

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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.

ST. PAUL:
WEST PUBLISHING CO.
1888.

Redeeming lands from mortgage. *Goodrich v. Leland*, 13 Mich. 110.

An executor or administrator, who has not possession of the decedent's real estate, nor obtained a license to sell, cannot maintain an action to remove a cloud from the title. *Paine v. First Div. St. Paul, etc., R. Co.*, 14 Minn. 65, (Gil. 49.)

An administrator cannot maintain an action for trespass upon real property, committed after the death of an intestate, unless he has first asserted his right, under the statute, by taking possession of such real property. But if he takes possession, he may then maintain an action for a trespass committed thereon before he took possession, and after the death of his decedent. In such case his possession as well as his letters of administration relate back to the death of his intestate. *Noon v. Finnegan*, 29 Minn. 418, 13 N. W. Rep. 197.

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 *State v. Ramsey County Probate Court*, 25 Minn. 22, 25.

§ 11. Assets—Interest of mortgagees.

Cited, *Loy v. Home Ins. Co.*, 24 Minn. 319.

See *Albright v. Cobb*, 30 Mich. 355.

§ 15. Fraudulent conveyances—Action by administrator.

Where there is a deficiency of assets in the hands of an administrator, for the payment of the debts of the intestate, he may maintain claim and delivery for property transferred by his intestate in fraud of creditors, and taken from his lawful possession, and need not first bring an action to vacate such conveyance. *Bennett v. Schuster*, 24 Minn. 383.

A similar statute held not to confer the right to maintain a bill *quia timet* to clear title to intestate's real estate from a claim of dower. *Paige v. Fagan*, (Wis.) 21 N. W. Rep. 786.

If the grantee has disposed of the property by warranty deed, he must be made a party to the action brought by the administrator. *Fraser v. Passage*, (Mich.) 30 N. W. Rep. 334.

CHAPTER 53.

PAYMENT OF DEBTS AND LEGACIES.

This chapter and chapter 77, *infra*, are to be read together as one body of law, pertaining to the same subject-matter. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.)

This chapter seems to contemplate two classes of claims,—one, of those for which the liability is absolute and fixed, including those not yet due; the other, of those the liability for which depends upon some future contingent event. The latter are designated "contingent claims," and in this class falls a penal bond, the condition of which has not been broken. *McKeen v. Waldron*, 25 Minn. 468.

Proceedings to establish a claim need not be formally entitled. Any description which will identify them is sufficient. In re *Jefferson*, 35 Minn. 215, 28 N. W. Rep. 256. A personal tax is a debt for the purpose of proof against and payment from a decedent's estate. *Id.* And see *Comstock v. Smith*, 26 Mich. 306.

See, also, *Riley v. Mitchell*, 35 N. W. Rep. 472; In re *Brown*, 35 Minn. 307, 29 N. W. Rep. 131; *Cummings v. Halstead*, 26 Minn. 151, 1 N. W. Rep. 1052.

§ 3. Meetings of commissioners—Notice.

See *Greenwood v. Murray*, 28 Minn. 120, 123, 9 N. W. Rep. 629; *Ashley v. Eggers*, 59 Wis. 563, 13 N. W. Rep. 471; *Gardner v. Callaghan's Estate*, 61 Wis. 91, 20 N. W. Rep. 685.

§ 6. Time for presenting claims.

Where no commissioners were appointed, the failure to present the claim to commissioners for more than six years did not bar the debt. *Wilkinson v. Estate of Winne*, 15 Minn. 159, (Gil. 123.)

§ 8. Presentation of claims—Extension of time.

On the application of a creditor who has failed to present his claim, if made before the settlement of the final account of the administration of the estate, the court may allow further time, not exceeding three months, for the examination and proof of such claim; in which case the judge of probate shall cause personal notice to the parties of the time and place of hearing. (*As amended 1887, c. 34.*)

This section does not vest the probate court with a mere discretionary power, but, in the case of an application properly made, is mandatory. *Massachusetts Mut. Life Ins. Co. v. Estate of Elliot, 24 Minn. 134.*

When the court is justified in granting an application for a renewal of the commission, and an allowance of further time to a creditor in which to present his claim against the estate, see *In re Mills, 34 Minn. 296, 25 N. W. Rep. 631.* Whether "good cause" is shown for granting such applications is, to a certain extent, a matter addressed to the sound discretion of the court. *Id.*

§ 9. Set-offs—Claims barred by statute.

