THE

REVISED STATUTES,

OF THE

TERRITORY OF MINNESOTA,

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LEGISLATIVE ASSEMBLY,

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CHAPTER 53.

OF WILLS OF REAL AND PERSONAL ESTATE.

Who may devise lands, &c.

SEC. 1. Every person of full age and sound mind, being seized in his own right of any lands, or any right thereto, or entitled to any interest therein descendable, to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner that a person under no disability may do the same: *Provided*, That no such will, alteration, or revocation shall be of any validity, without the consent of the husband of such married woman, in writing annexed to such will alteration, or revocation, and attested and subscribed, and to be proven and recorded in like manner as a last will and testament is required to be witnessed, proven, and recorded.

SEC. 2. Every devise of land in any will hereafter made, shall be

Construction of devise.

construed to convey all the estate of the devisor therein which he could lawfully devise, unless it shall clearly appear by the will, that the devisor intended to convey a less estate.

Estate in lands acquired after making will, how to pass.

SEC. 3. Any estate, right, or interest in lands acquired by the testator after the making of his will, shall pass thereby in like manner as if possessed at the time of making the will, if such shall manifestly appear by the will, to have been the intention of the testator.

Who may bequath personal estate.

SEC. 4. Every person of full age and sound mind, may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his rights thereto and interest therein; and all such estate not disposed of by the will, shall be administered as intestate estate.

How wills to be executed.

SEC. 5. No will made within this territory, except such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way effect the same, unless it be in writing and signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in the presence of the testator by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Nuncupative wills, how made, &c.

SEC. 6. No nuncupative will shall be good when the estate thereby bequeathed shall exceed the value of one hundred and fifty dollars, that is not proved by the oath of three witnesses at least, that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; nor unless such nuncupative will were made at the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will, except when such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

How same proved.

SEC. 7. After six months shall have passed after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words, or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken; nor shall letters testamentary or probate of any nuncupative will pass the seal of any probate court, until fourteen days at least after the decease of the testator, be fully expired; nor shall any nuncupative will be at any time approved and allowed, unless process shall first have been issued to call in the widow and other person or persons principally interested, if resident within the territory, to the end that they may contest the same if they please.

Soldiers and mariners may dispose of wages, &c.

Nothing herein contained shall prevent any soldier being in actual service, nor any mariner being on ship board, from disposing of his wages and other personal estate by a nuncupative will.

When legacy, &c., to subscribing witness void.

SEC. 8. All beneficial devises, legacies, and gifts whatsoever, made or given in any will, to a subscribing witness thereto, shall be wholly void, unless there be two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

When share of estate to be saved to subscribing witness

SEC. 9. But if such witness to whom any beneficial devise may have been made or given, would have been entitled to any share of the estate of the testator, in case the will was not established; then so much of the share that would have descended or been distributed to such witness, as will not exceed the devise or bequest made to him in the will,

shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

Revocation of wills.

SEC. 10. No will, nor any part thereof, shall be revoked, unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence, and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing signed, attested, and subscribed in the manner provided in this chapter for the execution of a will; excepting only that nothing contained in this section, shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of testator.

How will may be deposited with judge of probate.

SEC. 11. Any will in writing being inclosed in a sealed wrapper, and having indorsed thereon the name of the testator, and his place of residence, and the day when, and the person by whom it is delivered, may be deposited by the person making the same, or by any person for him, with the judge of probate in the county where the testator lives, and the judge of probate shall receive and safely keep such will, and give a certificate of the deposit thereof.

How such will kept and disposed of.

SEC. 12. Such will shall during the life time of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after the death of the testator, and at the first probate court after notice thereof, it shall be publicly opened by the judge of probate, and be retained by him.

Judge of probate to give notice of his possession of will.

SEC. 13. The judge of probate shall give notice of such will being in his possession to the executor therein appointed, if there be one, otherwise to the persons interested in the provisions of the same, to be presented for probate in such other court.

Others having custody of will, to deliver same in thirty days.

SEC. 14. Every person other than the judge of probate, having the custody of any will, shall within thirty days after he has a knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

Within what time executor to present will to probate court.

SEC. 15. Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has a knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will shall have been otherwise deposited with the judge of probate, and shall within the period above mentioned signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

Liability for neglect of duties in certain cases.

SEC. 16. Every person who shall neglect to perform any of the duties required in the two last preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and shall be liable to each and every person interested in such will, for the damages which each person may sustain thereby.

When person having custody of will may be committed for neglect to deliver same to probate court.

SEC. 17. If any person having the custody of any will, after the death of the testator, shall, without reasonable cause neglect to deliver the same to the probate court having jurisdiction of it, after he shall have been duly notified by such court for that purpose, he may be committed to the jail of the county, by warrant issued by such court, and there be kept in close confinement, until he shall deliver the will as above directed.

