REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS, AND OTHER LAWS OF A GENERAL AND PERMANENT NATURE, ENACTED BY THE LEGISLATURE IN 1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES AND FULL AND COMPLETE NOTES OF ALL APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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ST. PAUL
WEST PUBLISHING CO.
1910

PART III.

CIVIL ACTIONS AND PROCEEDINGS.

CHAPTER 74.

PROBATE COURTS.

GENERAL PROVISIONS.

3622. Jurisdiction.

Jurisdiction—In general.—The probate court is not endowed by Const. art. 6, § 7, with the general equity powers of courts of general jurisdiction. State ex rel. Union Nat. Bank of Grand Forks v. Probate Court of Ramsey County, 103 Minn. 325, 115 N. W. 173.

See, also, Wellner v. Eckstein, 105 Minn. 444, 117 N. W. 830.

—— **Estates of deceased persons.**—The jurisdiction of the court over the estate of a deceased person attaches when its general jurisdiction is invoked by presentation of a proper petition. Failure to give proper notice of the hearing on a petition for appointment of an administrator, by the publication of the citation for the full time required by statute, is an irregularity which renders the subsequent proceedings voidable and subject to be set aside on motion or appeal. But the giving of such notice, by the proper publication, is not necessary in order to confer jurisdiction over the estate, and the validity of subsequent proceedings cannot be questioned in a collateral proceeding. Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

3626. Court first acquiring jurisdiction has exclusive jurisdiction.

Cited in Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

3627. Counties in which administration shall be had.

Cited in Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

3631. Clerk of probate court.

As to counties having 275,000 inhabitants, see sections [601—] 27 to [601—] 30.

3636. Definitions.

Minor.—This section, fixing the majority of a female at 18 years, held not applicable to proceedings before an immigration officer for the purpose of determining the right of an alien to enter or to remain in the United States under the federal immigration statutes. Ex parte Petterson (D. C.) 166 Fed. 536.

3637. Salaries and clerk hire.—In all counties in which the compensation of judges of probate is not fixed by special law, the probate judges shall receive annual salaries as follows: In counties in which the population according to the last completed state or national census is less than three thousand, four hundred dollars; if the population is three thousand and less than six thousand, five hundred and seventy-five dollars; if six thousand and less than nine thousand, seven hundred and twenty-five dollars; if nine thousand and less than fifteen thousand, one thousand dollars; if fifteen thousand and less than twenty-two thousand thirteen hundred and fifty dollars; if twenty-two thousand and less than thirty thousand, fifteen hundred dollars; if thirty thousand and less than thirty-five thousand, eighteen hundred dollars; if thirty-five thousand and less than forty-five thousand, two thousand dollars; if forty-five thousand and less than one hundred and fifty thousand, three thousand dollars; if one hundred and fifty thousand and over, forty-five hundred dollars.

In addition to the foregoing salaries annual compensation for clerk hire for probate judges shall be as follows: In counties having a population of forty-five thousand and less than one hundred thousand, fourteen hundred dollars; if population is one hundred thousand and less than two hundred thousand, thirty-three hundred dollars, of which eighteen hundred dollars shall be for the salary of the clerk of such court and the balance for additional clerk hire, and stenographer; if two hundred thousand or over, the judge of probate shall appoint and employ one clerk of court who shall be paid the sum of twenty-five hundred dollars per annum, one deputy clerk of court who shall be paid the sum of thirteen hundred dollars per annum, and four general clerks who shall be paid the sum of one thousand dollars per annum each. In counties having a population of twelve thousand and less than forty-five thousand three hundred dollars, and such further sum as the county board may allow probate judges not to exceed nine hundred dollars annually. Provided, that no clerk hire shall be allowed or paid, except on the certificate of the probate judge, that the same has been paid or incurred by him. In counties having less than twelve thousand the county board may allow clerk hire, if deemed necessary, to an amount not exceeding one-fourth of the salary of the judge of such court. All such salaries and clerk hire shall be paid monthly from the county treasury upon the warrant of the county auditor.

In all counties having a population of two hundred thousand and over, probate judges and clerks shall charge for their services the fees prescribed by law, which shall be paid into the county treasury. Provided, that in all counties of this state having a population of less than one hundred thousand inhabitants, whether the salary of the judge of probate therein is fixed by general or special law, a judge of probate or clerk may charge, receive, and retain fees for taking acknowledgments and administering oaths, outside of probate duties, and for certified copies of the records and files of the court for which the compensation shall be as provided by section 3634, Revised Laws of 1905. (R. L. § 3637, as amended by Laws 1907, c. 322, and Laws 1909, c. 341, § 1.)

Historical.—"An act to amend section 3637, Revised Laws 1905, as amended by chapter 322, General Laws 1907, relating to salaries of judges of probate and clerk hire." Approved April 21, 1909.

See sections [3637—] 1 to [3637—] 15.

As to counties having 275,000 inhabitants, see sections [601—] 26, [601—] 27, [601—] 28 to [601—] 30.

[3637—]1. Same—In counties having more than 100,000 and less than 200,000 inhabitants and area of more than 5,000 square miles.—In all counties in this state having a population of more than one hundred thousand and less than two hundred thousand inhabitants according to the last completed state or national census and an area of more than five thousand square miles, whether or not the matters herein contained are now regulated by a special or a general law or laws, the annual salary of the probate judge shall be three thousand six hundred dollars. In addition to the foregoing salary, annual compensation for clerk hire, for probate judges in any such county or counties shall be a sum not greater than four thousand two hundred dollars to be determined, allowed, and approved by the board of county commissioners. All such salaries, and clerk hire shall be paid monthly from the county treasury, upon the warrant of the county auditor. ('09 c. 341 § 2)

[3637—]2. Salaries in counties having 27,000 inhabitants, etc.—That in any county in the state having a population of not less than twenty-seven thousand inhabitants wherein the salary of the judge of probate is arbitrarily fixed at twelve hundred dollars or less per annum, and where there are no provisions for clerk hire in the pro-

bate court of said county, the salary of the judge of probate is hereby fixed at fifteen hundred dollars per annum. ('07 c. 83 § 1)

Historical.—"An act to fix the salary of the judge of probate in counties exceeding twenty-seven thousand population, wherein the salary of the judge of probate is arbitrarily fixed at twelve hundred dollars or less per annum, and where there are no provisions for probate clerk hire." Approved April 3, 1907.

See section 3637.

[3637—]3. Salaries in counties having more than 100,000 and less than 200,000 inhabitants.—In all counties having a population of more than 100,000 and less than 200,000 inhabitants the judge of probate thereof shall receive in full compensation for all services rendered by him, an annual salary of thirty-six hundred dollars, paid in equal monthly installments. ('09 c. 269 § 1)

Historical.—"An act fixing and regulating the salaries and compensation of the judge of probate and authorizing county boards to appropriate money for the payment of clerk hire in probate courts in counties having or which may hereafter have a population of more than 100,000 and less than 200,000 inhabitants." Approved April 20, 1909.

By section 4, "all acts and parts of acts, whether the same be general, special or provide that the same shall not be repealed without express mention, inconsistent with the provisions of this act are hereby repealed."

See section 3637.

[3637—]4. Same—Clerk hire.—The board of county commissioners of such county is hereby authorized to appropriate out of the general funds of such county for paying clerk and clerical hire in the office of such probate court, such sum as they shall deem expedient, not exceeding the sum of forty-two hundred dollars. ('09 c. 269 § 2)

[3637—]5. Same—Fees.—The judge of probate and clerk of probate court shall charge the same fees for his services as are now or may hereafter be allowed by law and all such fees so charged and collected in said office, except fees for taking acknowledgments, administering oaths and performing marriage ceremonies outside of their probate duties, shall be paid into the county treasury. ('09 c. 269 § 3)

[3637—]6. Clerk hire in counties having 200,000 inhabitants.—That in all counties of this state having according to the then last completed state or national census a population of not less than 200,000 inhabitants, it shall be lawful for the judge of probate to employ a clerk of probate court, who shall be paid the sum of twenty-five hundred dollars per annum; one deputy clerk of probate court, who shall be paid the sum of thirteen hundred dollars per annum, and four general clerks, who shall be paid the sum of one thousand dollars per annum each, in equal monthly installments. ('07 c. 151 § 1)

Historical.—"An act fixing and regulating the salaries, compensation, duties and help of probate courts in counties having, or which may hereafter have, a population of 200,000 inhabitants or over." Approved April 11, 1907.

