

CHAPTER XLIV.

OF ACTIONS IN SPECIAL CASES.

TIT. I.

- SEC.
1. Chapter embraces all corporations and associations.
 2. Foreign corporations may prosecute, how.
 3. Limitation on actions by foreign corporations.
 4. Actions against corporations, how commenced.
 5. Corporations may be restrained by injunction.
 6. Injunction may issue, when.
 7. Power of district court over officers of corporations.
 8. Preceding section, how construed.
 9. Stock, etc., of corporation, sequestered, when.
 10. Property, how distributed on final judgment.
 11. When corporations may be adjudged dissolved.
 12. Banking corporations enjoined, when.
 13. Injunction, how issued.
 14. Receiver may be appointed.
 15. Who may be made parties.
 16. Creditor may file supplemental complaint, when.
 17. Action by creditor, when brought.
 18. Proceedings in such action.
 19. In case of insolvency, court may proceed, how.
 20. Proceedings on final judgment.
 21. Stockholders liable, when.
 22. Court to determine liabilities of officers and stockholders.
 23. Court may order publication of notice to creditors, when.

TIT. II.

24. What causes of action survive.
25. Action, in case of death of party injured, maintainable, when and by whom—rule of damages in such case.
26. Judgment against administrator, evidence of assets, when.
27. Real estate of deceased not bound by judgment against executor, *et al.*
28. Executor, *de son tort*, how liable.
29. Foreign executor may bring action in this state, how.
30. Next of kin liable for debts, when.
31. Liable in what amount.
32. May compel contribution.
33. Legatees liable for debts, when.
34. Costs, how apportioned.
35. Judgment, how discharged.
36. Heirs and devisees, to what extent liable for debts.
37. Heirs not liable, when.
38. Limitation of last section.
39. Heirs liable for debts, in what proportion—action must be brought within one year.

SEC.

40. Devisees and legatees, how liable to contribute.
41. New parties may be joined in action, when.
42. Issue in action, how formed and determined.
43. Estate of deceased heir liable, when.
44. Contribution.
45. Parties liable shall pay debts, in what order.
46. No preference between debts of same class.
47. Defenses by next of kin, *et al.*
48. Judgment in what amount rendered, in certain cases.
49. Payment of debt of prior class may be proved.
50. Real property descended, liable, when—judgment is prior lien on such property.
51. Heir personally liable, when.
52. Contribution among heirs and devisees.
53. Devisees personally liable, when.
54. Liable for deficiency.
55. Limitation of last two sections.
56. Devisees liable to action same as heirs.
57. Child born after making of will, how provided for.
58. Provisions of last two sections apply to every witness to a will who is also devisee.

TIT. III.

59. Boats or vessels, for what liable.
60. Action against boat or vessel, how brought.
61. Complaint shall show, what.
62. Clerk shall issue warrant.
63. Proceedings on return of warrant.
64. Who may appear and answer complaint.
65. Bond may be given and boat discharged.
66. Court to make order of sale, when.
67. Execution to issue against obligors on bond, when.
68. Owner, *et al.*, summoned to show cause, when.
69. Summons in such case shall show, what.
70. Affidavit to accompany summons.
71. Answer of party summoned may contain, what.
72. Pleadings and trial.
73. Justices of the peace have jurisdiction, when.
74. Proceedings before justice, how governed.
75. Warrant issued by justice returnable forthwith—proceedings on return—bond may be given and boat released.
76. Warrants, how served and returned.
77. Power of officer under order of sale.
78. Continuance granted, when—not to operate to discharge boat.
79. Plaintiff not entitled to continuance.
80. Who may take appeal.
81. Actions to be commenced, when.

TIT. IV.

SEC.

- 82. Claimant obtaining judgment, entitled to be put in possession of office, books, etc.
- 83. All claimants may be joined in one action.
- 84. Judgment in actions under this chapter—court may impose fine.
- 85. Corporation adjudged dissolved, when.
- 86. Costs, how collected.
- 87. Court may grant injunction and appoint receiver.
- 88. Record of judgment roll to be filed with secretary of state.
- 89. Action against corporation to annul act of incorporation, brought by attorney general, when.
- 90. Action to vacate charter, brought, when.
- 91. Action against party usurping or forfeiting office, brought, when.
- 92. Action to vacate letters patent, brought, when.
- 93. Name of person complaining to be joined as party with the state.

SEC.

- 94. Action for usurping office, complaint shall contain, what.

TIT. V.

- 95. Official bonds, security for what.
- 96. Who may bring action on official bond.
- 97. Leave to bring action to be obtained of district court.
- 98. Effect of judgment for one delinquency.
- 99. Execution, how indorsed.
- 100. Actions for fines and forfeitures, who may bring.
- 101. Action for penalty, how brought.
- 102. Judgment obtained by collusion no bar to action by another person.
- 103. Fines and forfeitures, where paid—place of trial of actions for property forfeited to state.
- 104. What fines and forfeitures, prosecuted by indictment—justice of the peace to have jurisdiction, when—punishment.

