Office having charge thereof. (G. S. 8948, 8949)

Sec. 139. Adjudication on Account.—Unless otherwise ordered, the guardian shall, and other persons may, be examined on the hearing. If the account be correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed. The order of settlement and allowance shall show the amount of the personal property remaining. Upon settlement of the final account, and upon delivery of the property on hand to the person entitled thereto, the court shall discharge the guardian and his sureties. Any person for whom a guardian has been appointed and who has become of age or has been restored to capacity may show to the court that he has settled with his guardian and may petition for the guardian's discharge without further hearing. Upon such petition, the court may discharge the guardian and his sureties. (G. S. 8948, 8949, 8950).

Sec. 140. Succeeding Guardian.—If a guardian dies, resigns, or is removed, the court with or without notice may appoint a successor.

Sec. 141. Special Guardian.—Upon a showing of necessity or expediency, the court with or without notice may appoint a special guardian of the person or estate or both of any person designated in Section 129, whether a petition for general guar-

dianship has been filed or not. There shall be no appeal from any order appointing or refusing to appoint a special guardian. A special guardian of the person shall have charge of the person of the ward. A special guardian of the estate shall collect the assets and conserve the estate, unless his powers are limited by the court in the order of appointment and in the letters to the performance of specified acts. Upon a showing of necessity or expediency, the court with or without notice may expressly confer upon a special guardian power to perform any or all acts in the administration of the guardianship, not exceeding the powers conferred by law upon general guardians.

Within fourteen days after appointment, a special guardian of the estate shall file an inventory and appraisal of the personal property according to the requirements of Article XII A. Upon the granting of letters of general guardianship, the power of a special guardian shall cease, and he shall proceed forthwith to a final accounting. Whenever a special guardian has been appointed to protect the ward's interest in any matter wherein the interest of the general guardian appears to conflict with that of the ward, or to protect the ward's interest upon suspension of an order of removal of a general guardian by appeal, the power of such special guardian shall not cease until terminated by the court. (G. S. 8928, 8951, 8952)

Sec. 142. Termination.—A guardianship of a minor shall terminate upon his death or upon his attainment of legal age. The marriage of a female ward under guardianship as a minor only and not under a juvenile court guardianship shall terminate the guardianship of her person but not of her estate, provided that such guardianship shall not affect her capacity to join with her husband in instruments involving his interest in real estate. The guardianship of a ward other than a minor shall terminate upon his death or upon his restoration to capacity. Whenever there is no further need for any guardianship, the court may terminate the same upon such notice as it may direct. (G. S. 8922)

Sec. 143. Restoration to Capacity.—Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been

discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred. (G. S. 8929)

ARTICLE XVI.—SALES, ETC., OF REALTY

Sec. 144. **Definitions.**—As used in this article, the word "mortgage" shall include an extension of an existing mortgage, subject to the provisions of Section 159; the word "lease", unless the context otherwise indicates, means a lease for more than three years.

Sec. 145. **Lease for Three Years or Less.**—The court with or without notice may direct a lease for three years or less of any real estate (including a homestead if the written consent of the spouse has been filed) whenever it appears to be for the best interest of the estate and of the persons interested in such real estate.

Sec. 146. **Reasons for Sale, Mortgage, Lease.**—The court may direct a sale, mortgage, or lease of any real estate of a decedent whenever the personal property is insufficient to pay the allowances to the spouse and children, expenses of administration, funeral expenses, expenses of last illness, taxes, debts, and bequests, or whenever it shall determine such sale, mortgage, or lease to be for the best interests of the estate and of the persons interested in such real estate. The proceeds of any such sale, mortgage, or lease which may be available for distribution shall be distributed to the same persons and in the same shares as if it had remained real estate.

The court may direct a sale, mortgage, or lease of any real estate of a ward whenever the personal property is insufficient to pay his debts and other charges against his estate, or to provide for the support, maintenance, and education of the ward, his wife, and children, or whenever it shall determine such sale, mortgage, or lease to be for the best interest of the ward.