See section 3637.

[3637—]7. Same—Fees of judge and clerk.—The judge of probate and clerk of probate court shall charge the same fees for his services as are now or may hereafter be allowed by law, and all such fees so charged and collected in said office shall be paid into the county treasury. ('07 c. 151 § 2)

[3637—]8. When act becomes applicable.—Whenever, according to the then last state or national census, the population of any county of this state which now has a population of less than 200,000 inhabitants shall acquire not less than that number, the probate court of such county shall at once become subject to the provisions of this act. ('07 c. 151 § 3)

[3637—]9. Additional clerk hire in certain counties having 45,000 and not over 75,000 inhabitants.—In all counties of this state containing a population of not less than 45,000 and not more than 75,000, and in which the salary of the judge of probate is now or may hereafter be less than that provided for by the General Laws of the State of Minnesota, the county commissioners of such county may allow a sum not to exceed $500 per annum for additional clerk hire in said probate office in addition to the sum now allowed by law for the salary of the clerk of probate. Said amount so to be allowed to be fixed by the county commissioners for the year 1905 at their next meeting after the passage of this act and annually thereafter on the first meeting of each year, and said clerk hire shall in all cases be for actual services rendered and shall be paid monthly upon the presentation of a certificate of the judge of probate to the county auditor who shall issue to such person entitled thereto his warrant upon the county treasurer of said county for the amount therefor. ('05 c. 155 § 1)

Historical.—"An act providing for additional clerk hire for judges of probate in certain cases." Approved April 12, 1905.
See section 3637.

[3637—]10. Same—Salaries not affected.—This act shall in no way affect or modify any existing laws applicable to said county relating to the salaries and compensation of judges of probate and clerks of probate. ('05 c. 155 § 2)

[3637—]11. Clerk hire in certain counties.—That in all cases where by reason of any special law or otherwise no allowance for clerk hire is made to the judge of probate of any county, the board of county commissioners of such county, may by resolution allow for clerk hire to such judges of probate a sum not exceeding nine hundred dollars per year, to be paid in like manner as the salary of the judge. ('05 c. 81 § 1)

Historical.—"An act to authorize the allowance of clerk hire to judges of probate in certain cases." Approved March 30, 1905.
Section 2 repeals inconsistent acts.
See section 3637.

[3637—]12. Same—Applicable to counties having more than 35,000 inhabitants.—This act shall only apply to counties of more than 35,000 inhabitants. ('05 c. 81 § 2)

[3637—]13. Clerk hire in certain counties having less than 25,000 inhabitants.—That in all counties containing less than twenty-five thousand inhabitants, wherein the salary of the judge of probate is fixed by special law, the board of county commissioners may make provision to allow clerk hire for the judge of probate, not to exceed the sum of five hundred dollars per annum. ('09 c. 242 § 1)

Historical.—"An act to authorize the board of county commissioners in counties having less than twenty-five thousand inhabitants to provide for clerk hire for the judge of probate in such counties." Approved April 19, 1909.
See section 3637.

[3637—]14. Same—How paid.—Said sums shall be paid out of the county treasury on the warrant of the county auditor in favor of the person entitled to such clerk hire and said warrants shall be paid by the county treasurer as salaries of county officers are paid. ('09 c. 242 § 2)

[3637—]15. Clerk hire in counties where special law repealed.—In all counties of this state, in which the Special Law relating to compensation of the clerk of the probate court has been repealed, the clerk hire of the probate court shall be the same as is by general

law provided for such clerk hire in counties of the same class. ('07 c. 184 § 2)

Historical.—"An act to repeal chapter four hundred fifty-seven of the Special Laws of the year one thousand eight hundred ninety-one, 'An act to fix the compensation of the clerk of the probate court of Stearns county, Minnesota.'" Approved April 13, 1907.

By section 1, Sp. Laws 1891, c. 457, is repealed.

See section 3637.

[3637—]16. Collecting and retaining fees—Curative.—That all acts of judges of probate and clerks of probate courts in collecting and retaining fees, as authorized and prescribed by law, in all counties of the state of Minnesota having a population of two hundred thousand or less, prior to the enactment of chapter 322, General Laws 1907, be and the same are hereby declared to be lawful. ('09 c. 419 § 1)

Historical.—"An act to legalize the collection and retention of certain fees by judges and clerks of probate courts." Approved April 22, 1909.

See section 3637.

PROBATE PRACTICE.

3638. Proceedings, how begun.

Cited in Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

[3645—]1. Premature hearing—Curative.—That any hearing or proceeding heretofore had or held in any probate court in this state, under the provisions of the Probate Code relating to the probating of a will, the appointment of an executor or administrator, or the issuance of a final decree, where the notice of such hearing or proceeding was published the requisite number of times in a legal and proper newspaper, but such hearing or proceeding was prematurely held, and no action or proceeding has heretofore been instituted to set aside or invalidate the action of the Probate Court in such hearing or proceeding, is hereby legalized, validated and given the same force and effect as if proper notice thereof had been given and such hearing or proceeding had been held at the proper time; provided that nothing herein contained shall be construed to apply to any action or proceeding heretofore brought or which shall be brought within one year from the passage of this act to test the validity of any such probate hearing or proceeding, or in which a defense alleging the invalidity thereof has been interposed; or to any action heretofore brought or which shall be brought within one year from the date of the passage of this act involving any right, title or estate in lands situate within this state derived under said will. ('05 c. 254 § 1)

Historical.—"An act to legalize certain proceedings in probate court." Approved April 18, 1905.

DESCENT OF PROPERTY.

3646. Real estate in general—Posthumous children.

See Wellner v. Eckstein, 105 Minn. 444, 117 N. W. 830, cited in note under section 3647.

3647. Homestead.

Antenuptial contract.—An antenuptial contract, cutting off the homestead right of a husband and his statutory one-third interest in his wife's property, was not prohibited by statute, and was valid. Appleby v. Appleby, 100 Minn. 405, 111 N. W. 305, 10 L. R. A. (N. S.) 590, 117 Am. St. Rep. 709.

Right of murderer to inherit.—Where a wife murdered her husband for the purpose of acquiring his estate, and the probate court, without knowledge of such fact, by final decree assigned his homestead to her and his children, and she thereafter conveyed her interest in the land to defendant, who had knowledge of the facts, and she was thereafter convicted of the crime, and the children brought action in the district court, alleging the facts and praying to

to have defendant adjudged to hold the legal title as trustee ex maleficio for their benefit, it was held, on appeal from an order sustaining a demurrer to the complaint, that it did not state a cause of action. Whether a widow, who has murdered her husband for the purpose of acquiring the real property of the intestate, may inherit under the statute of descent was not decided; the court not being able to agree. But a majority of the court were agreed that the order appealed from should be affirmed, on the ground that the decree of the probate court assigning to the widow her statutory interest in the real estate of her deceased husband is final. Wellner v. Eckstein, 105 Minn. 444, 117 N. W. 830.

3648. Lands other than homestead.—The surviving spouse shall also inherit an undivided one-third of all other lands of which decedent at any time during coverture was seized or possessed, to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except such as have been transferred or sold by judicial partition proceeding or appropriated to the payment of decedent's debts by either execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens. But the lands so inherited shall be subject in their just proportion to such debts of the decedent as are not paid out of his personal estate. The residue of such other lands, or, if there be no surviving spouse, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

First—In equal shares to his surviving children, and to the lawful issue of his deceased children, by right of representation.