TIT L E I.

OF ACTIONS RESPECTING CORPORATIONS.

(This Title is Chapter LXXVI. of the Statutes of 1866.)

SECTION 1. *Title (chapter) embraces all corporations and associations.*—This title (chapter) embraces all corporations, including in such designation all associations having any corporate rights, whether created by special acts or under general laws.

SEC. 2. *Foreign corporations may proceed, how.*—A foreign corporation may prosecute in the courts of this state, in the same manner as corporations created under the laws thereof.

Becht v. Harris et al., 4 Minn. 504.

SEC. 3. *Limitation on actions by foreign corporations.*—A foreign corporation cannot maintain an action in this state upon an obligation or liability arising out of, or in consideration of an act which is contrary to the law or policy of the state, or which is thereby forbidden in respect to corporations or associations therein, whose general business is similar to that of such foreign corporation.

SEC. 4. *Actions against corporations, how commenced.*—Actions may be commenced against corporations whether created under the laws of this state or any other state or country, except as otherwise expressly provided, in the same manner as other civil actions, and where service of summons is made according to the statute, the plaintiff may proceed thereupon in the same manner as in civil actions against natural persons.

SEC. 5. *Corporation may be restrained by injunction.*—Upon a complaint filed under the direction of the attorney general in any district court, such court has power to restrain, by injunction, any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business not authorized by the act by or under which such corporation was created, and to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law.

SEC. 6. *Injunction may issue, when.*—Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendant complained

of, has usurped, exercised, or claimed any franchise, privilege, liberty, or corporate right not granted to it.

SEC. 7. *Power of district court over officers of corporations.*—The district court may compel the officers of any corporation

First. To account for their official conduct in the management and disposition of the funds and property committed to their charge ;

Second. May decree and compel payment by them, to the corporation which they represent, and to its creditors of all sums of money, and of the value of all property which they have acquired to themselves, or transferred to others, or have lost or wasted by any violation of their duties as such officers ;

Third. May suspend any such trustee, or other officer from exercising his office whenever it appears that he has abused his trust ;

Fourth. May remove any trustee, or officer from his office, upon proof or conviction of gross misconduct ;

Fifth. May direct, if necessary, a new election to be held, by the body or board duly authorized for that purpose, to supply any vacancy created by such removal ;

Sixth. May set aside all alienations of property made by the trustees, or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made ; and

Seventh. May restrain and prevent any such alienation in cases where it is threatened, or there is good reason to apprehend that it is intended.

SEC. 8. *Preceding section, how construed.*—Whenever any visitorial powers over any corporation are vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to impair the powers so vested.

SEC. 9. *Stock, etc., of corporation sequestered, when.*—Whenever a judgment is obtained against any corporation incorporated under the laws of this state, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment or his representatives, the district court within the proper county may sequester the stock, property, things in action, and effects of such corporation, and appoint a receiver of the same.

SEC. 10. *Property, how distributed on final judgment.*—Upon a final judgment on any such complaint, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively.

SEC. 11 (AS AMENDED BY ACT OF FEBRUARY 27, 1871). *When corporation may be adjudged dissolved.*—Whenever any railroad company doing business in this state, shall charge, demand, or receive unreasonable rates for the transportation of freight or passengers over any portion of its line of railroad, or violate any of the provisions of its act or acts of incorporation, or any other law binding upon such corporation, or if any incorporated company remain insolvent for one year, or for one year neglects or refuses to discharge its notes or other evidence of debt, or for one year suspends the lawful business of such corporation, such company or corporation shall be deemed to have forfeited the rights, privileges, and franchises granted by any act or acts of incorporation, or acquired under the laws of this state, and shall

be adjudged to be dissolved, and it is hereby made the duty of the attorney general to make complaint in the district court in any county in which such company or corporation may be doing business, against any company or corporation who shall in any manner violate any of the provisions of this section, or commit any of the acts herein recited, and upon the trial in said court or any court to which the same may be transferred, if it shall be established, by the finding of the court or the verdict of the jury, that any of the acts herein recited have been committed by such corporation or company, the said court shall render judgment of forfeiture and the dissolution of such corporation, and may appoint receivers as in other cases provided for in this act. Upon the trial of any action commenced against any railroad company or corporation for charging, demanding, or receiving unreasonable rates for the transportation of freights or passengers, under the provisions of this section, the court or jury before whom the same is tried, shall find specially whether such company or corporation has charged, demanded, or received unreasonable rates for such transportation.

S. L. 1871, 90.

SEC. 12. *Banking corporation enjoined, when.*—Whenever any corporation having banking powers, or the power to make loans on pledges or deposits, or authorized by law to make insurances, becomes insolvent, or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any of the provisions of its act or acts of incorporation, or of any other law binding on such corporation, the district court may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges, and franchises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering to any person, any of the moneys, property, or effects of such corporation, until such court shall otherwise order.