Notice of time and place of proving will.

SEC. 18. When any will shall have been delivered into or deposited in any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publica-

tion under an order of such court, in such newspaper printed in this territory, as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice shall be given as herein provided.

When probate may be granted on testimony of one witness.

SEC. 19. If no person shall appear to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if such witness shall testify that such will was executed in all the particulars as required in this chapter, and that the testator was of a sound mind at the time of the execution thereof.

When other witnesses may be admitted to prove will.

SEC. 20. If none of the subscribing witnesses shall reside in this territory at the time appointed for proving the will, the court may in its discretion admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as the evidence of the execution of the will may admit proof of the handwriting of the testator and of the subscribing witnesses.

Effect of proof and allowance of will in probate court.

SEC. 21. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court, as provided in this chapter, or on appeal in the district court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

Wills proved and allowed in other states, &c.

SEC. 22. All wills, which shall have been duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator shall have real and personal estate, on which such will may operate in the manner mentioned in the following sections.

When copy of will and probate produced, notice to be given.

SEC. 23. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

If will allowed, copy to be filed and recorded, &c.

SEC. 24. If, on hearing the case, it shall appear to the court that the instrument ought to be allowed in this territory, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

Letters testamentary, &c., on such will.

SEC. 25. When any will shall be allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration, with the will annexed, and such letters testamentary or letters of administration shall extend to all the estate of the testator in this territory; and such estate, after payment of his just debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estates in this territory, belonging to persons who are inhabitants of any other territory, state, or country.

Provision for children born after making of will.

SEC. 26. When any child shall be born after the making of his parent's will, and no provisions shall be made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate, and the share of such child shall be assigned to him, as provided by law in case of intestate estate, unless it shall be apparent from the will that it was the intention of the testator that no provision should be made for such child.

When provision for child omitted by mistake, &c.

SEC. 27. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child, and it shall appear that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same

share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

From what estate such provision to be taken.

SEC. 28. When any share of the estate of a testator shall be assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as shall be necessary shall be taken from all the devisees or legatees, in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment may be adopted in the discretion of the probate court.

When the issue of deceased legatee, &c., to take estate.

SEC. 29. When a devise or legacy shall be made to any child, or other relation of the testator, and the devisee or legatee shall die before the testator, leaving issue, who shall survive the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition shall be made or directed by the will.

Estate of testator liable to payment of debts, &c., allowance for maintenance of widow, &c.

SEC. 30. All the estate of the testator, real and personal, shall be liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate, or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate shall be assigned to them.

Estate appropriated by will to payment of debts, &c.

SEC. 31. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, or so far as the same may be sufficient.

When provision insufficient, &c.

SEC. 32. If the provisions made by the will, or the estate appropriated shall not be sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real or personal, as shall not have been disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

Estate given by will liable to payment of debts, &c.—when certain devises, &c. to be exempted.

SEC. 33. The estate, real or personal, given by will to any devisees or legatees, shall be held liable to the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies, and the persons to whom they shall be made, may be exempted, if it shall appear to the court necessary, in order to carry into effect the intention of the testator, if there shall be other sufficient estate.

Estates given by will, and liable for payment of debts, &c., may be retained by executor until assignment, &c.

SEC. 34. When the estate given by any will shall be liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child, or of the issue of a child, not provided for in the will, as hereinbefore provided, the executor shall have a right to retain possession of the same until such liability shall be settled by order of the probate court; and until the devises and legacies so liable, shall be accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

When devisee or legatee to hold subject to liability to contribute, &c.

SEC. 35. All the devisees and legatees who shall, with the consent of the executor, or otherwise, have possession of the estate given to them by will, before such liability shall be settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall be held to contribute, according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him may have been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child, or the issue of a child, omitted in the will; and the persons who may, as heirs, have received the estate not disposed of by the will, as provided in this chapter, shall be liable to contribute in like manner as the devisees or legatees.

When liable for loss in case of insolvency of person liable to contribute.

SEC. 36. If any of the persons liable to contribute, according to the provisions of the preceding section, shall be insolvent, and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency in proportion to, and to the extent of, the estate they may have received; and if any of the persons so liable to contribute shall die before having paid his share, the claim shall be valid against his estate, in the same manner as if it had been his proper debt.

Settlement of liabilities by decree of probate court.

SEC. 37. The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much and in what manner each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy in any proper action or complaint in law or equity.

Wills and copies, how made evidence

SEC. 38. Every will, when proved as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal; and every will so certified, and the record thereof or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this territory, without further proof.

Attested copy to be recorded in registry of deeds.

SEC. 39. An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands thereby devised, are situated.

Construction of the term "executor."

SEC. 40. The word "executor" in this and subsequent chapters, shall be construed to include an administrator with the will annexed.