Second—If there is no surviving child and no lawful issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse.

Third—If the intestate leaves no issue nor spouse, his estate shall descend to his father and mother in equal shares, or, if but one survives, then to such survivor.

Fourth—If there be no surviving issue nor spouse, nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right or representation.

Fifth—If the intestate leaves neither issue, spouse, father, mother, brother nor sister, nor living issue of any deceased brother or sister, his estate shall descend to his next kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

Sixth—If any person dies leaving several children, or leaving one child and the issue of one or more other children, any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal share to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

Seventh—If, at the death of such child, who dies under age and not having been married, all the other children of his said parent being also dead, and any of them having left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of the other children of the same parent, according to the right of representation.

Eighth—If the intestate leaves no spouse nor kindred, his estate shall escheat to the state. (R. L. § 3648, as amended by Laws 1907, c. 36, § 1.)

See section [3335—] 1.

Cited in Wellner v. Eckstein, 105 Minn. 444, 117 N. W. 830.

Nature of wife's interest.—The right which a wife has by virtue of Laws 1875, c. 40, and Laws 1876, c. 37, in the lands of her husband during cover-

ture, is inchoate and contingent, and may, at any time before it becomes consummate by the death of the husband, be diminished or entirely taken away by the Legislature. Griswold v. McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382.

During the life of the husband the interest of the wife is not a vested one, growing out of the marriage contract, but a mere expectancy, or possibility, incident to the relation, contingent upon her surviving him. She is not a necessary party to an action brought against him for the purpose of having determined that he held the title to land as mortgagee, and not as owner; and, judgment having been entered to that effect, she is bound thereby. Stitt v. Smith, 102 Minn. 253, 113 N. W. 632, 13 L. R. A. (N. S.) 723.

The signature of the wife as a witness to a contract by the husband for the sale of his real estate held not a written consent to the sale within this section. Such contract may be specifically enforced as to him. Stromme v. Rieck, 119 N. W. 948.

Nature of husband's interest—Antenuptial contract.—See Appleby v. Appleby, 100 Minn. 408, 111 N. W. 305, 10 L. R. A. (N. S.) 590, 117 Am. St. Rep. 709.

See note under section 3647.

Liability for debts, etc.—Laws 1901, c. 33, excepting lands devested by execution or judicial sale, by assignment for creditors, or by insolvency or bankruptcy proceedings, applies to cases in which marriage and seisin occurred prior to its enactment. Griswold v. McGee, 102 Minn. 114, 112 N. W. 1020, 113 N. W. 382.

Minor child dying without issue.—Under G. S. 1894, § 4471, real property inherited by a child from its father's estate descended, where the child died unmarried, without issue, and before coming of age, to his surviving brothers and sisters. St. Paul Gaslight Co. v. Kenny, 97 Minn. 150, 106 N. W. 344.

3649. Election—Interpretation—Devise not additional.

Acceptance of provisions of will.—The acceptance by a widow of the provisions of her husband's will constitutes a bar to her claim of dower in lands conveyed by him during coverture by deed of warranty in which she did not join; such claim of statutory interest being inconsistent with the provisions of the will. Howe Lumber Co. v. Parker, 105 Minn. 310, 117 N. W. 518.

Construction of will.—A construction allowing the widow to take under her husband's will and retain her statutory interest in land conveyed by testator held not clearly to appear from the contents of the will, as required by G. S. 1894, § 4472. Howe Lumber Co. v. Parker, 105 Minn. 310, 117 N. W. 518.

3650. Illegitimate child.

Sufficiency of acknowledgment.—A writing whereby a father acknowledges himself to be the father, as provided by G. S. 1894, § 4473, need not be made for the express purpose of acknowledging the paternity of the child. Pederson v. Christofferson, 97 Minn. 491, 106 N. W. 958.

3653. Personal estate—Distribution.

Cited in Mayer v. Mayer, 106 Minn. 484, 119 N. W. 217.

Subd. 1.—Gen. Laws 1903, c. 334, subds. 1, 2 (now section 3653), vests in the widow an unqualified right to the property allowed immediately upon the husband's death. Her selection is necessary only as a designation of the property she elects to claim. Her abandonment of the husband, with or without cause, does not, in the absence of a decree annulling or dissolving the marriage, forfeit her rights to his property. If she dies before the property has been set apart by order of the court, or before she has selected it, the right of selection survives to her personal representative. Sammons v. Higbie's Estate, 103 Minn. 448, 115 N. W. 265.

Subd. 6.—Laws 1903, c. 334, amending Laws 1889, c. 46, § 70, made it unlawful for a childless spouse to dispose of all his personal property by will to the exclusion of his spouse, and entitled the surviving spouse to the same interest in both real and personal property of the deceased, unaffected by contrary testamentary disposition. Hayden v. Lamberton, 100 Minn. 384, 111 N. W. 278.

[3653—]1. Property escheated—Refundment to heirs in certain cases.—When any person who has died within the last past ten years in the state of Minnesota, and being a resident thereof at the time of his death, and his estate thereafter having been duly administered upon in the probate court of the county having jurisdiction thereof, and leaving no known spouse nor kindred, and said estate having been fully administered upon, and the balance in the hands

of the representative of said estate having by order of said court escheated to, and been paid to the state of Minnesota, and if it shall be made to appear that such deceased person, in fact, left heir or heirs to his estate, then, upon the proper presentation of proofs of such heirship and amount so escheated to the district court of the county wherein such probate proceedings were had, either in term time or vacation, upon notice of at least eight days to the attorney general of said state of the time and place of hearing such proofs, and if upon such hearing the said district court shall find that such deceased person left heir or heirs, said court shall determine who such heir or heirs are and the amount so escheated, and file its decision to that effect with the state auditor; then the state auditor shall draw his warrant on the state treasurer of said state, for the payment of said money to such heir or heirs, or to his, her or their attorney in fact, upon the recording of his power of attorney in the office of the state auditor of said state. ('09 c. 58 § 1)

Historical.—"An act providing for the establishment of heirship to a person or persons who have heretofore, and within the past ten years, died in the state of Minnesota, without having any known heir or heirs, and the money left from his estate having heretofore escheated to the state of Minnesota, and to appropriate money out of the state treasury of the state of Minnesota for the payment to such heir or heirs, as they may show themselves to be entitled thereto." Approved March 12, 1909.

Section 2 makes an appropriation to carry out the provisions of the act.

3654. Application to determine descent.

Jurisdiction.—Under Laws 1901, c. 346, § 1, as amended by Laws 1903, c. 23, the probate court of any county wherein lies any part of the lands in which petition is first filed has jurisdiction to determine the descent of all lands of decedent in the state and to decree distribution thereof, although part of them may lie in other counties. Chadbourne v. Alden, 98 Minn. 118, 107 N. W. 148.

Order for hearing.—It is not necessary that the land be described in the order fixing the time and place of hearing the petition. An order which described only a part of the land was valid as to all. Chadbourne v. Alden, 98 Minn. 118, 107 N. W. 148.

WILLS—EXECUTION, EFFECT, ETC.

3659. Who may make a will—How executed.

In general.—A written instrument, no matter what its form, which is of a testamentary character, is a will, and, if not executed as required by the statute, is void. Thomas v. Williams, 105 Minn. 88, 117 N. W. 155.

Sound mind.—A will, void because testator was not of sound mind, cannot be held invalid as to personal property and valid as to real estate. Sheeran v. Sheeran, 96 Minn. 484, 105 N. W. 677.