SEC. 13. *Injunction, how issued.*—Such injunction may be issued on the complaint of the attorney general, in behalf of the state, or on the complaint of any creditor or stockholder of such corporation. Whenever such injunction issues against any bank for any violation of its charter, on the complaint of any creditor, the court shall proceed to final judgment in such case, and adjudge a forfeiture if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation, and in all such cases the attorney general, or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued if either of them so appear and prosecute the same.

SEC. 14. *Receiver may be appointed.*—The court in any stage of the proceedings may appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for, and recover the debts and demands that are due, and the property that belongs to such corporation, who shall in all respects be subject to the control of the court.

SEC. 15. *Who may be made parties.*—If such application is made by a creditor of any corporation, whose directors or stockholders are made liable by law for the payment of such debts in any event or contingency, such debtors or stockholders, or any of them, may be made parties to the action, either at the time of filing the complaint or in any subsequent stage of the proceedings, whenever it becomes necessary to enforce such liability.

SEC. 16. *Creditor may file supplemental complaint, when.*—If any creditor of a corporation desires to make such directors or stockholders parties to the action, after a judgment therein against the corporation, he may do so on filing a supplemental complaint against them, founded upon such judgment; and if such decree was rendered in a proceeding instituted by the attorney general, such creditor may, on his application, be made complainant therein, and may in like manner make the directors and stockholders, sought to be charged, defendants in such action.

SEC. 17. *Action by creditor when brought.*—Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

SEC. 18. *Proceedings in such action.*—The court shall proceed thereon as in others cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

SEC. 19. *In case of insolvency, court may proceed, how.*—If on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

SEC. 20. *Proceedings on final judgment.*—Upon a final judgment in any such action, to restrain a corporation, or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its creditors.

SEC. 21. *Stockholders liable, when.*—In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

SEC. 22. *Court to determine liabilities of officers and stockholders.*—If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases.

SEC. 23. *Court may order publication of notice to creditors, when.*—Whenever any action is brought against any corporation, its directors, or other superintending officers or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action within a reasonable time, not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

TITLE II.

OF ACTIONS BY OR AGAINST EXECUTORS, ADMINISTRATORS, AND HEIRS.

(This Title is Chapter LXXVII. of the Statutes of 1866.)

SEC. 24 (1). *What causes of action survive.*—A cause of action arising out of an injury to the person, dies with the person of either party, except as provided in the next section. All other causes of action, by one against another, whether arising on contract or not, survive to the personal representatives of the former, and against the personal representatives of the latter.

Wilkinson et al. v. Est of Winne, 15 Minn. 159.

SEC. 25 (2). *Action in case of death of person injured, maintainable, when and by whom—rule of damages in such cases.*—When death is caused by the wrongful act or omission of any party, the personal representatives of the deceased may maintain an action, if he might have maintained an action, had he lived, for an injury caused by the same act or omission; but the action shall be commenced within two years after the act or omission by which the death was caused; the damages thereon cannot exceed five thousand dollars, and the amount recovered is to be for the exclusive benefit of the widow and next of kin, to be distributed to them in the same proportions as the personal property of the deceased person.

Boutiller Adm. v. Steamboat Milwaukie, 8 Minn. 97.

SEC. 26 (3). *Judgment against administrator evidence of assets, when.*—When a judgment is taken against an administrator or executor, upon failure to answer, it is not to be deemed evidence of assets in his hands, unless it appears that the complaint alleged assets, and was personally served on him.

SEC. 27 (4). *Real estate of deceased not bound by judgment against executor.*—The real property which belonged to a deceased person is not bound or in any way affected by a judgment against his executors or administrators, nor liable to be sold by virtue of an execution issued upon such judgment.

SEC. 28 (5). *Executor, de son tort, how liable.*—No person is liable to an action as executor of his own wrong, for having taken, received, or interfered with the property of a deceased person; but is responsible to the executor, as general or special administrator of such deceased person, for the value of all property so taken or received, and for all damages caused by his acts, to the estate of the deceased.

SEC. 29 (6). *Foreign administrator may bring action in this state, how.*—Any administrator or executor duly appointed in any other state or country, may commence and prosecute any action in any court of this state, in his capacity of executor or administrator, in like manner and under like restrictions as a resident may do: *provided*, that before commencing any action, an authenticated copy of his appointment as such executor or administrator is filed in the probate court of the county in which such action is to be commenced.

SEC. 30 (7). *Next of kin liable for debts, when.*—The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received out of such estate, or so much thereof as may be necessary to satisfy his debt; the action may be against all the next of kin jointly, or against any one or more of them.

SEC. 31 (8). *Liable in what amount.*—In such action, the plaintiff may recover the value of all the assets received by all the defendants in the action, if necessary to satisfy his demand; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction can be made from such amount, on account of there being other relatives to whom assets have also been delivered.