What offsets allowable—Claims purchased by administrator. *Willard v. Fralick, 31 Mich. 431.*

As to claims on a joint and several note, barred but for the pendency of an action, see *Jones v. Keep's Estate, 23 Wis. 45.*

§ 11. Report of commissioners.

Validity of report where but two out of the three commissioners acted in a particular case, the third not having had reasonable notice. *Hodges v. Thacher, 23 Vt. 455.*

Failure to ascertain the amount due upon an allowed claim. *Lowry v. Stevens, 6 Vt. 113.*

§ 12. Powers of commissioners.

Proof of claims—Powers of commissioners. *Clark v. Davis, 32 Mich. 154.*

Power to allow claims of a purely equitable nature. *Brown v. Sumner, 31 Vt. 671; Sparhawk v. Buell, 9 Vt. 41; Herrick v. Belknap, 27 Vt. 674.*

See, as to claims of the executor against the estate, *French v. Winsor, 24 Vt. 403, note.*

§ 13. Debts payable in the future.

Claims for rent. *Deane v. Caldwell, 127 Mass. 242.*

§ 14. Claims barred if not presented.

In an action pending in another state, at the time of the death of defendant, his administrator, there appointed, was substituted as a party, and judgment rendered against such administrator. Held, such judgment, not having been presented to commissioners here, was, under this section, forever barred, and an action against the administrator here, based thereon, was not maintainable. Section 50, *infra*, also prohibits such action. *Commercial Bank of Ky. v. Slater, 21 Minn. 174.* See, also, *Same v. Same, Id. 172.*

Where commissioners are appointed, and proceed duly and regularly, an executrix, who pays, out of funds not belonging to the estate, claims which are valid against the same, and which are properly allowable by the commissioners, but which have never been presented to them, or allowed by them, is not entitled to have such payments allowed to her on the settlement of her account as executrix. *Bunnell v. Post, 25 Minn. 376.*

Claims presented but not acted upon. *Cole v. Lightfoot, 4 Wis. 295.*

See, as to equitable claims, note to § 12.

See *Clark v. Tallman, (Iowa.) 27 N. W. Rep. 261; Ware v. Howley, Id. 789; Colby v. King, (Iowa.) 25 N. W. Rep. 704.*

§ 15. Actions against executor, etc.—When maintainable.

This section and section 50, *infra*, apply as well to a case in which the judge of probate acts as commissioner, as to a case in which commissioners are appointed by him. Section 20, *infra*; *Cummings v. Halsted, 26 Minn. 151, 1 N. W. Rep. 1052.*

The failure to appoint commissioners for more than seven years is an omission to appoint within the meaning of this section, upon which a creditor may bring action against the administrator. *Wilkinson v. Estate of Winne, 15 Minn. 159, (Gil. 123.)*

See *Lough v. Flaherty, 29 Minn. 295, 296, 13 N. W. Rep. 131.*

§ 16. Actions pending against deceased.

This section is not applicable to actions pending in another state. *Commercial Bank v. Slater*, 21 Minn. 172.

A foreign administrator may be admitted to defend an action pending against intestate at the time of his decease. *Brown v. Brown*, 35 Minn. 191, 23 N. W. Rep. 238.

Where, after verdict or decision upon an issue of fact, and before judgment, the unsuccessful party dies, and judgment on the verdict or decision is afterwards entered without substituting the executor, neither the judgment, verdict, or decision, nor the claim involved in the action, need be presented to the commissioners. Upon a certified copy of such judgment being filed in the probate court, it is entitled to be paid with the other debts allowed against the estate. An action cannot be maintained on the judgment against the executor. *Berkey v. Judd*, 27 Minn. 475, 9 N. W. Rep. 333.

See *Lough v. Flaherty*, 29 Minn. 295, 296, 13 N. W. Rep. 131.

§ 19. Deceased joint debtor—Liability of estate.

See *Ernst v. Nau*, (Wis.) 23 N. W. Rep. 492; *U. S. v. Spiel*, 8 Fed. Rep. 143.

§ 20. Judge to perform duties of commissioner.

See *Cummings v. Halsted*, cited in note to § 15, *supra*; *Auerbach v. Gloyd*, 34 Minn. 500, 27 N. W. Rep. 193.

***§ 20a. Judge to perform duties of commissioner.**

That the duties conferred upon commissioners by chapter fifty-three of the General Statutes shall be performed by the judge of probate court. (1879, c. 69.)

***§§ 21, 22. Register—Time and place of hearing.**

See *Auerbach v. Gloyd*, 34 Minn. 500, 27 N. W. Rep. 193; *State v. Probate Court*, 23 Minn. 381, 382, 10 N. W. Rep. 209.