Whether testator was of sound mind was, on the evidence, a question of fact, and the findings of the court that he was of sound mind were sustained. Church of St. Vincent de Paul v. Brannan, 97 Minn. 349, 107 N. W. 141.

Where the subscribing witnesses testify that in their opinion testator was of sound mind, and there was no evidence to the contrary, a prima facie case was established. Geraghty v. Kilroy, 103 Minn. 286, 114 N. W. 838.

Signature of testator.—A finding that the writing purporting to be the will of testator was not signed by him, nor by any person in his presence by his express direction, was sustained by the evidence. Pederson v. Christofferson, 97 Minn. 491, 106 N. W. 958.

The making of his mark to his proposed will by a testator, who is unable to write, is a signing, although his name, leaving a space for his mark, is written at the end of the will by another, without his express direction. Geraghty v. Kilroy, 103 Minn. 286, 114 N. W. 838.

Publication.—The evidence sustained a finding that testator declared the instrument signed by him, in the presence of the witnesses, to be his will. Geraghty v. Kilroy, 103 Minn. 286, 114 N. W. 838.

Attestation.—Whether a will was signed by the witnesses in the conscious presence of testator was a question of fact for the trial court. Cunningham v. Cunningham, 83 N. W. 58, 80 Minn. 180, 51 L. R. A. 642, 81 Am. St. Rep. 256, followed and applied. Church of St. Vincent de Paul v. Brannan, 97 Minn. 349, 107 N. W. 141.

Intention of testator.—Though a will, prepared from instructions and signed by testator upon assurance that it expresses his wishes, is invalid if the lan-

guage does not in legal effect make the provisions intended, it is not necessarily invalid if by the will, construed in connection with the statutes of inheritance, the property passes to the persons intended. Failure to incorporate a clause giving the residue of the estate to the person who in the absence of a will would inherit will not render the will invalid. Church of St. Vincent de Paul v. Brannon, 97 Minn. 349, 107 N. W. 141.

Undue influence.—Where testator, by his will, after providing for a second wife during her life, left practically all his property to her relatives, to the exclusion of his own children, the evidence was sufficient to show that the instrument was the result of undue influence exerted by her. Tyner v. Varien, 97 Minn. 181, 106 N. W. 898.

3663. Legacy to subscribing witness.

Executor as witness.—A person named in a will as executor is a competent attesting and subscribing witness to its execution. He is also a competent witness, although he petitions for its probate, to testify as to its execution, including what testator said relevant thereto. Geraghty v. Kilroy, 103 Minn. 286, 114 N. W. 838.

3665. Written wills, how revoked or canceled.

Implied revocation.—The common-law rule of implied revocation of wills by changed conditions and circumstances is adopted by this section. A settlement between husband and wife, in anticipation of a divorce, by which he made over to her one-third of all his property, coupled with the fact of divorce, revoked by implication a will theretofore executed by him in which he gave to her the amount of property she received on the settlement. Donaldson v. Hall, 106 Minn. 502, 119 N. W. 219, 20 L. R. A. (N. S.) 1073.

3666. Will revoked by marriage or divorce.—If, after making a will, the testator marries the will is thereby revoked, and if the testator after making the will is divorced from the bonds of matrimony, all provisions in such will in favor of the testator's spouse, so divorced, are thereby revoked. (R. L. § 3666, as amended by Laws 1909, c. 53, § 1.)

PROBATE OF WILLS.

3677. Filing petition—Notice—Proof and allowance of will.

Allowance of will—Inconsistent positions of proponent.—Where the petitioner for probate of a will upon the hearing filed objections to its allowance, and assumed the position of contestant, and other persons assumed the position of proponents, and such contest was tried in the probate court without objections from either and resulted in an order admitting the will to probate from which contestant appealed to the district court, proponents were estopped from there raising the question that contestant had elected to take under the will and was estopped from contesting it. Pederson v. Christofferson, 97 Minn. 491, 106 N. W. 958.

GRANTING LETTERS OF ADMINISTRATION.

3698. Hearing—Contest—Granting letters.

Jurisdiction.—Where the time of the hearing was improperly set for two days previous to the expiration of a legal publication, and on the date named the administrator was appointed, the appointment was only irregular, and the question of the validity of subsequent proceedings could not be raised in a collateral proceeding. Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

3702. Special administrator.

Cited in Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

3703. Powers and duties.

G. S. 1894, § 4484, cited in Sheeran v. Sheeran, 96 Minn. 484, 105 N. W. 677.

See note under section 3873.

Personal representative.—A special administrator is a "personal representative," within section 4503. Jones v. Minnesota Transfer R. Co., 121 N. W. 606.

REPRESENTATIVES—GENERAL PROVISIONS.

3705. General powers and duties.

Possession of land.—In an action by an administrator against the assignee of an heir of intestate to recover possession of land, a finding that possession by the administrator was necessary for the purposes of administration was sustained by the evidence. Kern v. Cooper, 97 Minn. 509, 106 N. W. 962.

In an action to determine adverse claims, plaintiff's administrator was properly substituted as plaintiff. Quinn v. Minneapolis Threshing Mach. Co., 102 Minn. 256, 113 N. W. 689.

[3711—]1. Certain foreclosures legalized.—Every mortgage foreclosure sale heretofore made under a power of sale in the usual form, contained in any mortgage executed under the laws of the state of Minnesota, and recorded in the office of the register of deeds of the proper county, of real property in this state, is, together with the record of such sale, legalized and made valid and effective to all intents and purposes as against the following objections, viz.:

First. That the foreclosure was made by an executor or administrator appointed in another state who did not file an authenticated copy of his letters or other record of his appointment with the register of deeds of the proper county prior to the foreclosure, provided, that such copy has been filed in such office prior to the passage of this act.

Second. Where a foreign executor or administrator failed to file for record with the register of deeds of the proper county, an authenticated copy of his letters or other record of his appointment, prior to the foreclosure, but did file such authenticated copy in said office subsequent to the foreclosure and prior to the passage of this act. ('09 c. 312 § 1)

Historical.—"An act to legalize mortgage foreclosure sales heretofore made by foreign executors or administrators." Approved April 21, 1909.

[3711—]2. Same—Pending actions.—The provisions of this act shall not affect any action now pending in any court in this state. ('09 c. 312 § 2)

CLAIMS AGAINST ESTATES.

Sections 3727–3749 cited in State ex rel. Union Nat. Bank of Grand Forks v. Probate Court of Ramsey County, 103 Minn. 325, 115 N. W. 173.

3727. Order limiting time to present claims.

See note under section 3733.

3733. Actions against executors or administrators.

Equitable liens—Jurisdiction.—Whether the Legislature has constitutional power to provide that the probate court may, as an incident to the administration of estates, determine and discharge equitable mortgages and liens, is not decided. Such duties have not been imposed, and in the absence of legislative enactment that court has no jurisdiction. "Action" means the proper action to be brought in a court of general jurisdiction. State ex rel. Union Nat. Bank of Grand Forks v. Probate Court of Ramsey County, 103 Minn. 325, 115 N. W. 173.

3734. Order adjudicating claim—Effect—Interest.

G. S. 1894, § 4517, cited in First Unitarian Society of Minneapolis v. Houliston, 96 Minn. 342, 105 N. W. 66.

See note under section 3874.

PAYMENT OF DEBTS AND LEGACIES.

Sections 3727–3749 cited in State ex rel. Union Nat. Bank of Grand Forks v. Probate Court of Ramsey County, 103 Minn. 325, 115 N. W. 173.

3744. Debts and legacies paid in full, when.

See section next following.