SEC. 32 (9). *May compel contribution.*—Any one of the next of kin, against whom a recovery is had pursuant to the last section, may maintain an action against all the other relatives of the testator, to whom any such assets have been paid jointly, or any one or more of them, for a just and equal contribution, and may recover of each defendant such amount as bears the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bears to the value of all the assets delivered to all the relations of the deceased.

SEC. 33 (10). *Legatees liable for debts, when.*—Legatees are liable to an action by a creditor of the testator, to recover the value of a legacy received by them. The action may be brought against all, or any one or more of the legatees. In such action the plaintiff cannot recover unless he shows:

First. That no assets were delivered by the executor or administrator of the deceased, to his heirs or next of kin; or,

Second. That the value of such assets has been recovered by some other creditor; or,

Third. That such assets are not sufficient to satisfy the demands of the plaintiff; and in the last case he can recover only the deficiency.

The whole amount which the plaintiff can recover shall be apportioned among all the legatees of the testator, in proportion to the amount of their legacies respectively, and his proportion can only be recovered of each legatee.

SEC. 34 (11). *Costs, how apportioned.*—If an action is brought against several next of kin jointly, or against several legatees jointly, for assets delivered to them, and a recovery had against them, the costs of such action shall be apportioned among the several defendants, in proportion to the amount of the damages recovered against each of them.

SEC. 35 (12). *Judgment, how discharged.*—In case of a judgment against several next of kin of a testator, or against several legatees, the payment on satisfaction of the amount recovered against any one of the defendants discharges such defendant, and exonerates him and his property from the judgment.

SEC. 36 (13). *Heirs and devisees, to what extent liable for debts.*—Heirs and devisees are liable to an action by a creditor of a deceased person, to recover the debt, to the extent of the value of any real property inherited by, or devised to them; if such action is against the heirs, all the heirs who are liable shall be made parties to the action.

SEC. 37 (14). *Heirs not liable, when.*—But the heirs are not liable for the debt unless it appears that the personal assets of the deceased were not sufficient to discharge it; or that after due proceedings before the probate court, the creditor is unable to collect the debt from the personal representatives of the deceased, or from his next of kin, or legatee; if the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, as mentioned in the last section, the heirs of such deceased person are liable for the residue.

SEC. 38 (15). *Limitation of last section.*—But the last section does not affect the liability of heirs for a debt of their ancestors, where such debt was by his will expressly charged exclusively on the real property descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

SEC. 39 (16). *Heirs liable for debts, in what proportion—action must be brought within one year.*—When the heirs, devisees, or legatees have received real or personal estate, and are liable for any debts under the provisions of law, they shall be liable in proportion to the estate they may have respectively received; and a creditor shall have a right to recover his claim against a part or all of such heirs, devisees, or legatees, to the amount of the estate they have respectively received; but no action shall be maintained unless commenced within one year from the time the claim is allowed or established.

SEC. 40 (17). *Devisees and legatees, how liable to contribute.*—If by the will of the deceased any part of his estate, or any devisees or legatees, shall be made exclusively liable for the debt, the devisees or legatees shall be liable to contribute among themselves [only] according to the will.

SEC. 41 (18). *New parties joined to action, when.*—If all the persons liable for the payment of any such debt shall not be included in the action as defendants, the action shall not thereby be in any way dismissed or barred, but the court before which it is pending may order any other parties brought in, by any proper process, and may allow such amendments as may be necessary to make them defendants, on such terms as the court shall prescribe.

SEC. 42 (19). *Issue in action, how formed and determined.*—If more than one person is liable as aforesaid, and the creditor brings an action against all or a part of the persons so liable, and the persons liable dispute the debt or the amount claimed, the district court may order an issue to be formed, and direct that the amount may be ascertained by a jury, and said court shall ascertain and determine how much each is liable to pay, and may award execution therefor.

SEC. 43 (20). *Estate of deceased heir liable, when.*—If any of the heirs, devisees, or legatees dies without having paid his just share of the debts, his estate shall be liable therefor, as for his own debt, to the extent to which he would have been liable if living.

SEC. 44 (21). *Contribution.*—When any of the heirs, devisees, or legatees pays more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same.

SEC. 45 (22). *Parties liable shall pay debts in what order.*—In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as herein provided, they shall give preference in the payment of the same, and are liable therefor, in the following order:

First. Debts entitled to a preference under the laws of the United States.

Second. Judgments against the ancestor or testator, according to the priority thereof respectively.

Third. Debts due to other creditors.

SEC. 46 (23). *No preference between debts of same class.*—No preference can be given by any next of kin, legatee, heir, or devisee, to one debt over another of the same class, except one specified in the second subdivision of the last section; nor is a debt, due and payable, entitled to a preference over a debt not due; nor does the

commencement of an action against any next of kin, legatee, heir, or devisee for the recovery of a debt, entitle it to preference over others of the same class.