APPEALS FROM THE DECISIONS OF COMMISSIONERS.

§ 24. (Sec. 20.) Appeal from commissioners' report.

Where commissioners allow part and disallow part of a claim, single in its character, though consisting of several items, an appeal must be from the decision on the claim as presented, and if confined to the part of the decision disallowing part of the claim, it will be fatally defective. *Capenhart v. Logan*, 20 Minn. 442, (Gil. 395.) The district court may review the judge of probate's allowance of the appeal, and, if the application for the appeal is limited to only a part of the commissioners' decision on a claim, should dismiss the appeal. *Id.*

Appeal by other creditors from the allowance of a claim. *Parsons v. Mills*, 1 Mass. 431, 2 Mass. 80.

Where the statute provides an appeal to review the decisions of an inferior court, a writ of *certiorari* will not, as a general rule, lie. *Wood v. Myrick*, 9 Minn. 149, (Gil. 139.)

The cause cannot be entitled on appeal in the name of the "estate" of the deceased person. *Columbus v. Monti*, 6 Minn. 568, (Gil. 403.)

A notice of appeal filed and served is as effectual as an application for an appeal. *Lake v. Albert*, 35 N. W. Rep. 177. And the payee of a note, given for the benefit of another, is a "creditor" within the meaning of the statute. *Id.*

See *Auerbach v. Gloyd*, cited in note to c. 49, § 15, *supra*; also, *State v. Probate Court*, 23 Minn. 381, 10 N. W. Rep. 209; *In re Charles*, 35 Minn. 433, 29 N. W. Rep. 170.

§ 25. (Sec. 21.) Appeal-bond.

A defect in the appeal-bond in being executed by but one surety does not go to the jurisdiction of the appellate court over the subject-matter of the appeal, but is a mere irregularity, which may be waived, or which the court may allow to be corrected by amending the bond, or filing a new one. *Riley v. Mitchell*, 35 N. W. Rep. 472.

Sufficiency of bond—Validity of proceedings in the absence of a valid bond. *Matter of Dickinson*, 2 Mich. 337.

See *Daniells v. St. Clair Circuit Judge*, (Mich.) 27 N. W. Rep. 1.

§ 27. (Sec. 23.) Proceedings on appeal.

Sufficiency of complaint. *Comstock v. Smith*, 26 Mich. 306.

§ 28. (Sec. 24.) Judgment on appeal—Certifying to probate court.

See Berkey v. Judd, cited in note to c. 49, § 13, subd. 4, *supra*.

§ 31. (Sec. 27.) Appeal by persons interested.

To the proceedings before commissioners, upon claims submitted for their allowance, all persons interested in the estate are parties, and all are bound by the award of the commissioners, or of the appellate court on appeal. State v. Probate Court, 25 Minn. 22.

See Lake v. Albert, cited *supra*, § 24; Auerbach v. Gloyd, 34 Minn. 500, 27 N. W. Rep. 193.

DISTRIBUTION OF ASSETS AMONG THE CREDITORS, AND OF INSOLVENT ESTATES.

§ 38. (Sec. 34.) Insolvent estate—Order of paying debts.

As to funeral expenses, see McNally v. Weld, 30 Minn. 209, 214, 14 N. W. Rep. 895. See In re Jefferson, 35 Minn. 215, 28 N. W. Rep. 256.

[§ 38a. (Sec. 35.) For this section, see *post*, page 1054.]

§ 39. (Sec. 36.) Decree of payment and distribution.

Where a decree is made by a probate court, directing debts allowed by the commissioners to be paid, it will be presumed that the commissioners gave the proper notice, or that the administrator appeared before them; and, in an action on the administrator's bond to recover the amount directed to be paid, proof of notice by the commissioners need not be made otherwise than by the decree. Lanier v. Irvine, 24 Minn. 116. No notice is required to authorize the making of a decree for payment of debts and distribution of assets among creditors. The existence of unpaid funeral expenses does not effect the validity of such decree. Id.

See Huntsman v. Hooper, 32 Minn. 163, 20 N. W. Rep. 127.

CONTINGENT CLAIMS.

§ 46. (Sec. 43.) Presentment and payment.

Claims depending upon a contingency which may never happen. Harding v. Smith, 11 Pick. 473.

See Blackmer v. Blackmer, 5 Vt. 355; Lowry v. Stevens, 6 Vt. 118; Jones v. Cooper, 2 Aiken, 54; Sargent v. Kimball, 37 Vt. 321; Sherman v. Abell, 46 Vt. 547; Waterman v. Wright, 36 Vt. 164; Lytle v. Bond, 39 Vt. 388.