[3744—]1. **Same—Contingent legacy—Trustee.**—In case there is sufficient assets in the hands of the executor or administrator for that purpose he shall proceed to pay all the debts and legacies of the deceased in full. When a legacy is contingent on the event of the legatee living to a certain age and the testator has omitted to appoint any person or persons to receive and hold said legacy until the legatee arrives at the prescribed age, the probate court may appoint some discreet person to act as trustee, who, upon giving a bond, as hereinafter prescribed, shall receive, invest and control said legacy, and the income thereof until the legatee shall arrive at the age prescribed in the last will and testament of the testator, or in case of the death of said legatee before arriving at said age, said legacy shall be disposed of according to the provisions of the last will and testament of the testator. Said trustee shall before entering upon the duties of his trust give a bond to the judge of probate with sufficient sureties in such sum as the judge of probate shall direct, conditioned that said trustee will faithfully execute the duties of his trust and will render a just and true account of his trusteeship to the probate court at any time when required by said court; that he will perform all orders and decrees of the probate court to be by him performed in the premises, and that when the legatee arrives at the prescribed age he will pay to said legatee the amount of said legacy and the income thereof, or in case of the death of said legatee before arriving at such age, that he will pay said legacy and the income thereof to the person or persons designated in the last will and testament of the testator as being entitled thereto. (Laws 1889, c. 46, § 121, as amended by Laws 1905, c. 234, § 1.)

Historical.—"An act to amend section one hundred and twenty-one of chapter forty-six of the General Laws of eighteen hundred and eighty-nine, being section 4528 of the General Statutes of 1894, relating to the payment of debts and legacies of deceased persons." Approved April 17, 1905.

Laws 1899, c. 46, was repealed by R. L. § 5538; the provisions of said section 121 being incorporated in R. L. § 3744. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

3749. Payment of secured debts.

Application in general.—This section has no application to equitable or disputed liens. State ex rel. Union Nat. Bank of Grand Forks v. Probate Court of Ramsey County, 103 Minn. 325, 115 N. W. 173.

See note under section 3733.

DISPOSAL OF REALTY BY REPRESENTATIVES.

3751. Real estate may be sold, when.

Subd. 1.—When land is sold for payment of debts and expenses, the surplus goes to the heir who would have taken the land. Kolars v. Brown, 121 N. W. 229.

See note under section 4272.

[3752—]1. **Certain mortgages by guardians legalized.**—Every mortgage heretofore made by any guardian, executor or administrator upon real property in this state, belonging to his ward, decedent or testator, and the foreclosure thereof, together with the record of such mortgage and the record of such foreclosure, are hereby legalized and made valid and effective to all intents and purposes as against the following objection, namely: That such mortgage was given upon only a part of the real property specified in the order of license authorizing the same and was given to secure the payment of a lesser sum of money than that specified in such order of license, providing such mortgage was duly report-

ed to and confirmed by the probate court making such license. ('09 c. 90 § 1)

Historical.—"An act legalizing certain mortgages given by guardians, administrators or executors upon real property in this state, belonging to their wards, decedents or testators, and the foreclosure of such mortgages and the record of such mortgages and of the foreclosure thereof." Approved March 20, 1909.

Section 2 enacts: "The provisions of this act shall not affect any action or proceeding at law now pending in any court of this state."

[3752—]2. Certain mortgages by guardians legalized.—That all mortgages on real estate in this state heretofore made by a guardian of a minor or minors under license from a proper probate court of this state, wherein the mortgage and the note or notes accompanying it bear date before the execution of a proper bond by the guardian and the approval and filing of said bond by the proper probate court, provided, all other proceedings therein were legal, are hereby legalized and made as valid and effectual to all intents and purposes and of the same force and effect as if said mortgage and the note or notes accompanying it bore date after the execution of a proper bond by the guardian and the approval and filing of the same by the proper probate court, provided, the acknowledgment of the guardian in the mortgage bears date after the execution of the bond by the guardian and the approval and filing of the said bond by the proper probate court. Provided, however, that nothing herein shall affect any action or proceeding now pending. ('09 c. 260 § 1)

Historical.—"An act to validate and legalize mortgages of real estate made under license from a probate court to guardians." Approved April 19, 1909.

3776. Limitation of actions to recover.

Application in general.—The sale of the real estate by an administrator who was irregularly appointed was not subject to attack in an action brought by the heir after the lapse of five years. This sale was an "administrator's sale," within this section. Hanson v. Nygaard, 105 Minn. 30, 117 N. W. 235.

[3776—]1. Records destroyed—Certain deeds prima facie evidence, etc.—Whenever it shall appear that probate court records of any estate have been destroyed by fire, and a deed purporting to convey real estate and to be made by an executor, administrator or guardian of such estate claiming to act under the jurisdiction of said court shall have been made and recorded in the office of the register of deeds of the county wherein the land thereby conveyed is situated, more than six years prior to the passage of this act, then such deed or the record thereof shall be taken and considered as prima facie evidence that the person executing such deed was at the time of such execution and delivery of deed the legal representative of said estate, duly authorized to make and deliver said deed by a court having full jurisdiction over said estate, and that all proceedings required by statute in the sales of real estate by legal representatives of estates from the time of filing of petition for license to the time of the execution and delivery of the deed have been duly complied with, and that all facts recited in said deed pertaining to the sale are true. ('07 c. 391 § 1)

Historical.—"An act to define the effect of certain recorded deeds made by executors, administrators or guardians where the probate court records have been destroyed by fire." Approved April 24, 1907.

[3776—]2. Same—Pending actions.—This act shall not affect any action heretofore commenced. ('07 c. 391 § 2)

[3776—]3. Certain assignments of school land certificates legalized.—That in all cases within this state prior to the 1st day of January, 1898, where an administrator of the estate of a deceased person has during his administration made an assignment or assignments of school land certificates belonging to the estate of such deceased person without first having obtained a license from

the probate court to make such assignment, or an order confirming the same, and when in any such case the administration of the estate has been closed and a final decree made and entered therein, that all such assignments shall be and the same are hereby declared to be legal and valid, and the records of such assignments heretofore actually recorded in the office of the register of deeds of the proper county shall in all respects be valid and legal. Provided, that the provisions of this act shall not apply to any action or proceeding now pending in any of the courts of this state, or commenced therein within 90 days after the passage and approval of this act. ('09 c. 311 § 1)

Historical.—"An act to legalize certain assignments of school land certificates made by an administrator of the estate of a deceased person in all cases where such administrator has made such assignments without license from the probate court." Approved April 21, 1909.

ACCOUNTING—DISTRIBUTION—FINAL SETTLEMENT.

3785-3787. [Superseded.]

See section [3787—] 1.

[3787—]1. Partial distribution—Finality—Bond—Lien of attorney.—At any time pending the administration of the estate of a deceased person and after the granting of letters thereon, the executor or administrator or any person interested in the estate may file a petition for the assignment of any part or portion or the whole of the estate to the persons thereto entitled; and thereupon the executor or administrator shall at once file his account to that date, and the court shall by order fix a time for the hearing of said petition and account, which order shall be published according to law. Upon such hearing the court shall settle and allow such account, if upon examination it is found just and correct, and shall upon satisfactory evidence determine the rights of all persons to said estate, and unless partition is asked for, as hereinbefore provided, shall make a decree in accordance with such determination, which decree shall assign and distribute such part or portion of said estate as shall have been petitioned for, or as to the court shall seem proper, or, in the discretion of the court, the whole thereof to the persons thereto entitled by law, and which decree shall name the persons entitled to the estate and the proportions of the estate to which each is entitled, and if any real estate is so assigned such decree shall describe as near as may be the land to which each is entitled. Such decree shall be final both as to the persons entitled to said estate and as to the proportions in which they are entitled to the same. When such decree shall have been entered all subsequent assignments or distributions of the estate of said deceased shall be to the same persons and in the same proportions as fixed and determined by such decree, and not otherwise. Provided, however, that no distribution of any part or portion of said estate shall be made until the expiration of the time limited by the order of the court for the filing and allowance of claims against the deceased, nor until a bond in at least double the amount of the claims remaining unpaid filed against said estate is given to the judge of probate, with such surety as the court directs, to secure the payment of the debts of the deceased, legacies or expenses of administration, or such part thereof as remains still unprovided for by reason of such distribution. Provided, that where any foreign heir, devisee or legatee has appeared by attorney, and said attorney shall, before such decree is made, have served upon the executor or administrator a notice of his intent to claim a lien upon any distributive share or legacy of such heir, devisee or legatee for the