The homestead of a decedent when the spouse takes any interest therein or the homestead of a ward shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed. Unless the written consent of all persons who take any interest therein has been filed, the homestead of a decedent shall not be mortgaged except for the purpose of extending, renewing, or satisfying an existing mortgage and paying the taxes, assessments, liens, encumbrances, repairs, and incidental expenses or other items necessary to procure such mortgage. (G. S. 8825, 8834, 8835)

Sec. 147. Petition, Notice, Hearing.—A representative may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the decedent or ward or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall state briefly the nature of the application made by the petition and shall be given pursuant to Article XIX, Section 188. Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the applicant made by the petition. (G. S. 8836, 8837, 8845)

Sec. 148. Order for Sale, Mortgage, Lease.—The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. When the purpose of a sale, mortgage, or lease is to pay debts, bequests, or other items, the real estate shall be sold, mortgaged, or leased in the following sequence: (1) real estate devised charged with the payment of such debts, bequests, or other items (2) real estate

not specifically devised (3) real estate specifically devised but not so charged. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interests and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage, or lease shall remain in force until terminated by the court, but no private sale shall be made after one year from the date of the order unless the real estate shall have been reappraised under order of the court within thirty days preceding the sale. (G. S. 8838, 8839, 8841)

Sec. 149. Terms of Sale.—The court may order a sale of real estate for cash, part cash and a purchase-money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten per cent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four per cent per annum and shall be payable in reasonable monthly, quarterly, semi-annual, or annual payments, and the final installment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide for conveyance by quitclaim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and his assigns in such contract, the real estate may be resold under the original order and a reappraisal within thirty days preceding the sale. A sale of the vendor's interest in real estate sold by the representative on contract may be made under order of the court with or without notice upon an appraisal of such interest within thirty days preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal. (G. S. 8841)

Sec. 150. Public Sale.—If a sale at public auction be ordered, three weeks' published notice of the time and place of sale shall be given. Proof of publication shall be filed before the confirmation of the sale. Such publication and sale may be made in the county where the real estate is situated or in the county of the probate proceedings. If the parcels to be sold are contiguous and lie in more than one county, notice may be given and the sale may be made in either of such counties or in the county of the probate proceedings. The representative may adjourn the sale from time to time, if for the best interests of the estate and the persons concerned, but not exceeding three months in all. Every adjournment shall be announced publicly at the time and place fixed

for the sale, and if for more than one day further notice thereof shall be given as the court may direct. (G. S. 8843, 8848)

Sec. 151. Private Sale.—If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court, which reappraisal shall be filed before the confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal. (G. S. 8844)

Sec. 152. Additional Bond.—If the bond of the representative be insufficient, before confirmation of a sale of lease or before execution of a mortgage he shall file an additional bond in such amount as the court may require. (G. S. 8842, 8910, 8913)

Sec. 153. Sale of Contract Interest.—Whenever a person entitled under contract of purchase to any interest in real estate dies, or whenever a ward is entitled under contract of purchase to any interest in real estate, such interest may be sold for the same reasons and in the same manner as other real estate of a decedent or ward. Before confirmation the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the representative shall assign the contract and convey by quitclaim deed. The proceeds of such sale in the estate of a decedent shall be disposed of in the same manner as the proceeds of sales of real estate of which the decedent was seised. (G. S. 8849, 8850)

Sec. 154. Sale Subject to Charge.—When the estate of a decedent or ward is liable for any charge, mortgage, lien, or other encumbrance upon the real estate therein, the court may refuse to confirm the sale or lease until after the filing of a bond in such amount as the court may direct conditioned to save the estate harmless. (G. S. 8851)

Sec. 155. Confirmation.—Upon making a sale or lease, the representative shall file his report thereof. Upon proof of compliance with the terms of the order, the court may confirm the sale or lease and order the representative to execute and deliver the proper instrument. (G. S. 8856)

Sec. 156. Eminent domain proceedings.—Whenever any real estate of a decedent or ward is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the representative may agree in writing upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the ap-

proval of the court. When such agreement has been made, the representative shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction. The court with or without notice shall hear, determine, and act upon the petition. If the court approves the agreement, the representative upon payment of the agreed compensation shall convey the real estate sought to be acquired, and execute any release which may be authorized. (G. S. 8853, 8854, 8855)

