

GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA

36

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COMPLETE IN TWO VOLUMES.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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## CHAPTER 56.

## PARTITION AND DISTRIBUTION OF ESTATES.

## § 1. Allowance to children before division.

See Wood v. Myrick, 16 Minn. 494, (Gil. 447, 450, 452.)

## § 4. Distribution of estate.

Cited, Jordan v. Secombe, 33 Minn. 224, 22 N. W. Rep. 383; Huntsman v. Hooper, 32 Minn. 164, 20 N. W. Rep. 127.

A decree of the probate court in partition, assigning the residue of an estate, under this section, made without the notice provided for by § 8 of this chapter, is void for want of jurisdiction. Wood v. Myrick, 16 Minn. 494, (Gil. 447.)

An administrator will be allowed to deduct from the share of a distributee advances made by him to such distributee on account of her needy circumstances. Lyle v. Williams, (Wis.) 26 N. W. Rep. 448.

The decree of the probate court, assigning to a devisee the property devised, establishes the validity of the devise conclusively as against all interested in the estate, unless an appeal is taken. Such a decree establishes the right to the property assigned of the person to whom it is assigned the same as would the decree of any other court of competent jurisdiction; and if assigned to a devisee in trust, it establishes the validity of the trust. Greenwood v. Murray, 26 Minn. 259, 2 N. W. Rep. 945.

A decree of the probate court, under this section, cannot be attacked collaterally, and a defense setting up error therein, and conceding the jurisdiction of the court, will be demurrable. Wood v. Myrick, 16 Minn. 494, (Gil. 447.)

## § 6. Partition between heirs.

The power to make partition is only given as an incident of settling the estates of deceased persons. After administration is closed, the probate court has no jurisdiction. Hurley v. Hamilton, 33 N. W. Rep. 912.

See Wood v. Myrick, 16 Minn. 494, (Gil. 450, 452;) State v. Probate Court, 25 Minn. 22, 25.

## § 8. Order of distribution—Notice.

The provisions in regard to a notice, before partition is made, provided in this section, are applicable to a decree of the probate court, authorized by § 4 of this chapter, assigning the residue of the estate; and, if a decree assigning the residue of the estate is made under said § 4, without the notice required by § 8 being first given, it is void for want of jurisdiction; and, if pleaded as provided by § 91, c. 66, Gen. St., the want of such notice may be averred in the answer as a defense. Wood v. Myrick, 16 Minn. 494, (Gil. 447.)

As to the sufficiency of the publication of the order appointing a hearing as notice, see Greenwood v. Murray, 26 Minn. 120, 9 N. W. Rep. 629.

See State v. Probate Court, 25 Minn. 22, 25.

## § 12. Partition where tract not divisible.

When any tract of land, messuage, or tenement is of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section: *provided*, the party accepting it pays or secures to one or more of the others such sums as the commissioners award, to make the partition equal; and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded are paid to the parties entitled to the same, or secured to their satisfaction: *provided, further*, that if none of the parties entitled to shares in such land will accept the same as provided in this and the preceding section, then, and in such case, the probate court may authorize the executor or administrator to sell such land, and pay the proceeds, after deducting costs and expenses of sale, to the parties respectively entitled to the same,

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designating the proportion that each shall receive; such sale to be made and conducted in the same manner as provided by law for the sale of lands by executors and administrators for the payment of debts. (*As amended* 1883, c. 42, § 1.)

See *State v. Probate Court*, 25 Minn. 22, 25.

§§ 13-19. Procedure—Appeals—Effect of partition.

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

\*§ 19a. Opening decree made without notice.

In any case where a decree has heretofore been made, or shall hereafter be made, without notice, by a probate court, purporting to assign the estate of a deceased person, or the residue thereof, to the person or persons entitled thereto, any person interested in any real estate embraced within the terms of such decree, whether as heir or devisee of such deceased person, or as grantee of any heir or devisee, may apply to said court to have the said real estate of such deceased person, or the portion thereof in which the applicant is interested, assigned to the person or persons entitled thereto; and thereupon such court shall by order appoint a time for hearing said application, and shall direct notice of such hearing to be given by publication of said order in a newspaper published in the county where said court is held, and named in the order, for three weeks successively, at least once in each week; and upon the hearing, unless it appears that there are debts or claims existing against the deceased or the estate, not paid or provided for, the probate court shall enter a decree assigning said real estate to the person or persons entitled thereto, and the share or shares so assigned shall be held by the respective owners free from all debts, claims, or demands against the estate, except that the same shall not affect the lien of any mortgage upon said real estate. (1883, c. 113, § 1, *as amended* 1885, c. 49.)

§§ 20-24. Expenses—Reversions—Absentees.

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

CHAPTER 57.

SALES OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SALES BY EXECUTORS AND ADMINISTRATORS.

§ 1. Sale to pay debts.

See *Creswell v. Slack*, (Iowa,) 26 N. W. Rep. 42; *Toner v. Collins*, (Iowa,) 25 N. W. Rep. 287.

§ 2. Petition.

If there are several executors or administrators, all must join in the petition, and a license granted on the petition of one is invalid. *Hannum v. Day*, 105 Mass. 33.

The petition need not show that there are no mortgages or incumbrances on the land, that it is not cultivated or improved, or that there are no water privileges or other natural advantages thereon. *Spencer v. Sheehan*, 19 Minn. 333, (Gil. 292.)

The petition need not necessarily set forth the value of the real estate to be sold. *Yeomans v. Brown*, 8 Metc. 51.