

Statutes  
1878

THE  
GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY  
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FOURTH EDITION.

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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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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 settling 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.*)

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## CHAPTER L.

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

#### SECTION.

- 1-6. Issuance of letters—bond—condition—qualified bond—executor also residuary legatee—neglect to accept and give bond.  
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LETTERS TESTAMENTARY, &c.

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§ 1. Letters testamentary, to whom issued. When a will is duly proved and allowed, the probate court shall issue letters testamentary thereon to the executor named therein, if he is legally competent, and accepts the trust and gives bond as required by law.

§ 2. Bond to be given—condition. Every executor, before entering upon the execution of his trust, and before letters testamentary are issued, shall give bond to the judge of probate, in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court, within three months, a true and perfect inventory of all goods, chattels, rights, credits and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and the will of the testator all his goods, chattels, rights, credits and estate, which shall at any time come to his possession, or to the possession of any other person for him; and out of the same pay and discharge all debts, legacies and charges, chargeable on the same, or such dividends thereon as are ordered and decreed by the probate court; to render a true and just account of his administration to the probate court within one year, and at any other time when required by such court; to perform all orders and decrees of the probate court, by the executor to be performed in the premises: *provided*, that it shall and may be lawful for any testator, by any last will and testament, heretofore executed, or hereafter to be executed, or by a codicil thereto, to provide that any executors, guardians or trustees, specially named and appointed as such in such will or codicil, shall not be required to give any bond as such executors, trustees or guardians, except as against the creditors of such testator; and in case of the appointment and qualification of such executors, trustees or guardians, so named in such will or codicil, he or they shall, before entering upon the execution of such trust, give such bond as the said judge of probate may direct, conditioned as aforesaid, to pay all debts, claims and demands chargeable on and proved against the estate of said testator, the expenses and charges of his last illness, funeral expenses, and expenses and costs of administration, but not conditioned for the further performance of any other trusts created by such will; and the probate court may from time to time require additional bonds to further secure the creditors of such estate, and the payment of said expenses and costs of administration: *provided*, that no responsibility shall exist upon any bond required by this act, beyond the assets of the estate liable for the payment of debts. (*As amended 1878, c. 76, § 1.*)

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\*§ 3. Application of last section. The provisions of this act shall apply to all wills containing such proviso or codicil heretofore made or hereafter made, and within the limits of this state, whether the testator is a resident or not; and the execution of such wills and the trusts thereunder shall, so far as interests or rights thereunder exist therein, shall be governed thereby. (*1878, c. 76, § 2.*)

§ 4. (Sec. 3.) Bond, when executor is residuary legatee. If, however, the executor is a residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with condition only to pay all the debts and legacies of the testator; and in such case he shall not be required to return an inventory.

§ 5. (Sec. 4.) Neglect to accept trust and give bond. No person named as executor in a will, who neglects to accept the trust, or give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

§ 6. (Sec. 5.) Same—other executors appointed. If a person named executor in any will refuses to accept the trust, or neglects for twenty days after the probate of the same to give bond as required by law, the probate court may grant let-

ters testamentary to the other executors, if there are any capable and willing to accept the trust; and if there are none such, the court may commit administration of the estate, with the will annexed, to such person as would have been entitled thereto if the deceased had died intestate.

§ 7. (SEC. 6.) **Proceedings when executor is a minor.** When the person named executor in a will is under full age at the time of proving the will, administration shall be granted, with the will annexed, during the minority of the executor, to the person who would have been entitled thereto if the deceased had died intestate, unless there is another executor who accepts the trust and gives bond; and in that case, the executor who gives bond shall have letters testamentary, and shall administer the estate until the minor arrives at full age, when he may be admitted as joint executor, on giving bond according to law.

§ 8. (SEC. 7.) **Administrator with will annexed—bond and powers.** Every person appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner, and with the same condition as is required of an executor, and shall proceed in all things to execute the trust in like manner as an executor is required to do. And whenever, by the terms of a will, the person (or persons) therein named as executor or executrix is empowered to sell and convey real estate, an administrator with such will annexed, appointed to execute the same, shall have the same power to sell and convey real estate that the person (or persons) named therein as executor or executrix could have had in executing such will. (*As amended 1875, c. 54, § 1.*)

\*§ 9. **Marriage of executrix, etc.** When an unmarried woman who is administratrix or executrix, alone, or jointly with another person or persons, marries, her marriage shall not extinguish her authority as such administratrix or executrix. (*1874, c. 65, § 1.*)

§ 10. (SEC. 9.) **Removal of executor.** When an executor resides out of this state, or neglects, after due notice given by the judge of probate, to render his account and settle the estate according to law, or perform any decree of the court, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

§ 11. (SEC. 10.) **Effect of death or removal of executor.** When an executor dies, or is removed, or his authority is extinguished, the remaining executor, if there is any, may execute the trust; and if there is no other executor, administration, with the will annexed, may be granted of the estate not already administered.

§ 12. (SEC. 11.) **Inability of joint executor to act—administrator with will annexed.** When all the executors appointed in a will are not authorized, according to the provisions of this chapter, to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust, required and allowed by the will; and their acts shall be as valid and effectual for every purpose as if all were authorized and acted together; and administrators with the will annexed shall have the same authority to perform every act, and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for every purpose.

§ 13. (SEC. 12.) **Executor of executor not to administer.** The executor of an executor shall not, as such, administer the estate of the first testator; but on the death of the only surviving executor, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as the probate court may judge proper.

§ 14. (SEC. 13.) **Separate or joint bonds may be taken.** When two or more persons are appointed executors of any will, the judge of probate may take a separate bond from each, or a joint bond from all, with sureties.