SEC. 47 (24). *Defenses by next of kin, et al.*—The next of kin, legatees, heirs, and devisees may show that there are debts of a prior class unsatisfied; or that there are unpaid debts of the same class with that on which the action is brought; and if it appears that the value of the personal property delivered to them, or of the real estate descended or devised to them, does not exceed the debts of a prior class, judgment shall be rendered in their favor.

SEC. 48 (25). *Judgment, in what amount rendered in certain cases.*—If the personal property delivered to such next of kin or legatee, or if the real estate, descended or devised to such heir and devisee, exceeds the amount of debts which are entitled to a preference over the debt for which the action is brought, judgment shall be rendered against them only for such a sum as bears a just proportion to the other debts of the same class with that on which the action is brought.

SEC. 49 (26). *Payment of debt of prior class may be proved.*—If debt of a class prior to that on which the action is brought, or of the same class, is paid by any next of kin, legatees, heirs, or devisees, they may prove such payment, and the amount of the debt so paid shall be estimated in ascertaining the amount to be recovered, in the same manner as if such debts were outstanding and unpaid, as prescribed in the last two sections.

SEC. 50 (27). *Real property descended, liable, when.*—If it appears that the real property so descended was not alienated by the heir at the time of the commencement of the action, or if the heir confesses the claims and shows what real property has descended to him, the court shall order that the debt of the plaintiff, or the proportion thereof which he is entitled to recover, be levied of the real property so descended, and not otherwise; and every judgment rendered in such action has preference as a lien on the real property so descended, to any judgment obtained against such heir personally for a debt on demand in his own right.

SEC. 51 (28). *Heir personally liable, when.*—When it appears in the action, that before the commencement thereof, the heir has alienated the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so alienated, and judgment may be rendered therefor, and execution awarded, as in actions for his own debts. But no real property, aliened in good faith by an heir, before action commenced against him, is liable to execution, or in any manner affected by a judgment against him.

SEC. 52 (29). *Contribution among heirs and devisees.*—In actions brought against several heirs jointly, or several devisees jointly, the amount which the plaintiff recovers shall be apportioned among all the heirs of the ancestor, or among all the devisees of the testator, in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or legatee.

SEC. 53 (30). *Devisees personally liable, when.*—Devisees made liable, by the foregoing provisions of this title (chapter), to the creditor of their testator, are not so liable unless it appears that his personal assets, and the real property of the testator descended to his heirs, were insufficient to discharge the debt; or unless it appears that after due proceedings before the probate court, the creditor has been unable to recover the debt, or any part thereof, from the personal representatives of the testator, or from his next of kin, or legatees, or from his heirs.

SEC. 54 (31). *Liable for deficiency.*—In either of the cases specified in the

last section, the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, and the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees and heirs, may be recovered of the devisees of such testator, to the extent of the real property devised to them respectively.

SEC. 55 (32). *Limitation of last two sections.*—But the last two sections do not affect the liability of devisees, for a debt of their testator, where such debt was, by his will, expressly charged exclusively upon the real property devised, or by the terms of the will made payable exclusively by such devisee, or made payable out of the real property devised, before resorting to the personal property, or to any other real property descended or devised.

SEC. 56 (33). *Devisees subject to action, same as heirs.*—The provisions of this chapter, with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to actions and proceedings against devisees, and they must in like manner be jointly sued.

SEC. 57 (34). *Child, born after making of will, how provided for.*—In cases where, by the provisions of any statute, a child, born after the making of a will, is entitled to succeed to a portion of the testator's real and personal property, such child shall have the same rights and remedies to compel a distribution of the personal property, and a partition of the real property, as are provided for next of kin, and for heirs, and shall in all respects be liable in the same manner, and to the same extent, to the creditors of his ancestor in respect to the personal property delivered to him, and the real property descended to him, as is herein prescribed in relation to the next of kin, and heirs; and such child may recover of the legatees and devisees who may have received or taken any real or personal property of the testator, the share or portion thereof to which he may be entitled.

SEC. 58 (35). *Provisions of last two sections apply to every witness to a will, who is also devisee.*—The provisions of the last two sections, relative to a child born after the making of a will, apply equally to every person, who being a witness to a will, is entitled, by the provisions of any statute, to recover a portion of the real or personal property of the testator from the legatees and devisees named in such will.

TITLE III.

OF ACTIONS AGAINST BOATS AND VESSELS.

(This Title is Chapter LXXXIII. of the Statutes of 1866.)

