

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

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CHAPTER XLVIII

ESTATES IN DOWER AND BY THE CURTESY.

(Repealed by 1875, c. 40, § 5, saving all vested rights. See *ante*, c. 46, § 3.)

CHAPTER 48 (with a note at end of c. 123, title 1).

§ 1. (SEC. 13.) *Dower, how barred by deed.* A married woman may bar her right of dower in any estate conveyed by her husband, or by his guardians, if he is a minor or an insane person, by joining in the deed of conveyance, and acknowledging the same, or by a subsequent deed, which may be executed either by joining with her husband therein, or by herself alone, to be acknowledged as in other cases; and in cases when conveyance of real estate have been made by the husband of lands to which he had title, and the separate deed of the wife has heretofore been made to the grantee of the husband for a valuable consideration paid to her, such separate conveyance of the wife shall be as effectual to bar the dower in such premises as though she had joined in the deed executed by the husband. (*G. S.*, c. 48, § 13, as amended by 1874, c. 64, § 1, and 1878, c. 33, § 1.)

CHAPTER XLIX

PROBATE COURTS.

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§ 1. *Probate court in each county.* There is established, in each organized county in this state, a probate court, which shall have and use a seal.

§ 2. *Jurisdiction of probate court.* The several probate courts have exclusive jurisdiction, in the first instance, in their respective counties, to take proof of wills, and to direct the administration of the estates of deceased persons—

First.—When the deceased, at or immediately before his death, was an inhabitant of the county, in whatever place he dies;

Second.—When the deceased, not being an inhabitant of this state, dies in the county, leaving assets therein;

Third.—When the deceased, not being an inhabitant of this state, dies out of this state, leaving assets in the county;

Fourth.—When the deceased, not being a resident of this state, dies out of this state, not having assets herein, but when assets thereafter come into the county;

Fifth.—When real property of the deceased is situated in the county, and no other probate court has gained jurisdiction under either of the preceding subdivisions of this section. (*As amended 1868, c. 94, § 1.*)

23 M. 84.

§ 3. *Further jurisdiction of probate court.* The probate court has jurisdiction also—

First. To take proof of a will relating to real property situated in the county, when the testator dies out of this state, not being an inhabitant thereof, and not leaving assets therein;

Second. To grant and revoke letters testamentary and of administration;

Third. To direct and control the conduct, and settle the accounts of executors and administrators;

Fourth. To enforce the payment of debts and legacies, and the distribution of the estates of intestates;

Fifth. To order the sale, and dispose of the real property of deceased persons;

Sixth. To appoint and remove guardians, to direct and control their conduct, and to settle their accounts;

Seventh. To take the care and custody of the person and estate of an insane person or spendthrift, residing in the county;

Eighth. To direct the admeasurement of dower;

Ninth. To exercise the powers and duties conferred upon it by law.

§ 4. Jurisdiction exclusive, except, etc. The jurisdiction acquired by any probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law; and when a guardian is appointed, or any other proceeding is commenced, in the probate court of a particular county, all further proceedings in respect to the same shall be continued in that court.

§ 5. When judge is an executor, etc., or interested, judge of adjoining county to act. The probate court of each county shall be held by the judge of probate. But if the judge is an executor, administrator or guardian in respect to an estate or person which would otherwise come within his jurisdiction, or is interested in said estate, or in any property claimed thereby, or is of kin to said person or any one interested in such estate in which any of said persons or parties, or in case the judge of probate is a material or necessary witness, either for the probate of any will, or other facts necessary or proper to be proved in such probate court, then, and in either of the cases herein provided, the said judge of probate shall have the right, and it shall be his duty, to notify and require the judge of probate of an adjoining county to act for and in the place of the judge of probate so disqualified, in all matters herein mentioned; and it shall be the duty of such judge of probate of an adjoining county to hear, try and determine such matters, in the same manner and like effect as the judge of probate of said court might have done, had he not been so disqualified. (*As amended 1872, c. 63, § 1.*)

§ 6. Duties of judge—to keep office, hold court, etc. The judge of probate shall keep his office open at reasonable hours, suitable and convenient for the transaction of business, and for the deposit and safe-keeping of the public books and papers under his charge. He shall keep his office at the county seat, and on the first Monday of each month hold a probate court therein, or at such other place in the county as he may appoint. He shall also provide suitable cases for the books and papers of his office, the expense of which is a county charge; they belong to the county, and shall be delivered by the judge of probate to his successor in office, who has power to complete all unfinished business.

PROCEEDINGS IN PROBATE COURT.