amount of his compensation agreed upon, if there be a special agreement, or the reasonable value of his services in representing such devisee, legatee or heir, and shall have filed in probate court a duplicate of such notice, with proof of service, said attorney or attorneys shall have a lien upon such distributive share or legacy for such amount, which shall be taxed and allowed by the probate court at the time of hearing any petition for partial or general distribution of the estate in which such lien claimed was filed, and any money or property decreed therein to such heir or legatee, shall be decreed subject to such lien. The executor or administrator shall, out of any money or specific personal property so decreed, satisfy said lien claim, and for that purpose may, under the order and direction of the probate court, sell so much of such specific personal property as may be necessary to satisfy said lien, claim, and the costs and expenses of the sale. (Laws 1899, c. 46, § 251, as amended by Laws 1901, c. 10, and Laws 1905, c. 21, § 1.)

Historical.—Section 251 of Laws 1899, c. 46, being G. S. 1894, § 4664, as amended by Laws 1901, c. 10, was amended as above set forth by section 1 of an act entitled "An act to amend chapter 46 of the General Laws of the State of Minnesota for the year 1889, entitled: An act to establish a probate code, as amended by chapter 10 of the General Laws of the State of Minnesota for the year 1901," approved March 2, 1905 (Laws 1905, c. 21).

Laws 1889, c. 46, and Laws 1901, c. 10, were repealed by R. L. §§ 5538, 5544; the provisions of said amended section 251 being incorporated in R. L. §§ 3785–3787. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

3790. Proceedings on hearing.—On hearing such petition, the court may examine the representative on oath and hear all proper testimony offered, touching on account, or relating to, the distribution of the estate. If all taxes, including personal property taxes, assessed against the estate, have been paid so far as there were funds to pay them, and the account is found correct, it shall be settled and allowed, if incorrect, it shall be corrected under the direction of the court, and then settled and allowed. Upon such settlement, the court shall determine who are entitled to the residue of the estate, and shall then or thereafter make its decree, assigning such residue to the persons entitled thereto by law. (R. L. § 3700, as amended by Laws 1907, c. 434, § 1.)

3791. Assignment of residue and record thereof.

Finality of decree.—See Wellner v. Eckstein, 105 Minn. 444, 117 N. W. 830, cited in note under section 3647.

[3793—]1. Certain decrees validated—Limitation.—That any final decree, made by any probate court of this state, in the matter of the estate of a decedent, when the order for hearing the application for such decree has been duly published, according to law, but the hearing was had and such final decree issued at a date later than the date stated in such order for hearing, and which decree, 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, be and the same hereby is legalized and made valid, and the same may be read in evidence in any court within this state, and shall have the same force and effect as if duly issued on the date stated in the order for hearing, and no right, title or estate in lands situated within this state, derived under such decree, shall be held invalid or be set aside by reason of the defect aforesaid, 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 six months after the passage of this act. ('07 c. 313 § 1)

Historical.—"An act defining the force and effect of final decrees issued by the probate court of this state, and recorded in the office of the register of deeds, and to legalize certain of the same, and to limit the time within which their validity may be questioned." Approved April 23, 1907.

[3793—]2. Same—Pending actions.—That nothing herein contained shall be construed to apply to any action or proceeding now pending in which the validity of such decree is involved. ('07 c. 313 § 2)

3794. Discharge of representative.

See section next following.

[3794—]1. Same.—That whenever an executor or administrator shall have fully complied with all the terms and conditions of the final decree of distribution and of all other decrees and orders of the probate court appointing him, and shall have paid over to the distributees named in such final decree of distribution of the said court, all moneys and funds and property to them awarded by such final decree, and when such executor shall have in all other respects fully complied with the terms and conditions of said final decree, and have fully complied with all the orders and decrees of the said court, and when it shall appear to the court that the executor or administrator has paid over all moneys to the proper parties, and that he has in all things complied with the orders of the court and the terms of the final decree in said estate, and that he has in all things, well, faithfully and fully administered his trust as such executor or administrator, the court shall enter an order and decree fully discharging the said executor or administrator and the sureties on his bond from all further liability, and from all liability by reason of said trust and by reason of said administration. (Laws 1903, c. 195, § 1, as amended by Laws 1905, c. 332, § 1.)

Historical.—"An act to amend section one of chapter one hundred and ninety-five of the General Laws of nineteen hundred and three." Approved April 19, 1905.

Laws 1903, c. 195, was repealed by R. L. § 5546; the provisions of section 1 thereof being incorporated in section 3794. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

3795. Deposit with county treasurer.—If it shall appear that any part of the money on hand has not been paid over because the person entitled thereto cannot be found in the state, or his place of residence is unknown, or has not appeared and claimed and received his share of the estate according to the decree of distribution within one year after the date of the decree, or for any good and sufficient reason the same has not been paid over, the court may direct the petitioner to deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he shall file with the county auditor, and one in the probate court. Upon filing such receipts the petitioner shall be entitled to the discharge provided for in section 3794. (R. L. § 3795, as amended by Laws 1909, c. 57, § 1.)

[3796—]1. Certain decrees of heirship—Prima facie evidence.—That where decrees of heirship to real estate in the State of Minnesota were made by any of the probate courts of this state, under the provisions of chapter 50 of the General Laws of Minnesota, 1885, and said decrees were entered in the records of said courts and certified copies thereof were recorded in the offices of the register of deeds as provided by said chapter, prior to the repeal of said chapter, said decrees, and said records thereof, and certified copies of either said decrees or said records, shall be taken and held in all legal proceedings in this state, in respect to the succession

of the real estate described in the decrees, as prima facie evidence of all the facts found in said decrees. ('05 c. 73 § 1)

Historical.—"An act to make decrees of heirship to real estate entered and recorded under the provisions of chapter 50, General Laws of Minnesota, 1885, and the records thereof, prima facie evidence under certain circumstances." Approved March 24, 1905.

PROBATE BONDS.

3814. Bonds, run to whom—How approved and prosecuted.

Action on bond—Failure to account.—Failure of an administrator to account to the probate court within the time limited, and to pay funds received by him to his successor as administrator de bonis non, amounted to a default in the bond. The district court had jurisdiction to entertain an action upon the bond to enforce the liability, and prima facie the amount of the liability of the sureties was the amount received by the principal, not to exceed the face of the bond. McAlpine v. Kratka, 98 Minn. 151, 107 N. W. 961.

GUARDIANS AND WARDS.

3821. Testamentary guardians.

See section next following.

[3821—]1. Same.—The father with the written consent of the mother, and the mother with the written consent of the father, may by will appoint a guardian of their minor children, whether born at the time of making the will or afterwards, to continue during their minority or a less time, and if either parent dies without having appointed a testamentary guardian, the survivor may by will appoint such guardian. Such guardian, within thirty days after probate of the will, or after he has knowledge of his appointment, and in case of appeal within thirty days after final determination of such appeal, shall file with the probate court his acceptance of the trust and give bond to be approved by the court. Thereupon a certificate shall be issued to him, under the hand and seal of the court reciting his appointment by will, his acceptance and qualification. He shall then have the same powers and perform the same duties, with respect to the person and estate of the ward, as a guardian appointed by the probate court. Such guardian shall at all times be subject to the jurisdiction, direction and orders of the probate court, and may be removed by such court for good cause. If any guardian so appointed by will does not accept the trust and qualify within the time limited, he shall be deemed to have renounced the appointment, and the probate court may then appoint a guardian as in other cases. (G. S. 1894, § 4539, as amended by Laws 1905, c. 256, § 1.)