§ 49. (Sec. 46.) Presentation to probate court.

What is such a contingent claim as is contemplated in this section, see Palmer v. Pollock, 26 Minn. 433, 440, 4 N. W. Rep. 1113; O'Gorman v. Lindeke, 26 Minn. 93, 1 N. W. Rep. 841.

See Mann v. Everts, (Wis.) 25 N. W. Rep. 209; Auerbach v. Gloyd, 34 Minn. 500, 27 N. W. Rep. 193.

§ 50. (Sec. 47.) Recovery from heirs, etc.

See note to section 14, *supra*; also Cummings v. Halsted, cited in note to § 15, *supra*.

ACTIONS AGAINST EXECUTORS, ETC.

§ 51. (Sec. 48.) Defense of plene administravit.

See Peckham v. Hoag, (Mich.) 23 N. W. Rep. 818.

§ 52. (Sec. 49.) Omission to appoint commissioners—Action.

Where a creditor of an estate has, by reason of an omission to appoint commissioners, the right to bring an action against a personal representative, such remedy is not exclusive; but, if commissioners are subsequently appointed, such claim may be presented to and proved before them. Wilkenson v. Estate of Winne, 15 Minn. 159, (Gil. 123.)

A delay of seven years in the appointment of commissioners is an "omission to appoint," authorizing proceedings by a creditor against the personal representative.

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Wilkenson v. Estate of Winne, 15 Minn. 159, (Gil. 123.) The debts upon which actions are allowed by c. 53, Gen. St., are the same as those actions upon which are the subject of c. 77. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.) Where commissioners to audit claims against an estate are appointed, and a claim proper to be passed on by them is presented to and disallowed by them, and no appeal taken, such claim cannot be enforced by action against real estate descended to the heirs, whatever irregularities there may have been in the appointment of, and in the action of, the commissioners, and though the claimant was ignorant of the report till more than two years thereafter, and after the administrator was discharged. *Id.*

§ 53. (Sec. 50.) Other actions not maintainable—Exception.

No action will lie against the representative on a claim not presented to the commissioners. *Commercial Bank v. Slater*, 21 Minn. 172; *Same v. Same*, *Id.* 174.

As to the liability of the personal representative to costs, and how enforced, see *Lough v. Flaherty*, 29 Minn. 295, 13 N. W. Rep. 131.

CHAPTER 54.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

§ 1. Executors, etc.—With what chargeable.

ASSETS—LIABILITY OF EXECUTORS AND ADMINISTRATORS. Buildings erected on lands belonging to wife of deceased. *Washburn v. Sproat*, 16 Mass. 449. Personal property applied by administrator to repairs and improvements of real estate in executing an agreement of intestate. *Cobb v. Muzzey*, 13 Gray, 57. Money paid by the heirs to avoid a sale of real estate for payments of debts. *Fay v. Taylor*, 2 Gray, 154. Rents and profits of real estate afterwards sold for payment of debts. *Towle v. Swasey*, 106 Mass. 100. Interest upon the proceeds of lands sold for payment of debts. *Jennison v. Hapgood*, 14 Pick. 345. Money received by the executor for a deed made by testator, and delivered after his death. *Loring v. Cunningham*, 9 Cush. 87. Money paid as compensation for land taken for public use. *Phillips v. Rogers*, 12 Metc. 405; *Boynton v. Peterborough & S. Ry.*, 4 Cush. 467; *Moore v. Boston*, 8 Cush. 274; *Chapin v. Waters*, 116 Mass. 147. Money recovered of principal for whom decedent was surety, the administrator having previously paid the debt. *Mowry v. Adams*, 14 Mass. 327.

§ 7. Accountable for income of realty.

Cited, *State v. Probate Court*, 25 Minn. 25.

§ 8. Losses from negligence—Liability.

Cited, *State v. Probate Court*, 25 Minn. 25; *Bryant v. Livermore*, 20 Minn. 337, (Gil. 271.)

*§ 8a. Unapproved claims—Payment—Allowance.

That in all cases where any executor or administrator has heretofore paid in good faith any debts or claims against the estate which he represents, without the same having been duly approved, as required by law, and whose final account has not yet been settled, such payments may be allowed by the judge of probate upon proof satisfactory to said judge of probate that said debts or claims were just and existing demands against said estate at the time of said payment. (1887, c. 184.)

§ 9. Rendering accounts.

Every executor or administrator shall render his account of his administration within one year from the time of his receiving letters testamentary or of