

THE  
STATUTES AT LARGE  
OF THE  
STATE OF MINNESOTA

COMPRISING  
THE GENERAL STATUTES OF 1866  
*As amended by subsequent Legislation to the close of the Session of 1873*  
TOGETHER WITH  
*ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873*

WITH REFERENCES TO  
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER  
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED  
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,  
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE  
CONSTITUTION OF THE STATE OF MINNESOTA

*VOL. I.*

---

COMPILED AND ARRANGED BY  
A. H. BISSELL  
ATTORNEY-AT-LAW

---

CHICAGO  
CALLAGHAN AND COMPANY

1873

## CHAPTER XXXIII. OF TITLE BY DESCENT.

(This Chapter is Chapter XLVI. of the Statutes of 1866.)

## SEC.

1. Lands shall descend, how.
2. Illegitimate child considered an heir, when.
3. Estate of illegitimate child shall descend, how.
4. Degrees of kindred, how computed—kindred of half-blood shall inherit, how.
5. Advancement, how considered.
6. Advancement shall exclude heir from further portion, when.

## SEC.

7. Advancement, how considered.
8. Gifts and grants deemed advancements, when.
9. Value of advancement, how estimated.
10. Advancement, how considered, if heir dies before the intestate.
11. Construction of this chapter.
12. Inheritance or succession "by right of representation" defined—posthumous children.

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

*First.* In equal shares to his children, and to the lawful issue of any deceased child by right of representation; and if there is no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise they shall take according to the right of representation.

*Second.* If he leaves no issue, his estate shall descend to his widow during her natural life, and after her decease to his father; and if he leaves no issue or widow, his estate shall descend to his father.

*Third.* If he leaves no issue nor father, his estate shall descend to his widow during her natural life, and after her decease in equal shares to his brother and sister by right of representation: *provided*, that if he leaves a mother she shall take an equal share with his brothers and sisters.

*Fourth.* If he leaves no issue, nor widow, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister, by right of representation: *provided*, that if he leaves a mother she shall take an equal share with his brothers and sisters.

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

*Sixth.* If the intestate leaves no issue, nor widow, and no father, mother, brother, or sister, his estate shall descend to his next of kin in equal degree; excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred to those claiming through an ancestor more remote: *provided*, however,

*Seventh.* If any person dies leaving several children, or leaving one child, and

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

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

*Ninth.* If the intestate leaves a widow and no kindred, his estate shall descend to such widow.

*Tenth.* If the intestate leaves no widow nor kindred, his estate shall escheat to the people of this state.

SEC. 2. *Illegitimate child, when considered an heir.*—Every illegitimate child shall be considered as an heir of the person who shall, in writing, signed in the presence of a competent witness, acknowledge himself to be the father of such child, and shall, in all cases, be considered as an heir of his mother, and shall inherit his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents intermarry and have other children, and his father, after such marriage, acknowledges him as aforesaid, or adopts him into his family, in which case such child and all the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the other shall inherit his estate, and he theirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the said children, as provided hereinbefore, in like manner as if all had been legitimate.

SEC. 3. *Estate of illegitimate child shall descend, how.*—If any illegitimate child dies intestate, without lawful issue, his estate shall descend to his mother; or in case of her decease, to her heirs at law.

SEC. 4. *Degrees of kindred, how computed.*—The degrees of kindred shall be computed according to the rules of the civil law; and 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 gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

SEC. 5. *Advancement, how considered.*—Any estate, real or personal, given by the intestate in his lifetime as an advancement to any child, or other lineal descendant, shall be considered as a part of the estate of the intestate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the estate of the intestate.

SEC. 6. *When advancement to exclude heir from further portion.*—If the amount of such advancement exceeds the share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement, and if the

amount so received is less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

SEC. 7. *Advancement, how estimated.*—If such advancement is made in real estate, the value thereof shall, for the purposes mentioned in the preceding section, be considered a part of the real estate to be divided; and if it is in personal estate, it shall be considered as a part of the personal estate; and if, in either case, it exceeds the share of real or personal estate respectively, that would have come to the heir so advanced, 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 those of the other heirs who are in the same degree with him.

SEC. 8. *Gifts and grants to be deemed advancements, when.*—Gifts and grants shall be deemed to have been made in advancement only when they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such, by the child or other descendant.

SEC. 9. *Value of advancement, how estimated.*—If 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 party receiving it, it shall be considered as of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given, as nearly as the same can be ascertained.

SEC. 10. *Advancement, how considered if heir dies before the intestate.*—If any child or other lineal descendant so advanced dies before the intestate leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced in like manner, as if the advancement had been made directly to them.

SEC. 11. *Construction of this chapter.*—Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of an estate, by deed or will.

SEC. 12. *Inheritance or succession by right of representation defined.*—Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parents.