Sec. 157. Platting.—Whenever it is for the best interests of the estate of a decedent or ward, real estate may be platted by the representative under such conditions and upon such notice as the court may order. (G. S. 8872)

Sec. 158. Conveyance of Vendor's Title.—When any person legally bound to make a conveyance or lease dies before making the same, or when any ward is legally bound to make a conveyance or lease, the court may direct the representative to make the conveyance or lease to the person entitled thereto. Upon the filing of a petition by any person claiming to be entitled to such conveyance or lease, or by the representative, or by any person interested in the estate or claiming an interest in such real estate or contract, setting forth a description of the land and the facts upon which such claim for conveyance or lease is based, the court shall fix a time and place for the hearing thereof, upon such notice as it may direct. Upon proof of the petition, the court may order the representative to execute and deliver an instrument of conveyance or lease upon performance of the contract. (G. S. 8861 to 8871, inc.)

Sec. 159. Mortgage Extension.—A representative without order of the court may make an extension of an existing mortgage for a period of five years or less, if the extension agreement contains the same prepayment privileges and the rate of interest does not exceed the lowest rate in the mortgage extended.

Sec. 160. Liability on Mortgage Note.—No representative shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed by him in his representative capacity.

Sec. 161. Title Free From Tax Lien.—The lien of the State for inheritance taxes payable by a representative shall not extend to any right acquired by a purchaser, mortgagee, or lessee through any conveyance made by such representative under a power contained in a will or under order of the court.

Sec. 162. Validity of Proceedings.—No sale, mortgage, lease, or conveyance by a representative shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate. (G. S. 8857, 8858)

Sec. 163. Limitation of Action.—No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a representative shall be maintained by any person claiming under or through the decedent or ward unless such proceeding is begun within five years immediately succeeding the date of such sale, mortgage, lease, or conveyance, provided however, in case of real estate sold by a guardian, no action for its recovery shall be maintained by or under the ward unless it is begun within five years next after the termination of the guardianship; provided further that in cases of fraud, minors and others under legal disability to sue when the right of action first accrues may begin such action at any time within five years after the disability is removed. (G. S. 8859)

ARTICLE XVII.—APPEALS.

Sec. 164. Appealable Orders.—An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court:

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

2. An order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian.

3. An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate.

4. An order directing, or refusing to direct, a conveyance or lease of real estate under contract.

5. An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim in whole or in part when the amount in controversy exceeds one hundred dollars.

6. An order setting apart, or refusing to set apart property, or making, or refusing to make, an allowance for the spouse or children.

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

8. An order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds one hundred dollars.

9. An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds one hundred dollars.

10. An order adjudging a person in contempt.

11. An order vacating a previous appealable order, judgment, or decree; an order refusing to vacate a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect.

12. A judgment or decree of partial or final distribution.

13. An interlocutory decree entered pursuant to Article XIII, Section 115.

14. An order granting or denying restoration to capacity.

15. An order determining, or refusing to determine, an attorney's lien, when the amount in controversy exceeds one hundred dollars.

16. An order determining, or refusing to determine, inheritance taxes upon a hearing on a prayer for reassessment and redetermination; but nothing herein contained shall abridge the right of direct review by the supreme court. (G. S. 8983)

Sec. 165. Venue.—Such appeal shall be to the district court of the county of the probate court which made the order, judgment, or decree appealed from, except that an appeal taken from any order, judgment, or decree (other than one determining or refusing to determine venue or transferring or refusing to transfer venue) made before the transfer of venue shall be taken to the district court of the county to which the transfer was made.