Historical.—"An act to amend section 4539 of the General Statutes of 1894, relating to the appointment of testamentary guardians." Approved April 18, 1905.

G. S. 1894, § 4539, was section 132 of Laws 1889, c. 46, which was repealed by R. L. § 5538; the provisions of said section being incorporated in R. L. § 3821. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

3826. Guardian for insane or incompetent persons.

Old age.—In proceedings for appointment of a guardian for an incompetent, evidence held to sustain a finding that the person was, by infirmities of old age, incompetent to manage his property. Swick v. Sheridan, 119 N. W. 791.

3834. Guardians of minors—General powers.

Cited in State v. Sager, 99 Minn. 54, 108 N. W. 812.

See note under section 4930.

3838. Guardian to collect debts and appear in actions.

Action for personal injuries.—Under this section an action to recover damages for personal injuries to a minor may be brought in his name as plaintiff

by his general guardian. Section 4060, providing for an action by the general guardian, is not inconsistent, and either course may be pursued. Patterson v. Melchior, 102 Minn. 363, 113 N. W. 902.

COMMITMENT OF INSANE PERSONS.

Sections 3852-3861 cited in Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393, 17 L. R. A. (N. S.) 984.

[3855—]1. Interpreters for deaf and dumb.—That at all hearings and examinations held for the purpose of determining whether or not persons who are deaf and dumb, or either, are insane, as provided by the laws of this state, each and every such deaf and dumb, or deaf or dumb person, so charged with insanity, who is unable to read and write, shall as a matter of absolute right have furnished to him, at all hearings and examinations wherein he is charged with insanity, an interpreter to convey questions to him and his answers, by the sign language with which he is familiar, to all questions propounded to him at such hearing, and in the event such person so charged with insanity does not make such request or demand for such interpreter, it shall be the duty of the judge or other officer before whom such examination is held, to provide such interpreter, who shall be recommended by the superintendent of the Minnesota state school for the deaf, before any hearing is had, and retain such interpreter at all times during such hearing or hearings. ('05 c. 47 § 1)

Historical.—"An act to provide interpreters at all hearings of deaf and dumb persons charged with insanity." Approved March 18, 1905.

[3855—]2. Same—Expenses.—The necessary expense of such interpreter shall be paid by the county within which such hearing is held, and shall be a charge thereon. ('05 c. 47 § 2)

[3856—]1. Order for examination—Examiners—Duty of county attorney—Commitment—Warrant—Court commissioner.—That section 19 of chapter 5 of the General Laws of the State of Minnesota for 1893, being section 3465 of the Statutes of 1894, as amended by chapter 119 of the General Laws of 1895, be, and the same is hereby amended so as to read as follows:

Section 19. Whenever the probate judge, or, in his absence, the court commissioner of any county shall receive information in writing duly verified by the person presenting the same, that there is an insane person in his county needing care and treatment (Form "B") the said judge of court or court commissioner shall issue his order (Form "C") directed to the sheriff of his county, or some other suitable person, commanding such alleged insane person to be brought before said judge or court commissioner for examination upon charge of insanity, and at the same time the said judge or court commissioner shall by order in writing appoint a jury (Form "G") consisting of two, examiners in lunacy, who, with the said judge or court commissioner, shall constitute said jury, to examine the alleged insane person, when he shall be brought before said judge or court commissioner as directed, which said examiners in lunacy shall, before entering upon their duties, take and subscribe an oath (Form "D") to faithfully discharge their duties as such examiners. In all cases when ordering the examination of any alleged insane person, the said judge or court commissioner shall notify (Form "H") the county attorney, or in his absence an attorney to be appointed by the county attorney, who shall appear on behalf of said alleged insane person, and take such action as may be necessary to protect the rights of such person; and upon request of said county attorney or his substitute, the said judge or court commissioner shall issue subpoenas for the attendance of witnesses for such alleged insane person, to be sworn and

give evidence on his behalf upon such examination; and it is hereby made the official duty of all county attorneys as hereinbefore provided to attend such examinations and represent the alleged insane, and to see that said alleged insane person is fully protected. And the said judges of probate and court commissioners are hereby authorized and empowered to issue subpoenas for the attendance of all witnesses upon such examination. If the said examiners' jury at the close of such examination shall find the information true, and that the person alleged to be insane is in fact insane, and a fit subject for hospital treatment, they shall within twenty-four hours after said examination certify to said fact (Form "E") and thereupon said judge or court commissioner shall issue a duplicate warrant (Form "F") committing said person to the custody of the superintendent of the proper state hospital for the insane or to the superintendent or keeper of any private licensed institution for the care of the insane, or shall place such warrant or commitment together with a certified copy of the certificate of the jury in the hands of the sheriff, or other suitable person whom he shall authorize to convey said insane person to the hospital. Provided, that in case said insane person is a female she shall be accompanied while being conveyed to the hospital by her husband, father, mother, brother or son or daughter or by a woman designated by the judge of probate or court commissioner. Said warrant shall be issued within two days after the date of the said jury's certificate to the insanity of such person, and said sheriff or authorized person shall forthwith execute said warrant. At its reception by him the duplicate warrant and certified copy of the jury's certificate shall be filed in the office of the superintendent, and the original, with the superintendent's indorsement thereon, shall be returned to the judge of probate and filed in his office. If said jury, upon examination, shall find said person to be sane, or shall disagree as to his insanity, they shall so certify said fact, and said person shall be forthwith discharged. The findings of said jury shall in all cases be entered upon the records of said judge or court commissioner. Provided further, that in any county of this state having a population of one hundred and fifty thousand or more inhabitants, the judge of probate of such county may refer any or all examinations of alleged insane persons to the court commissioners of such county for full action by him, with said examiners in lunacy appointed by judge of probate in accordance with the provisions of this section; and in such case the court commissioner shall perform all the duties of the judge of probate, and when said findings are made the court commissioner shall file the same with the probate court, together with all petitions, orders, affidavits and writings appertaining to the matter. (Laws 1893, c. 5, § 19, as amended by Laws 1895, c. 119, and Laws 1905, c. 85, § 1.)

Historical.—"An act to amend section 19 of chapter 5 of the General Laws of the State of Minnesota for the year 1893, being section 3465 of Statutes of 1894, as amended by chapter 119 of the General Laws of Minnesota for 1895, the same being 'An act to confirm the location and establishment of the Minnesota Hospital for the Insane, and to provide for the commitment thereto and the management and supervision thereof, and the licensing and supervision of all other hospitals for the insane.'" Approved March 30, 1905.

The acts referred to in the title were repealed by R. L. §§ 5540, 5541. So far as the amended section above set forth differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

[3856—]2. Discharge after examination—Duty of sheriff—Fees.—That section two [,] chapter two hundred and twelve of the General Laws for 1897, be and the same is hereby amended so as to read as follows:

Section 2. If, upon the examination of said patient by said three physicians, it is found that said patient is not a proper subject for

treatment in any insane hospital in the state, then such fact shall be distinctly embodied and stated in the report of said physicians to said board of control, whereupon, they, the said board of control, may, at their discretion, discharge such patient and return him to the county from which he was committed, and place him in the custody of the sheriff of said county, and in such case it is hereby made the duty of such sheriff to receive such patient so returned, and deliver him to his relatives or friends, if such can be found, or to the board of county commissioners of such county; and it is hereby made the duty of such county commissioners to provide for such person so returned. The sheriff shall be entitled to a fee of one dollar for receiving such person, and the same mileage as he is entitled to by law for the service of a writ or summons, except in counties where sheriffs are paid salaries. The same to be allowed and paid in the same manner as other claims against the county. (Laws 1897, c. 212, § 2, as amended by Laws 1905, c. 341, § 1.)