SEC. 59 (1). *Boats or vessels, for what liable.*—Every boat or vessel used in navigating the waters of this state is liable:

First. For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel, on account of work done, or services rendered on board, or for the benefit of such boat or vessel, or on account of labor done, or materials furnished by mechanics, tradesmen, or others, in and for building, repairing, fitting out, furnishing, or equipping the same;

Second. For all sums due for wharfage or anchorage of such boat or vessel within this state ;

Third. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract touching the transportation of persons or property, entered into by the master, owner, agent, or consignee, of the boat or vessel on which such contract is to be performed ; and,

Fourth. For all injuries done to persons or property by such boat or vessel : *provided, however,* that in no case shall any boat or vessel be liable, as aforesaid, for any debt contracted on account of work done, or services rendered on board, or for the benefit of such boat or vessel, until the contract therefor is fully and duly performed on the part of the person engaging to perform the same.

To what contracts the statute applies, *Steamer Falls City v. Kerr*, 1 Minn. 390 ; *Steamboat Reville v. Lendreet*, 2 Minn. 175 ; *Irvine v. Steamboat Hamburg*, 3 Minn. 192. Jurisdiction of the state courts under the statute, *Reynolds v. Steamboat Favorite*, 10 Minn. 242 ; *Morin v. Steamboat F. Sigel*, *ib.* 250 ; *Griswold v. Steamboat Otter*, 12 Minn. 465.

SEC. 60 (2). *Action against boat or vessel, how brought.*—Whoever wishes to institute an action against a boat or vessel, shall file his complaint against such boat or vessel by name, with the clerk of the district court of the county in which such boat or vessel may be.

Action lies against boat by name, *Boutiller Adm v. Steamboat Milwaukee*, 8 Minn. 97. Title how transferred, *McMahon v. Davidson*, *imp.* 12 Minn. 357.

SEC. 61 (3). *Complaint shall show, what.*—The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued ; it shall be verified by the affidavit of the plaintiff, or some credible person for him.

Statute must be substantially if not literally complied with, *Billis v. Steamboat Henrietta*, 1 Minn. 252. Facts only should be pleaded, and in this case special contract treated as surplusage, *Steamboat War Eagle v. Nutting*, *ib.* 256.

SEC. 62 (4). *Clerk shall issue warrant.*—Whenever any such complaint is filed in the office of the clerk of the district court, he shall issue a warrant returnable in twenty days, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel, and furniture, until discharged from such custody by due course of law.

SEC. 63 (5). *Proceedings on return of warrant.*—Upon the return of the warrant, issued by virtue of the preceding section, proceedings shall be had in the district court against the boat or vessel seized, in the same manner as if the action had been instituted against the person on whose account the demand accrued.

SEC. 64 (6). *Who may appear and answer complaint.*—The master, owner, agent or consignee of the boat or vessel may appear on behalf of such boat or vessel, and answer the complaint.

SEC. 65 (7). *Boat may be discharged, if bond is given.*—If the master, owner, agent or consignee, before final judgment gives bond to the plaintiff, with sufficient sureties to be approved by the court, or the judge or clerk thereof in vacation, conditioned to satisfy the amount which shall be adjudged to be owing and due to the plaintiff, in the determination of the action, together with all costs accruing, such boat or vessel, with the tackle, apparel, and furniture belonging thereto, shall be discharged from further detention by the sheriff.

SEC. 66 (8). *Court to make order of sale, when.*—If judgment is rendered against any boat or vessel, in favor of the plaintiff, the court shall make an order

directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel, and furniture, to satisfy the judgment, and all costs that may have accrued in the cause, which order shall be executed and returned in the same manner as an execution.

SEC. 67 (9). *Execution to issue against obligors in bond, when.*—If a bond has been entered into, according to the sixty-fifth (seventh) section of this title (chapter), and judgment rendered in favor of the plaintiff, execution shall be issued for the amount of the judgment and costs, in favor of the plaintiff, against the principal and sureties in such bond.

SEC. 68 (10). *Owner, et al., summoned to show cause, when.*—Whenever judgment is rendered against any boat or vessel in favor of the plaintiff, and such boat or vessel has been discharged from the custody of the sheriff prior to the rendition of such judgment, by the giving of bonds or otherwise, or when from any cause whatever, said judgment or any part thereof remains unpaid for the period of sixty days, the masters and owners thereof, either or both, and in case the owner is a foreign corporation, then the officers, members, or stockholders of such corporation or either or any of them may be summoned as is hereinafter provided, to show cause why he or they shall not be bound by the judgment in the same manner as if said action had been originally commenced and prosecuted to judgment against them.

SEC. 69 (11). *Summons in such case shall contain, what.*—The summons provided for in the last section shall be subscribed by the judgment creditor, his representative or attorney, describe the judgment and require the party summoned to show cause within twenty days after the service of the summons, and may be served in the same manner that a summons is served in civil actions.

SEC. 70 (12). *Affidavit to accompany summons.*—The summons shall be accompanied by an affidavit of the person subscribing it that the judgment has not been paid or satisfied to his knowledge, information, or belief, and shall specify the amount due thereon.