Sec. 166. Requisites.—Such appeal may be taken by any person aggrieved within thirty days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1) the appellant shall serve upon the adverse party or his attorney, or upon the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, file in the

probate court such notice with proof of service thereof, and pay the required fee for the return, (2) the appellant, other than the State, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein. The notice of the order, judgment, or decree appealed from, the notice of appeal, and bond, if required, shall be served as in civil actions in the district court. (G. S. 8984, 8985)

Sec. 167. Return.—When an appeal has been effected, the probate court forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. If the appeal is taken under Section 164, Subsection 10, such transcript shall also contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return. (G. S. 8986)

Sec. 168. Suspension by Appeal.—Such appeal shall suspend the operation of the order, judgment, or decree appealed from until the appeal is determined or the district court shall otherwise order. The district court may require the appellant to give additional bond for the payment of damages which may be awarded against him in consequence of such suspension, in case he fails to obtain a reversal of the order, judgment, or decree so appealed from. Nothing herein contained shall prevent the probate court from appointing special representatives nor prevent special representatives from continuing to act as such. (G. S. 8987)

Sec. 169. Trial.—Within twenty days after perfection of the appeal, the appellant shall file with the clerk of the district court, and serve upon the adverse party or his attorney a clear and concise statement of the propositions, both of law and of fact, upon which he will rely for reversal of the order, judgment, or decree appealed from; within twenty days after such service the adverse party may serve and file his answer thereto and the appellant, within twenty days thereafter, may serve and file a reply. If there be no reply, allegations of new matter in the answer shall be deemed denied. Demurrers shall not be permitted. The district court may allow or require any pleading to be amended, grant judgment on the pleadings, or, if the appellant fail to comply with the provisions hereof, dismiss the appeal.

After issues are so formed, the case may be brought on for trial by either party by the filing and service upon the attorney for the adverse party, or if he have none, then upon the clerk for him, of a notice of trial or note of issue, in accordance with the practice in the district court. Thereupon the cause shall be placed upon the calendar, tried, and determined in the same manner as if originally commenced in that court. All appeals other than those from the allowance or disallowance of a claim shall be tried by the court without a jury, unless the court orders the whole issue, or some specific question of fact involved therein, to be tried by a jury or referred. (G. S. 8988, 8989)

Sec. 170. Affirmance—Reversal.—Whenever the appellant fails to prosecute his appeal, or the order, judgment, or decree appealed from or reviewed on certiorari is sustained, judgment shall be entered in the district court affirming the decision of the probate court. Upon the filing in the probate court of a certified transcript of such judgment, the probate court shall proceed as if no appeal had been taken. If the order, judgment, or decree reviewed is reversed or modified, the district court shall remand the case to the probate court with directions to proceed in conformity with its decision. Upon the filing in the probate court of a certified transcript of such judgment, it shall proceed as directed by the district court. (G. S. 8990)

Sec. 171. Judgment—Execution.—The party prevailing on the appeal shall be entitled to costs and disbursements to be taxed as in a civil action. If judgment be rendered against the estate, they shall be an adjudicated claim against it. If judgment be rendered against an appellant other than the State, the Veterans' Administration, or representative appealing on behalf of the estate, judgment shall be entered against the appellant and the sureties on his appeal bond and execution may issue thereon. (G. S. 8891, 8892)

Sec. 172. Direct Appeal to Supreme Court.—A party aggrieved may appeal direct to the supreme court from an order determining or refusing to determine inheritance taxes upon a hearing on a prayer for reassessment and redetermination. Within thirty days after service of notice of the filing of such order, the appellant shall serve a notice of appeal upon all parties adversely interested or upon their attorneys and upon the probate judge. An appellant, other than the State, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute

the appeal with due diligence to a final determination, pay all costs and disbursements and abide the order of the court therein. The notice of appeal with proof of service and the bond, if required, shall be filed in the probate court within ten days after the service of such notice and the appellant shall pay to such court the sum of fifteen dollars of which ten dollars shall be transmitted to the clerk of the supreme court, as provided by law for appeals in civil actions.

Such appeal shall stay all proceedings on the order appealed from. Whenever a party in good faith gives due notice of appeal from such order and omits through mistake to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just. Upon perfection of the appeal, the probate court shall transmit to the clerk of the supreme court the ten dollars aforementioned together with a certified copy of the notice of appeal and bond, if required. The filing thereof shall vest in the supreme court jurisdiction of the cause, and records shall be transmitted to the supreme court, and records and briefs shall be printed, served, and filed, and such appeal shall be heard and disposed of as in the case of appeals in civil actions from the district court. If a settled case be necessary, the probate court may settle a case upon the application of any party. The notice of the hearing upon such application and the case proposed to be settled shall be served on all other parties interested in the appeal at least eight days prior to the hearing.

