GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

JANUARY 1, 1889.

COMPLETE IN TWO VOLUMES.

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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Ninth. If the intestate leaves a surviving husband or wife, and no kindred, his or her estate shall descend to such survivor.

Tenth. If the intestate leaves no husband or wife, or kindred, his or her estate shall escheat to the state. (1876, *c.* 37, § 3, *as amended* 1885, *c.* 118, *and c.* 19.)

The act of 1875 divested lands of the wife's contingent right of dower; and the act of 1876, substituting the words "one-third of all other land of which deceased was at any time during coverture seized or possessed" for the words "one-third of all other lands of which the deceased died seized," did not affect previous grants in which the wife did not join. The rights of grantees became vested by the act of 1875, and could not be thereafter divested. Morrison v. Rice. 35 Minn. 436, 29 N. W. Rep. 168. See Cairncross v. McGrann, 33 N. W Rep. 548.

No devise by the husband, not so assented to by the wife, could of itself interrupt this law of descent. The estate so created is, however, subject to the application and ordinary effect of the equitable doctrine of election or of estoppel. When a testator by will bequeaths to his wife something to which she has no right, except by force of the will, and by the same instrument disposes of all his lands in which she is by law entitled to dower, or to an estate of inheritance, it being apparent the testator intended the bequest to be in lieu of her legal estate, and the devise being valid except for the legal right of the wife in the property, a case for an election arises on the part of the widow as to whether she will take under the will or against it. If she elects to take the bequest, she will be held to have confirmed the devise, and to have relinquished her legal estate. Washburn v. Van Steenwyk, 32 Minn. 336, 20 N. W. Rep. 324.

SUBD. 10. The provision limiting the period that a debt shall remain a lien on property of a deceased person to three years, was not retroactive in its operation. State v. Probate Court of Ramsey Co., 25 Minn. 22; followed, Dawson v Girard Life Ins. Co., 27 Minn. 414, 8 N. W. Rep. 142.

Nor was it unconstitutional. In re Ackerman, 33 Minn. 54, 21 N. W. Rep. 852.

That a debt is barred by a failure to present it for allowance to commissioners to audit claims against the estate of the debtor, does not affect the right to foreclose a mortgage given to secure it. Jones v. Tainter, 15 Minn. 512, (Gil. 423.)

Chapter 18, Laws 1879, (*post*, *c.* 57, § 38,) operated to repeal § 3, *c.* 37, Laws 1876, so far as the latter limited the time within which the real estate of a deceased person might be sold for the payment of his debts. Culver v. Hardenbergh, 33 N. W. Rep. 792.

The repeal of the proviso to subd. 10 does not affect a case in which it had previously taken effect, and real estate devised to testator's wife, after all his lawful debts were paid, is not liable to be sold for payment of debts after the lapse of three years from the date of his death. Gates v. Shugrue, 35 Minn. 392, 29 N. W. Rep. 57.

See Desnoyer v. Jordan, 27 Minn. 295, 298, 7 N. W. Rep. 140; Campbell v. Holt, 115 U. S. 620, 6 Sup. Ct. Rep. 209; Richards v. Chace, 2 Gray, 383.

§ 5. (Sec. 2.) Illegitimate children—Inheritance by.

Cited, McArthur v. Craigie, 22 Minn. 353.

§ 7. (Sec. 4.) Degrees of kindred—Half blood.

When resort is to be had to computation—Inheritance by kindred of the half blood. Rowley v. Stray, 32 Mich. 70.

CHAPTER 47.

WILLS.

§ 1. Power to devise lands.

Cited, Washburn v. Van Steenwyk, 32 Minn. 336, 20 N. W. Rep. 324.