SEC. 71 (13). *Answer of party summoned, may contain what.*—The party summoned may answer, denying the judgment or setting up any defense that may have arisen subsequent to the rendition of said judgment, and in addition thereto, that he was not at the time said cause of action arose against said boat or vessel the master, owner, or part owner thereof, or that he was not at the time said cause of action arose against said boat or vessel, or at any time since, an officer, member, or stockholder of any foreign corporation which was the owner of such boat or vessel at the time said cause of action arose, but no other defence whatever.

SEC. 72 (14). *Pleadings and trial.*—The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply, and the issue may be tried and judgment and costs given, and enforced by execution in the same manner as in civil actions.

SEC. 73 (15). *Justices of the peace to have jurisdiction, when.*—Justices of the peace, within their respective counties, have cognizance of all cases arising under this title (chapter), when the demand claimed does not exceed the sum of one hundred dollars.

SEC. 74 (16). *Proceedings before justices, how governed.*—In all their proceedings, justices of the peace shall conform to the provisions of law governing justices' courts, and as near as may be to the provisions of this title (chapter), as they apply in the district court.

SEC. 75 (17). *Warrant issued by justice returnable forthwith—proceedings on return—bond may be given and boat released.*—Every warrant issued by a justice of the peace under this title (chapter), shall be returnable forthwith; and upon the return thereof the justice shall hear and determine the action in a summary manner: *provided*, that if the master, owner, agent, or consignee executes a bond to the plaintiff with sufficient surety to be approved by the justice, conditioned that he will satisfy the amount which may be adjudged to be owing and due to the plaintiff on the determination of the action, together with costs, then the boat, vessel, tackle, apparel, and furniture seized by such warrant shall be discharged from custody.

SEC. 76 (18). *Warrants, how served and returned.*—All warrants issued under the provisions of this title (chapter), shall be served and returned as writs of attachment are served and returned.

SEC. 77 (19). *Power of officer under order of sale.*—Whenever an order of sale is made for the sale of a boat or vessel, with its tackle, apparel, and furniture, the sheriff or constable has power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of judgment rendered in favor of the plaintiff, and all the costs that have accrued.

SEC. 78 (20). *Continuance granted, when—effect of continuance.*—Upon good and sufficient cause shown by the master, owner, agent, or consignee of any boat or vessel, sold under this title (chapter), the court or justice of the peace may grant a continuance of the cause; but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

SEC. 79 (21). *Plaintiff not entitled to continuance.*—No continuance of a cause, under this title (chapter), shall be granted to the plaintiff.

SEC. 80 (22). *Who may take appeal.*—In all cases arising under this title (chapter), if judgment is rendered in favor of the plaintiff, the master, owner, agent, or consignee of the boat or vessel, or other person interested, may appeal from the judgment, as in other cases.

SEC. 81 (23). *Actions to be commenced within one year.*—All actions against a boat or vessel, under the provisions of this title (chapter), shall be commenced within one year after the cause of action accrues.

TITLE IV.

OF ACTIONS TO VACATE CHARTERS AND LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE.

(*This Title is Chapter LXXIX. of the Statutes of 1866.*)

SEC. 82 (1). *Action against corporation to annul act of incorporation, brought by attorney general, when.*—An action may be brought by the attorney general in the name of the state, whenever the legislature so directs, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent.

SEC. 83 (2). *Action to vacate charter, brought, when.*—An action may be brought by the attorney general in the name of the state, for the purpose of vacating the charter, or annulling the existence of a corporation, other than municipal, whenever such corporation :

First. Offends against any of the provisions of the act, or acts, creating, altering, or renewing such corporation ; or,

Second. Violates the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers ; or

Third. Whenever it has forfeited its privileges, or franchises, by failure to exercise its powers ; or,

Fourth. Whenever it has done, or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises ; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney general shall bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved ; and also in every other case in which satisfactory security is given to indemnify the state against the costs and expenses to be incurred thereby.

SEC. 84 (3). *Action against party usurping or forfeiting office, brought, when.*—An action may be brought by the attorney general in the name of the state, upon his own information, or upon the complaint of a private party, against the party offending in the following cases :

First. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, or any franchise within this state, or any office in a corporation created by the authority of this state ; or

Second. When any public officer has done, or suffered an act, which by the provisions of law causes a forfeiture of his office ; or,

Third. When any association or number of persons act within this state as a corporation without being duly incorporated. And the attorney general shall bring the action whenever he has reason to believe that any of these acts can be proved.

SEC. 85 (4). *Action to vacate letters patent, brought, when.*—An action may be brought by the attorney general in the name of the state for the purpose of vacating or annulling letters patent, granted by the state in the following cases :

First. When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made with his consent or knowledge ; or,

Second. When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact.

Third. When he has reason to believe that the patentee, or those claiming under him, have done or omitted any act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same.

SEC. 86 (5). *Name of complainant to be joined as party with state.*—When an action is brought by the attorney general, by virtue of this chapter, on the complaint or information of any person having an interest in the question, the name of such person shall be joined with the state as plaintiff.