ARTICLE XVIII.—COMMITMENTS.

Sec. 173. **Voluntary Hospitalization.**—Any insane, inebriate, feeble-minded, or epileptic person desiring to receive treatment at a state institution may be admitted upon his own application, in such manner and upon such conditions as the state board of control may determine. During the time of such treatment and until the expiration of three days after such person in writing demands his release, the superintendent of such institution is authorized and empowered to detain him as though he had been duly committed. If any such person demands his release, the superintendent if he deems such release not to be for the best interest of such person, his family, or the public, shall file a petition for commitment in the probate court of the county wherein such institution is located, within three days after such demand. (G. S. 8954, 8955)

Sec. 174. **Institution of Proceedings.**—Unless otherwise indicated by the context, the word “patient” as used in this article means any person for whose commitment as an insane, inebriate, feeble-minded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient’s settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending. Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto. (G. S. 8956, 8957, 8963)

Sec. 175. **Examination.**—The patient shall be examined at such time and place and upon notice to such persons and served in such manner as the court may determine. If he be obviously inebriate, feeble-minded, or epileptic, and if the county attorney consent thereto in writing, the examination may be made by the court; otherwise the court shall appoint two duly licensed doctors of medicine, or in feeble-minded proceedings two persons skilled in the ascertainment of mental deficiency, to assist in the examination. Upon the filing of a petition for the commitment of a feeble-minded or epileptic patient, the court shall fix the time and place for the hearing thereof, of which ten days’ notice by mail shall be given to the state board of control, and to such other persons and in such manner as the court may direct.

The examiners and the court shall report their findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. The court shall determine the nature and extent of the property of the patient committed and of the

persons upon whom liability is imposed by law for his care and support, making such findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. (G. S. 8958, 8959, 8970, 8975)

Sec. 176. Commitment.—If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate committing the patient to the custody of the superintendent of the proper state hospital. If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate committing him to the joint custody of the superintendents of the proper state and federal institutions. If such federal institution be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feeble-minded or epileptic, the court shall appoint the state board of control guardian of his person and commit him to its care and custody.

Whenever a defendant in a criminal proceedings has been examined in the probate court pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court but there shall be no petition, property report, nor commitment, unless otherwise ordered. (G. S. 8960, 8961, 8962)

Sec. 177. Payment of Fees, Etc.—In each proceedings the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law, to each examiner the sum of five dollars per day for his services and fifteen cents for each mile traveled, to the person to whom the warrant of apprehension is issued the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself, and of authorized assistants, and to the person conveying the patient to the place of detention the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself and of authorized assistants, and to the patient's counsel when appointed by the court, the sum of ten dollars per day. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof.

Whenever the settlement of the patient is found to be in another county, the court shall transmit to the county auditor a statement of the expenses of the apprehension, confinement, examination, commitment, and conveyance to the place of detention. Such auditor shall transmit the same to the auditor of the county of the patient's settlement and such claim shall be paid as other claims against such county. If the auditor to whom such claim is transmitted shall deny the same, he shall transmit it with his objections to the state board of control which shall determine the question of settlement and certify its findings to each auditor. If the claim be not paid within thirty days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. (G. S. 8966, 8967, 8968)

Sec. 178. Release Before Commitment.—Before the delivery of the warrant of commitment, the court may release an insane or inebriate patient to any person who files a bond to the State in such amount as the court may direct, conditioned upon the care and safekeeping of the patient; but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released. (G. S. 8964)

Sec. 179. Release After Commitment.—Any insane, inebriate, feebleminded, or epileptic patient committed to the state board of control or any institution under its control, may be released to any person if such board consent thereto or if a bond to the State be filed with such board in such amount as it may fix, conditioned upon the care and safekeeping of the patient and the payment of all expenses, damages, and other items arising from any act of such patient. (G. S. 8960)