TESTAMENTARY CAPACITY. See Fraser v. Jennison, (Mich.) 3 N. W. Rep. 882; In re Stewart, (Wis.) 22 N. W. Rep. 392; Freeman v. Easley, (Ill.) 7 N. E. Rep. 656; Lamb v. Lamb, (Ind.) 5 N. E. Rep. 171; American Bible Society v. Price, (Ill.) 5 N. E. Rep. 126; Estate of Dalrymple, (Cal.) 7 Pac. Rep. 906; Delaney v. City, (Kan.) 9 Pac. Rep. 271; Estate of Lang, (Cal.) 2 Pac. Rep. 491; Hoban v. Piquette, (Mich.) 17 N. W. Rep. 797; Rice v. Rice, (Mich.) 15 N. W. Rep. 545, 19 N. W. Rep. 132; In re Ames' Will, (Iowa,)

2 N. W. Rep. 408. Burden of proof, see Stephenson v. Stephenson, (Iowa,) 17 N. W. Rep. 456. Opinions of witnesses, see Porter v. Throop, (Mich.) 11 N. W. Rep. 174; In re Pinney's Will, 27 Minn. 280, 6 N.W. Rep. 791, 7 N.W. Rep. 144; Severin v. Zack, (Iowa,) 7 N. W. Rep. 404; American Bible Society v. Price, *supra;* Burley v. McGough, (Ill.) 3 N. E. Rep. 738; Parsons v. Parsons, (Iowa,) 21 N. W. Rep. 570.

UNDUE INFLUENCE. See Bradford v. Vinton, (Mich.) 26 N. W. Rep. 401; In re Farnsworth, (Wis.) 22 N. W. Rep. 523; In re Armstrong, (Wis.) 23 N. W. Rep. 407; In re Disbrow's Estate, (Mich.) 24 N. W. Rep. 624; Baylies v Spaulding, (Mass.) 6 N. E. Rep. 62; In re Convey's Will, (Iowa,) 2 N. W. Rep. 1084; Fraser v. Jennison, (Mich.) 3 N. W. Rep. 882.

§ 2. Devise—Estate passed.

Cited, In re Oertle, 34 Minn. 173, 24 N. W. Rep. 924.

§ 5. Wills—Execution.

Where erasures and interlineations are made by the testator in an executed will, the attestation of the original will is not an attestation of the will as altered; and if there is no other sufficient attestation of the will as altered, it cannot be sustained, since it is not attested as imperatively required by the statute. In re Penniman, 20 Minn. 253, (Gil. 227)

The attestation of a will is sufficiently proved, if it be shown to have been in the conscious presence of the testator. No formal request need be proved. In re Allen's Will, 25 Minn. 39. That the testator actually saw the attesting witnesses subscribe their names as such to the will need not be shown when it appears that it was done in his immediate and conscious presence, so that he could have seen it if he had felt so disposed. Evidence held sufficient in this case to support the findings. Id.

As to the formalities attending the execution of a will, see In re Hulse's Will, (Iowa,) 3 N. W. Rep. 734; In re Convey's Will, (Iowa,) 2 N. W. Rep. 1084; In re Smith's Will, (Wis.) 8 N. W. Rep. 616, 9 N. W. Rep. 665; Bradford v. Vinton, (Mich.) 26 N. W. Rep. 401; Johnson v. Johnson, (Ind.) 7 N. E. Rep. 201; Worthington v. Klemm, (Mass.) 10 N. E. Rep. 522.

Competency of witnesses, see Bates v. Officer, (Iowa,) 30 N. W. Rep. 608; Hawkins v. Hawkins, (Iowa,) 6 N. W. Rep. 699; Quinn v. Shields, (Iowa,) 17 N. W. Rep. 437.

§ 9. Revocation.

Interlineations and erasures by the testator in an executed will, will not operate as a revocation, even *pro tanto*, unless the will be thereafter re-executed and attested as required, in case of a revocation by some "other writing," by this section. In re Penniman, 20 Minn. 254, (Gil. 228.)

Drawing a scroll through the signature, but not so as to render it illegible, is not a cancellation. Gay v. Gay, (Iowa,) 14 N. W. Rep. 238.

A will was wholly written on the first page of the sheet, and on the fourth page testatrix wrote, "I revoke this will," adding her signature and the date, but such writing was not attested. Under a similar statute, held, not effectual to revoke the will. In re Ladd's Will, (Wis.) 18 N. W. Rep. 734.

Implied revocation by the subsequent marriage of testatrix, see Blodgett v. Moore, (Mass.) 5 N. E. Rep. 470; Osgood v. Bliss, (Mass.) 6 N. E. Rep. 527; Nutt v. Norton, (Mass.) 7 N. E. Rep. 720; Noyes v. Southworth, (Mich.) 20 N. W. Rep. 891.