§ 7. Proceedings in probate courts—powers of judge, how exercised—depositions. There are no pleadings in probate courts, but the proceedings shall conform to the statute, and may be instituted upon the application of a party, verbal or written, which, when verbal, shall be entered in the minutes of the court, and when written, shall be filed. The judge of probate has the same power to examine witnesses and parties on oath, to compel their attendance, to preserve order during any proceedings before him, and punish contempts, as a district judge possesses under the provisions of law. He may exercise his powers, except when otherwise provided by law, by means of—

First.—A citation to a party.

Second.—An affidavit, deposition, examination, or statement under oath of a party or witness, or other legal and competent evidence.

Third.—A subpoena or attachment.

Fourth.—Orders, judgments and decrees.

Fifth.—An execution, warrant, or other process to enforce them.

The deposition of any witness without this state may be taken under a commission issued to any competent person in any state or county, by the probate court in which the evidence is wanted, whether said evidence be in respect of matters pending before the court, or before commissioners appointed by the court in the settlement of estates. The party desiring said deposition shall apply to the probate court by petition for said commission, and if by said petition it appears that the testimony of any witness not residing in this state is material respecting any matter pending before said probate court or commission, the probate court may, in its discretion, order said commission to issue upon written interrogations, copies of which shall be served on any adverse party who has appeared in the matter, or his attorney, and upon cross-interrogations to be filed by said adverse party. And such interrogatories and cross-interrogatories may be settled before the judge of probate, upon notice, as in the district court, and the notices to be given and time for filing interrogatories and cross-interrogatories, the form of the commission, and the manner of executing and returning the same, shall conform substantially, and as near as may be, to the practice adopted in the district courts relative to the taking of depositions of witnesses without this state; or such deposition may be taken upon stipulations in writing as in the district court. And depositions taken as provided in this section may be used in all matters between the parties thereto, pending before such probate court or commissioners appointed by it in the settlement of estates. (*As amended 1870, c. 62, § 1*)

22 M. 393.

§ 8. Books of record to be kept by judge—their contents. He shall keep—

First—A register, in which shall be entered a memorandum of all official business transacted by him or in his office, appertaining to the estate of each deceased person, under the name of such person; that pertaining to the general guardian of an infant, under the name of such infant; that pertaining to an insane person, or spendthrift, under his name.

Second—A record of wills, in which shall be recorded all wills proved before him, with the certificate of the probate thereof; and of all wills proved elsewhere upon which letters of administration are issued by him.

Third—A record of letters testamentary and of administration and guardianship, in which shall be recorded all letters testamentary and of administration and guardianship issued by him.

Fourth—A record of orders, in which shall be recorded all orders made by him in the discharge of his duties, a summary balance sheet of the accounts of administrators, executors and guardians allowed by him, the reports of admeasurers of dowers, and the reports of commissioners on the distribution of estates; also a memorandum of executions issued, and a note of satisfaction when satisfied. (*As amended 1870, c. 66, § 1.*)

§ 9. (SEC. 10.) Each book to have index. Each of such books shall have an index, referring to the entries in alphabetical order, under the name of the person to whose estate or business they relate, and indicating the page of the book where the entry is made.

§ 10. (SEC. 11.) Judge not to act as attorney, when. A judge of probate cannot be counsel or attorney in any civil action for or against any executor, administrator, guardian, or minor trustee, or other person over whom or whose accounts he would by law have jurisdiction, whether such action relates to the business of the estate or not.

§ 11. (SEC. 12.) Costs, payable out of estate, etc. Costs, to the extent of the fees and disbursements paid or incurred, may be awarded in favor of one party against another, to be paid out of the estate or fund in any proceeding contested adversely before the judge of probate.

§ 12. (SEC. 13.) Orders, how enforced—process, how issued. Orders for the payment of

money may be enforced in the same manner as judgments for the payment of money in the district court; but all process shall be issued by the judge of probate.

APPEALS FROM PROBATE COURTS.

§ 13. (SEC. 14.) **In what cases allowed.** An appeal may be taken to the district court from a judgment or order in a probate court, in the following cases:

First. An order admitting a will to record or probate, or refusing the same.

Second. An order appointing an administrator, executor or guardian, or removing him, or refusing to make such appointment or removal.

Third. An order directing real property to be sold, mortgaged or leased, or confirming the same.

Fourth. An order or judgment by which a debt, claim, legacy or distributive share is allowed, or payment thereof directed, or such allowance or direction refused, when the amount in controversy exceeds fifteen dollars.

Fifth. Judgment upon an accounting by an executor, administrator or guardian, including an intermediate order involving the merits, and necessarily affecting the judgment.