Historical.—"An act to amend section 2, chapter 212 of the General Laws of 1897, entitled 'An act to provide for a second examination of all persons committed to the Minnesota State Hospitals for the Insane, by the probate courts or court commissioners.'" Approved April 19, 1905.

Section 2 repeals inconsistent acts.

Laws 1897, c. 212, was repealed by R. L. 5542. So far as Laws 1905, c. 341, differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

3860. Action of court—Warrant of commitment.—When the person examined is found to be sane, he shall be discharged. When found to be insane, the court shall order him committed to the custody of the superintendent of one of the state hospitals for the insane, and issue duplicate warrants to the sheriff or other suitable person, authorizing him to convey said insane person to the hospital designated. But where the person committed is a female, she shall be accompanied while being conveyed to the hospital, either by her husband, by a near relative or by a woman, who shall be designated in the order of commitment. The warrant may be in the following form, to-wit:

State of Minnesota)
County of .....)

In Probate Court.

To (here insert sheriff, constable, or the name of the person designated by the court) and to the superintendent of the state hospital for insane at.....: .....
having been, upon examination, found to be insane and a resident of .....(here insert proper county) county, Minnesota, you (here insert name of officer or person to whom issued) are commanded forthwith to convey and deliver (name of insane person) to said superintendent, and you, the said superintendent, are hereby commanded to receive the said.....
.....into the hospital and keep him there until legally discharged.

Given under my hand and seal of the probate court of said county this .....day of .....19...

.....
(Seal.) Probate Judge.
.....County, Minnesota.

If the person so examined is found to be a non-resident of the State of Minnesota, the warrant may be in the following form, to-wit:

State of Minnesota)
County of .....)

In Probate Court.

To (here insert sheriff, constable, or the name of the person designated by the court), and to the superintendent of the state hospital for the insane at.....: .....
having been, upon examination, found to be insane and a non-resident of the state, and the state board of control having authorized his admission to said state hospital for the insane, you (here insert name of the officer or person to whom issued) are commanded forthwith to convey and deliver (name of insane person) to said superintendent, and you, the said superintendent, are hereby commanded to receive the said.....into the hospital, and keep him there until legally discharged.

Given under my hand and the seal of the probate court of said county, this .....day of .....190...,

.....

(Seal.) Probate Judge.

.....County, Minnesota.

One of such warrants shall be filed in the office of the superintendent of the hospital, and the other, with the superintendent's indorsement thereon that said patient has been received by him, shall be returned to the probate court and filed therein. (R. L. § 3860, as amended by Laws 1907, c. 79, § 1.)

Historical.—"An act to amend section 3860, Revised Laws 1905, of Minnesota, relating to warrant of commitment to state hospitals for the insane." Approved April 2, 1907.

Section 2 repeals inconsistent acts.

3862. Fees, how paid.

See section [3862—]1.

[3862—]1. Same.—The judge of probate or court commissioner shall allow the following fees for services provided for in this act: To the examiners in lunacy, for every examination, five dollars each, and for every mile traveled by each of them in making such examination fifteen cents, and to the family physician or examiner procuring answers to the questions specified in section 22 of said chapter 5, the sum of five dollars. To the person authorized to convey an insane person to a state hospital, or to the place of his legal residence, three dollars per day for the time necessarily employed, and all necessary disbursements for travel, and for the support of himself, the insane person and authorized assistants. Such amounts to be audited by the judge of probate or court commissioner and judgment entered of record therefor, to be paid out of the county treasury, by the county treasurer upon the written order of the judge of probate or court commissioner under seal of the court; and upon the payment thereof, said judgment shall be satisfied of record by the judge of probate or court commissioner; provided, that the said written order shall be filed with the county auditor, who shall issue his warrant on the county treasurer in payment of said sums. (Laws 1889, c. 46, § 277, as amended by Laws 1893, c. 5, § 49, and Laws 1905, c. 57, § 1.)

Historical.—"An act to amend section 277 of chapter 46 of the General Laws of the State of Minnesota for the year 1889, entitled 'An act to establish a Probate Code,' as amended and modified by section 49 of chapter 5 of the General Laws of the State of Minnesota for the year 1893, entitled 'An act to confirm the location and establishment of the Minnesota Hospitals for the Insane, to provide for commitment thereto, the management and supervision thereof and the licensing and supervision of all other hospitals for the insane.'" Approved March 23, 1905.

Section 2 repeals inconsistent acts.

The acts referred to in the title were repealed by R. L. §§ 5538, 5540; the provisions of said section 277, as amended and modified, being incorporated in part in R. L. § 2862. So far as Laws 1905, c. 57, differs from the Revised Laws, it is to be construed, by virtue of section 5504, as amendatory or supplementary.

APPEALS.

3872. In what cases allowed.

Subd. 7.—An appeal from an order vacating or allowing an administrator's account presents for review ordinarily the propriety of the order appealed from, and not the merits of the account. But where, on such appeal, the parties voluntarily litigate the merits of the account, and the court hears and determines the same, the parties are bound by the result. Bradley v. Bradley Estate Co., 97 Minn. 130, 106 N. W. 338.

A final decree assigning real property to the heirs may be vacated and set aside by the probate court on the ground that it was obtained by fraud; but to justify such action as against a stranger to the record, who purchases the property from one of the distributees, such purchaser must be connected, by actual or constructive notice, with the fraud. St. Paul Gaslight Co. v. Kenny, 97 Minn. 150, 106 N. W. 344.

3873. Who entitled to appeal.

See Rong v. Haller, 106 Minn. 454, 119 N. W. 405, cited in note under section 3874.

In other cases.—Under Laws 1903, c. 27, amending G. S. 1894, § 4667, an heir at law is a party aggrieved, and may at any time within 30 days appeal from an order admitting a will to probate, although he did not appear and take part in the proceedings. Where such heir dies after entry of the order and before expiration of the time allowed, a special administrator may, within the time limited, appeal. Sheeran v. Sheeran, 96 Minn. 484, 105 N. W. 677.

3874. Appeal, how and when taken.

Notice.—A notice of appeal must be liberally construed. A notice of appeal from an order allowing a claim in part and disallowing the balance construed as from the whole order. First Unitarian Society of Minneapolis v. Houliston, 96 Minn. 342, 105 N. W. 66.

Under sections 3873, 3874, a notice of appeal from a decree assigning the residue of the estate to the devisee was properly served on the executor alone. Rong v. Haller, 106 Minn. 454, 119 N. W. 405.

3877. Notice of trial, etc.

Manner of trial.—Where an appeal involves the trial of issues of fact, the trial court should make findings of fact and conclusions of law as in ordinary civil actions. Swick v. Sheridan, 119 N. W. 791.

3878. Proceedings in certain cases—Trial.

See Blandin v. Brennin, 106 Minn. 353, 119 N. W. 57, cited in note under section 3879.

3879. When judgment affirmed—When reversed.

Cited in Swick v. Sheridan, 119 N. W. 791.

Jurisdiction of district court.—On an appeal from an order allowing the final account of an administrator, the district court cannot determine the right of the administrator to compensation for services rendered or for disbursements made subsequent to the filing of his account. Although the matter is tried de novo, the district court exercises appellate jurisdiction only. Turner v. Fryberger, 99 Minn. 236, 108 N. W. 1118, 109 N. W. 229.

Operation in general.—This section authorizes affirmance of the order or decree appealed from (1) where appellant fails to appear and prosecute his appeal, and (2) where the order or decree appealed from is sustained on its merits. Sections 3878 and 4195 do not apply to such appeals, where appellant fails to appear when the appeal is called for trial. Blandin v. Brennin, 106 Minn. 353, 119 N. W. 57.

Relief from default.—An application to be relieved from default in the prosecution of an appeal held addressed to the discretion of the district court. Blandin v. Brennin, 106 Minn. 353, 119 N. W. 57.