Subsequent birth of a child to testator as an implied revocation, see Alden v. Johnson, (Iowa,) 18 N. W. Rep. 696; Milburn v. Milburn, (Iowa.) 14 N. W. Rep. 204.

§ 11. Executor—Presenting will.

Cited, In re Brown, 32 Minn. 445, 21 N. W. Rep. 474.

§ 14. Application for probate—Notice.

Cited, Greenwood v. Murray, 28 Minn. 123, 9 N. W. Rep. 629; Spencer v. Sheehan, 19 Minn. 345, (Gil. 298.)

Sufficiency of notice. Chase v. Ross, 36 Wis. 267. Insufficient notice, jurisdiction. O'Dell v. Rogers, 44 Wis. 136.

After personal notice or publication, (as the case may be,) the court has complete jurisdiction, notwithstanding the failure to appoint a guardian *ad litem* for minors interested in the estate. No provision is made for such appointment. In re Mousseau's Will, 30 Minn. 202, 14 N. W. Rep. 887.

§§ 18–21. Foreign wills.

An executor in another state, the will not being proved nor letters issued in this state, although an authenticated copy of the letters and appointment in such other

state be filed in the proper probate court in this state, cannot maintain an action in this state for trespass upon real estate here. Pott v. Pennington, 16 Minn. 509, (Gil. 460.)
See Crippen v. Dexter, 13 Gray, 330.

§ 23. Omission to provide for child.

Testator's will contained certain specific legacies and devises, and devised and bequeathed all the remainder of his property to his wife, with this clause: "And her rights under this residuary provision shall not be affected or changed by the birth of any child of mine, if any shall be born to me before or after my decease." Held to manifest an intention not to provide for a child born after the execution of the will. Prentiss v. Prentiss, 14 Minn. 18, (Gil. 5.)

§ 35. Recording will.

Cited, Spencer v. Sheehan, 19 Minn. 345, (Gil. 298.)

*§ 37. Probate proceedings—Defective notice—Limitation.

That any will duly executed, and which has heretofore been actually admitted to probate by any probate court within this state, whether proper notice thereof had previously been given or not, and which will, or a certified copy thereof, has been of record in the office of the register of deeds of the county where the real estate thereby affected was at the time of the making of such record, or is situate, for a period of not less than ten years prior to the passage of this act, may be read in evidence in any court within this state, and shall have the same force and effect as if the proper notice of probate of such will had been given, and no right, title, or estate in lands situate within this state derived under such will shall be held invalid or set aside by reason of any defect in such notice, unless the action in which the validity of such title shall be called in question be commenced, or the defense alleging its invalidity be interposed, within ten years after the actual recording of such will as aforesaid: *provided*, that persons under disability, by reason of being minors, insane persons, idiots, persons in captivity, or in any country with which the United States were at war when such record was made, may commence such action or interpose such defense at any time within ten years after the removal of such disability: *provided, further*, that such action shall be commenced with reasonable diligence in all cases. (1887, *c.* 202, § 1.*)

*§ 38. Act not retrospective.

That nothing herein contained shall be construed to apply to any action or proceeding now pending in which the validity of such probate is involved. (*Id.* § 2.)

CHAPTER 49.

PROBATE COURTS.†

§ 2. Jurisdiction.

When it appears that a probate court has jurisdiction of the subject of the appointment of an administrator of the estate of a person deceased, the letters of administration issued by such court are, in a collateral proceeding, conclusive evidence of the due

*"An act defining the force and effect of wills heretofore admitted to record, and to limit the time within which the same may be questioned." Approved March 3, 1887. Took effect from and after January 1, 1888.

†The duties of commissioners are imposed upon probate judges by *§§ 20, 20*a*, *c.* 53, *post*.
For percentages to be paid into the county treasuries by executors, administrators, and guardians in proceedings for the settlement of estates, see *ante*, *c.* 7, *§§ 8, 8*a*.
See provision of Gen. Laws 1887, *c.* 159, in relation to the revision and codification of probate laws.