Sec. 180. Detention.—Upon delivery of an insane or inebriate patient to the institution to which he has been committed, the superintendent thereof shall retain the duplicate warrant and endorse his receipt upon the original which shall be filed in the court of commitment. Upon such filing, the court shall transmit a copy of the warrant with all endorsements of the state board of control. After such delivery, the patient shall be under the care, custody, and control of such board until discharged by it or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public shall be released from custody by such board or any institution except upon order of a court of competent jurisdiction. Whenever a patient is paroled, discharged, transferred to another institution, dies, escapes, or is

returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Upon commitment of a feeble-minded or epileptic patient, the state board of control may place him in any home, hospital, or any other place or institution under the control of such board or of any of its agencies and shall exercise general supervision over him. (G. S. 8973, 8974)

Sec. 181. Commissioner May Act.—Whenever the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge. (G. S. 8969)

Sec. 182. Malicious Petition.—Whoever for a corrupt consideration or advantage, or through malice, shall make or join in or advise the making of any false petition or report, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made, shall be guilty of a felony and punished by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars. (G. S. 8971)

Sec. 183. Restoration of Feeble-minded and Epileptics.—The state board of control may petition the court of commitment, or the court to which the venue has been transferred, for the restoration to capacity of a feeble-minded or epileptic patient. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition, the court shall restore the patient to capacity.

Upon the filing of such petition by any person other than the state board of control and upon payment by the petitioner to such board all expenses in connection with the hearing in such amount as may be fixed by such board for the transportation, board, and lodging of the patient and authorized attendants, the court shall fix the time and place for the hearing thereof, ten days' notice of which shall be given to the state board of control and to such other persons and in such manner as the court may direct. Any person may oppose such restoration. Upon proof that the patient is not feeble-minded or epileptic, the court shall order him restored to capacity at the expiration of thirty days from the date of service of such order upon the state board of control. If restoration be denied, the patient shall be remanded to the state board of control; if restoration be granted, he shall be so remanded for the thirty days aforesaid. (G. S. 8960)

Sec. 184. Appeal.—Notwithstanding the provisions of Article XVII, there shall be no appeal from an order granting or denying the petition of any person other than the state board of control for the restoration to capacity of a feeble-minded or epileptic patient, except as provided in this section. The state board of control may appeal to the district court in the manner prescribed by Article XVII for appeals by the State. Such appeal shall suspend the operation of the order appealed from until final determination of the appeal.

Any person aggrieved other than the state board of control, upon payment by him to such board of all expenses in connection with the hearing in the district court in such amount as may be fixed by such board for the transportation, board, and lodging of the patient and authorized attendants, may appeal to the district court in the manner prescribed by Article XVII. Such appeal shall not suspend the operation of the order appealed from until reversed or modified by the district court. Upon perfection of the appeal, the return shall be filed forthwith. The district court shall give the appeal precedence over every other proceeding therein, and shall hear the matter de novo, without a jury, and in a summary manner. Upon determination of the appeal, judgment shall be entered pursuant to the provisions of Article XVII. (G. S. 8960)

ARTICLE XIX.—MISCELLANEOUS.

Sec. 185. Definitions.—As used in this act, the word “representative” unless the context otherwise indicates, shall include executors, general administrators, special administrators, administrators with the will annexed, administrators de bonis non, general guardians, and special guardians. The word “minor” means a male person under the age of twenty-one years or a female person under the age of eighteen years. (G. S. 8706)

Sec. 186. Petition.—Every application shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or in the statement of facts in any petition shall invalidate any proceedings. (G. S. 8708)

Sec. 187. Venue.—Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his death; if the decedent was not a resident of this state, proceedings may be had in any county wherein he left any property or into which any property belonging to his estate may have come. Proceedings for the appointment of a guardian shall be had in the county of the ward's residence, or if he be a nonresident of this state,

proceedings may be had in any county in which his property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or ward in this state.

If proceedings are instituted in more than one county, they shall be stayed except in the county where first legally commenced until final determination of venue. If the proper venue be determined to be in another county, the court, after making and retaining a true copy of the entire file, shall transmit the original to the proper county and proceedings shall be commenced anew in such proper county. (G. S. 8694, 8695)

Sec. 188. Notice.—Whenever notice of hearing is required by any provision of this act by reference to this section, such notice shall be given once a week for three consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending; or if no such designation be made, in any legal newspaper in such county; or if the city or village of the decedent's residence is situated in more than one county, in any legal newspaper in such city or village. The first publication shall be had within two weeks after the date of the order fixing the time and place for the hearing.