Sixth. An order vacating or refusing to vacate a previous order or judgment made or rendered, alleged to have been procured by fraud, misrepresentation, or through surprise, or excusable inadvertence or neglect. (*As amended 1877, c. 22, § 1.*)

§ 14. (SEC. 15.) **Who may appeal.** The appeal can only be taken by a party aggrieved who appeared and moved for, or opposed, the order or judgment appealed from, or who, being entitled to be heard thereon, had not due notice or opportunity to be heard; the latter fact to be shown by affidavit and filed and served with the notice.

§ 15. (SEC. 16.) **Appeal, how and when to be taken—stay of proceedings.** The appeal may be taken upon questions of fact or law, or both, by the service of a notice on the adverse party, stating the appeal from the order or judgment, or some specified part thereof, and by filing a copy of the said notice in the office of the judge of probate, together with a recognizance entered into by the party appealing, with one or more sureties, to be approved by the judge of probate, conditioned that the party will prosecute his appeal with due diligence to a final determination, and pay all costs adjudged against him in the district court; which appeal shall be taken within sixty days after notice of the order or judgment appealed from. The appellant shall cause an entry of such appeal to be made by the clerk of the district court on the register of actions, and upon the calendar, on or before the first day of the next general term thereof: *provided*, that such appeal shall suspend the operation of the order or judgment appealed from, and stay proceedings thereon, until such appeal is determined, or the district court to which such appeal is taken shall otherwise order. The district court in which such appeal may be pending, shall have power, in the exercise of a sound discretion, or upon good cause shown, to require the appellant to give such further bonds with surety, or such further security, to be filed or deposited with the clerk of such district court, for the payment of damages in consequence of such suspension or stay which may be awarded against such appellant, in case he fail to obtain a reversal of the order or judgment so appealed from, as such district court may deem proper under the circumstances. (*As amended 1874, c. 74, § 2, and 1878, c. 17, § 1.*)

*§ 16. **Return on appeal.** Immediately after an appeal is perfected, as provided in the preceding section of this chapter, the judge or clerk of the probate court shall, upon the request of either party to such appeal, and upon the payment or tender of ten cents per folio therefor, make a return to such appeal to the district court of the proper county; and such return shall consist of a certi-

fied transcript of all of the papers and proceedings upon which the order, judgment or decree appealed from shall have been founded, including a copy of such order, judgment or decree; and if such return is not filed in the office of the clerk of the proper district court within twenty days after the said appeal is perfected, such appeal may be dismissed, upon motion of respondent therein, or such return may be compelled by order of the district court upon the motion of either party to such appeal. (1874, c. 71, § 2.)

*§ 17. **Appeal on questions of law—evidence to be returned.** When any appeal from a probate court to the district court is taken upon questions of law alone, the evidence, oral and documentary, upon which the judgment, order or decree is founded, shall be certified to the district court by the judge or clerk of the probate court, and the same shall thereupon form a portion of the records of the cause in which such appeal is taken; but when the appeal is taken upon questions of fact, or both law and fact, none of the evidence taken upon the trial of a cause need be transmitted to the district court. (*Id.*)

*§ 18. **When district court acquires jurisdiction of appeal.** Upon filing of the return of the probate court in the office of the clerk of the district court, such appeal shall be presumed to have been duly perfected in the court below, and the district court shall be deemed to have acquired jurisdiction of the cause, and may thereafter compel a further or an amended return, or may allow any amendments to be made, or defects or mischances to be supplied or corrected, to the same extent as in civil actions in said court. (*Id.*)

*§ 19. **Trial in district court—notice—jury—costs.** Upon the filing of a return to an appeal as hereinbefore provided, the same may be brought on for hearing before the district court by either party, upon eight days' notice to the adverse party, and either in term time or vacation; but no jury trials shall be allowed in such cases, except as provided by section one hundred and ninety-nine of chapter sixty-six of the General Statutes, and upon issues settled in accordance with the rules of the district court in such case provided: *provided*, that the prevailing party shall be entitled to costs upon the final judgment of the district court, as in civil actions, unless otherwise ordered by the court. (*Id.*)

*§ 20. **Jury, how selected, etc.** In case of the setting and submitting of any issue or issues to a jury, under the provisions of this chapter, at any other trial than in term time, such jury shall be selected, summoned and impanelled under the direction of the judge, in the same manner, as near as may be, to the provisions of sections fifty-four and fifty-five, of chapter sixty-five of the General Statutes; and any verdict rendered by such jury shall be as valid and conclusive as if the same were rendered by a regular panel in term time. (*Id.*)

*§ 21. **Effect of act—pending cases.** This act shall take effect and be in force from and after its passage, and shall apply to all proceedings now pending where the appeals have been taken, except that it shall not be so construed as to affect any vested rights. (*Id.*)

CHAPTER L.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

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SECTION.

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