In an action to oust a usurper private and public interests may be joined, Territory of Minn. *ex rel. Parker v. Smith*, 3 Minn. 240.

SEC. 87 (6). *Action for usurping office, complaint shall contain, what.*—When ever such action is brought against a person for usurping an office, the attorney general, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto, and in every such case, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice requires.

SEC. 88 (7). *Claimant obtaining judgment, entitled to be put in possession of office, books, etc.*—If judgment is rendered in favor of the person so alleged to be entitled, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office, and may be put in possession thereof, and of the books and papers belonging thereto by order of the court, and any party refusing to deliver the same when ordered by the court shall be punished as for a contempt; and he may also recover, by action, the damages which he sustains by reason of the usurpation of the office by the defendant.

SEC. 89 (8). *All claimants may be joined in one action.*—When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

SEC. 90 (9). *Judgment in actions under this title (chapter), how rendered—court may impose fine.*—When a person or a corporation is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment shall be rendered, that such person or corporation be excluded from the office, franchise, or privilege. The court may also in its discretion impose upon the defendant a fine, not exceeding one thousand dollars.

SEC. 91 (10). *Corporation adjudged dissolved, when.*—If it is adjudged that a corporation has by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

SEC. 92 (11). *Costs, how collected.*—If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation.

SEC. 93 (12). *Court may grant injunction and appoint receiver.*—When such judgment is rendered against a corporation, the court has power to restrain the corporation, to appoint a receiver of its property, and take an account and make distribution thereof among its creditors, and the attorney general, immediately after the rendition of such judgment, shall institute proceedings for that purpose.

SEC. 94 (13). *Record of judgment roll to be filed.*—Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, the attorney general shall cause a copy of the judgment roll to be forthwith filed in the office of the secretary of state.

TITLE V.

OF ACTIONS ON OFFICIAL SECURITIES AND TO RECOVER FINES
AND FORFEITURES.*(This Title is Chapter LXXVIII. of the Statutes of 1866.)*

SEC. 95 (1). *Official bonds, security for what.*—The official bond or other security of a public officer to the state or any municipal body or corporation, whether with or without sureties, is to be construed as security to all persons severally, for the official delinquencies against which it is intended to provide, as well as to the state, body, or corporation designated therein: *provided*, that when no other provision is made by law, it shall run to the state of Minnesota.

On official bond of deputy collector complaint must cover his appointment, *Hall v. Williams et al.*, 13 Minn. 260.

SEC. 96 (2). *Who may bring action on.*—When a public officer, by official misconduct or neglect, forfeits his official bond, or renders his sureties liable upon an official security, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he is entitled by reason of the delinquency.

SEC. 97 (3). *Leave to bring action to be obtained of district court.*—Before an action can be brought by a plaintiff, other than the state or body politic named in the bond, leave shall be obtained of the district court, or a judge thereof, within the county where the action is triable, by the production of a copy of the bond, and an affidavit showing the delinquency, and if the delinquency is such, that if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

SEC. 98 (4). *Effect of judgment for one delinquency.*—A judgment in favor of a party for one delinquency, does not preclude the same or another party from an action on the same security for another delinquency.

SEC. 99 (5). *Execution, how indorsed.*—Upon the execution issued on a judgment, recovered upon the official security of a public officer, against him and a surety, there shall be indorsed a direction to the officer to whom the execution is delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

SEC. 100 (6). *Actions for fines and forfeitures, who may bring.*—Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who, by special provisions of law, are authorized to recover them; and whether prosecuted by public officers or by private persons, are governed by the same rules as other civil actions, except as herein otherwise prescribed.

SEC. 101 (7). *Action for penalty, how brought.*—When an action is brought for a penalty, which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon trial the amount recovered shall be determined in proportion to the offense.

SEC. 102 (8). *Judgment obtained by collusion, no bar to action by another person.*—A recovery of a judgment, for a penalty or forfeiture, by collusion between

the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, does not prevent the recovery of the same by another person.

SEC. 103 (9, AS AMENDED BY ACT OF FEB. 10, 1870). *Fines and forfeitures, where paid—place of trial of actions for property forfeited to state.*—Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where the same are incurred; and whenever any property, real or personal, is forfeited to the state, or to any officer, for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in the district court of any county where such property may be.

S. L. 1870, 140.

SEC. 104 (10). *What fines and forfeitures prosecuted by indictment—justice to have jurisdiction, when—punishment.*—All fines and forfeitures imposed as a punishment for any offense, or for the violation or neglect of any duty imposed by statute, may be prosecuted for and recovered by indictment in the district court; or when the amount or value thereof does not exceed one hundred dollars, the same may be prosecuted for by complaint before a justice of the peace, who shall have jurisdiction therefor concurrently with the district court, and in all cases of the imposition of a fine pursuant to statute, as punishment for any offense, the offender may be committed till the same is paid, or he is otherwise discharged according to law.