At least fourteen days prior to the date fixed for the hearing, the petitioner, his attorney, or agent, shall mail a copy of the notice to each heir, devisee, and legatee whose name and address are known to him; and if the decedent was born in any foreign country, or left heirs, devisees, or legatees in any foreign country, to the consul or representative referred to in Section 68, or if there be none, to the chief diplomatic representative of such country at Washington, D. C., or to the secretary of state at St. Paul, Minnesota who shall forward the same to such representative.

Proof of such publication and mailing shall be filed before the hearing. No defect in any notice, nor in the publication or service thereof, shall invalidate any proceedings. (G. S. 8709, 8710, 8712)

Sec. 189. Erroneous Escheat.—Whenever a final decree has been made determining that any property has escheated to the State because the decedent left surviving no spouse nor kindred, or because of the failure of a devisee or legatee to receive under a will admitted to probate, or whenever application is made to prove a will disposing of property escheated to the State, upon the petition of the representative or any person interested in the estate and upon twenty days notice to the Attorney General and to such other persons as the court

may direct, the court may vacate the final decree, admit the will to probate as provided by law, and enter a final decree assigning the escheated property to the persons entitled thereto. (G. S. 8727)

Sec. 190. Escheat Returned.—After the determination of the inheritance tax, the State Auditor shall recommend in writing to the Legislature an appropriation for payment, or if the escheat was of realty, a conveyance thereof to the persons designated in such final decree. After such appropriation or authorization for conveyance by the Legislature, and upon payment of the inheritance tax, the auditor shall draw his warrant on the State Treasurer, or execute a proper conveyance of the realty, to the persons designated in such final decree. (G. S. 8728)

Sec. 191. Disclosure Proceedings.—Upon the filing of a petition by the representative or any person interested in the estate, alleging that any person has concealed, converted, embezzled, or disposed of any property belonging to the estate of a decedent or that any person has possession or knowledge of any will or codicil of such decedent, or of any instruments in writing relating to such property, the court, upon such notice as it may direct, may order such person to appear before it for disclosure. Refusal to appear or submit to examination, or failure to obey any lawful order based thereon shall constitute contempt of court. (G. S. 8804, 8805)

Sec. 192. No Abatement.—No action or proceedings commenced by a representative shall abate by reason of the termination of his authority.

Sec. 193. Murderer Disinherited.—No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent, or take by devise or bequest from him any portion of his estate. No beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such

beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued. (G. S. 8734)

Sec. 194. State Patents.—Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life. (G. S. 8721)

Sec. 195. Federal patents.—Whenever any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees", the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate insofar as the same may be applicable, shall pertain to and govern the procedure in the action provided for in this section. (G. S. 8733, 8733-1, L. 1921 c. 36, Sec. 2)

Sec. 196. Repeal.—Chapter 74, Mason's Minnesota Statutes of 1927, Chapter 74, the 1934 Supplement to Mason's Minnesota Statutes of 1927 (except laws relating to salaries and clerk hire, curative laws, G. S. 8833, 8976 as amended by Laws 1931, c. 301, 8977, 8978, 8979, 8980, 8981, 8982) G. S. 7581, Laws 1931, c. 33, Laws 1931, c. 259, and all other laws inconsistent herewith are repealed.

Sec. 197. G. S. Defined.—Unless the context otherwise indicates, the term "G. S." as used in this act means "Mason's Minnesota Statutes of 1927, Section". The term (G. S.—) or (L.— c.—) at the end of a Section indicates its origin only.

Sec. 198. Constitutionality.—If any part of this act be declared unconstitutional, no other part shall be affected thereby.

Sec. 199. Name of Act.—This act may be cited as the Minnesota Probate Code. For convenience only, the table of contents immediately preceding Article I shall be appended to and printed with this act immediately preceding Article I.

Sec. 200. Date of Effect.—This act shall take effect and be in force from and after 12:01 A. M., July 1, 1935.

Approved March 29, 1935.