PART III

ESTATES OF DECEDENTS AND GUARDIANSHIPS

CHAPTER 525

MINNESOTA PROBATE CODE

POWERS OF COURT

525.01 PROBATE COURT; PROVISIONS.

HISTORY. R.S. 1851 c. 8 art. 6 s. 2; P.S. 1858 c. 7 s. 77; G.S. 1866 c. 8 s. 189; G.S. 1878 c. 8 s. 220; 1889 c. 46 ss. 2, 6; G.S. 1894 ss. 819, 4409, 4413; R.L. 1905 s. 3622; G.S. 1913 s. 7200; G.S. 1923 s. 8690; M.S. 1927 s. 8690; 1935 c. 72 s. 1; M. Supp. s. 8992-1.

NOTE: Many laws were enacted implementing Minnesota Constitution, Article 6, Section 7, but the first complete probate code adopted was Laws 1889, Chapter 46, which assembled and synchronized the various laws relating to wills, executors and administrators, guardians and wards, jurisdiction, practice, and similar. For the purposes of these annotations, it would be confusing and not helpful to trace the origin and legislative history back of the 1889 Code.

1. Jurisdiction in general
2. Jurisdiction of estates of deceased persons
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1. Jurisdiction in general

As respects the subjects committed to the probate court, their jurisdiction is general, and they have all the powers that any court has. Davis v Hudson, 29 M 27, 11 NW 136; McNamara v Casserly, 61 M 335, 63 NW 880; Buntin v Root, 66 M 454, 69 NW 330.

The constitution gives to probate courts the entire and exclusive jurisdiction over the estates of deceased persons and persons under guardianship, in the same manner and to the same extent that it gives to the district court jurisdiction over civil cases in law and equity arising out of matters of contract or tort. Within its sphere the jurisdiction of the probate court is exclusive. State ex rel v Ueland, 30 M 277, 15 NW 245; Culver v Hardenburgh, 37 M 225, 33 NW 792; Boltz v Schutz, 61 M 444, 64 NW 48; Luse v Reed, 63 M 5, 65 NW 91; Brandes v Carpenter, 68 M 388, 71 NW 402; Starkey v Sweeney, 71 M 241, 73 NW 859; O'Brien v Larson, 71 M 371, 74 NW 148; Betcher v Betcher 83 M 215, 86 NW 1; Duxbury v Shanahan, 84 M 353, 87 NW 944; Fitzpatrick v Simonson, 86 M 140, 90 NW 378; Appleby v Watkins, 95 M 455, 104 NW 301.

The legislature cannot enlarge or diminish the jurisdiction conferred by the constitution but it may regulate its exercise by prescribing modes of procedure to be followed by the court in exercising it, including the process or proceedings by which the jurisdiction shall attach to a particular estate. Culver v Hardenburgh, 37 M 225, 33 NW 792; Mansseau v Mansseau, 40 M 236, 41 NW 977.

The probate courts have implied powers to do what is essential to such powers as are expressly conferred. Culver v Hardenburgh, 37 M 225, 33 NW 792; Levi v Longini, 82 M 324, 84 NW 1017, 86 NW 333; Betcher v Betcher, 83 M 215, 86 NW 1.

When a probate court legally probates a will or appoints a first administrator, it thereby acquires jurisdiction to direct and control the administrator; and such jurisdiction continues as one proceeding until its close. Culver v Hardenburgh, 37 M 225, 33 NW 792; Rice v Dickerman, 47 M 527, 50 NW 698; Boltz v Schutz, 61 M 444, 64 NW 48.

The jurisdiction of probate courts to determine claims against the estates of decedents is not exclusive except as made so by statute. Claims ex delicto are prosecuted in the district court. Comstock v Matthews, 55 M 111, 56 NW 583.

The exclusive jurisdiction of the probate courts cannot be interfered with by an injunction issued out of the district court. O'Brien v Larson, 71 M 371, 74 NW 148.

A court of equity will entertain an action brought by an executor on the part of the estate against a co-executor to determine the amount of a disputed claim, or to force an account, or to foreclose a mortgage, or in any case where justice requires it, there being no remedy at law. Peterson v Vanderburgh, 77 M 218, 79 NW 828.

The jurisdiction of the probate court is expressly limited and restricted to the estates of deceased persons and persons under guardianship. Peterson v Vanderburgh, 77 M 218, 79 NW 828.

The jurisdiction of the probate court is not based upon the common law or on statutory law. It is defined by Minnesota Constitution, Article 6, Section 7. State ex rel v Probate Court, 84 M 289, 87 NW 783.

The powers of the probate courts are not only general but plenary in cases where they are authorized to act. They are not courts of limited jurisdiction in the commonly accepted sense of the term. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

The probate court lacks the general equity powers of courts of general jurisdiction. State ex rel v Probate Court, 103 M 325, 115 NW 173.

Whether a widow, who has murdered his husband for the purpose of acquiring the real property of the intestate, may inherit under the statute of descent, is not decided; the court not being able to agree, but a majority of the court are 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 is final. Wellner v Eckstein, 105 M 444, 117 NW 830.

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

The district court as a court of chancery may not interfere with the exercise of the constitutional powers of the probate court, but in the interest of justice may exercise ancillary jurisdiction to aid that court. It is competent for the district court to restrain an executor from fraudulently disposing of testator's shares of stock. Brown v Strom, 113 M 1, 129 NW 136.

Money and property in the hands of the representatives of an estate are subject to garnishment. Fulton v Okes, 195 M 247, 262 NW 570.

Probate proceedings are in rem, the res being the property left by the deceased. In re Mahoney, 195 M 431, 263 NW 465.

Sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead and which confer such jurisdiction upon the district court are not in violation of the constitutional provision which gives the probate court exclusive jurisdiction of estates of deceased persons. State ex rel v Probate Court, 198 M 45, 268 NW 707.

In administering an estate the probate court applies equitable principles and exercises equitable powers; but it is not possessed of independent jurisdiction in

equity over controversies between the representative of the estate with strangers to the proceedings claiming adversely, nor of collateral actions. State ex rel v Probate Court, 199 M 297, 271 NW 879.

The time within which to file a claim, required to be filed against the estate of a decedent, not barred during his lifetime, is governed by section 525.431 and not by section 541.05. Ovjala v Borg, 200 M 470, 274 NW 621.

Mason's Statutes, Section 8815 (525.431) held to withhold from the probate court jurisdiction to receive or allow, against an estate under administration, claims which remain contingent for more than five years after the death of the decedent. In re Estate of Borlang, 201 M 407, 276 NW 732.

With the probate court, under our constitution, lies exclusive jurisdiction to construe and determine validity of wills and the provisions thereof for purposes of administration, and to determine amount of distributive shares thereunder. In re Estate of Peterson, 202 M 31, 277 NW 529.

If no dependents survive a deceased employee, compensation accrued but unpaid at the time of his death shall be distributed by the industrial commission to the legal heirs of such employee without probate administration, under section 176.11. Fitzpatrick v City of St. Paul, 217 M 59, 13 NW(2d) 737.

Must there be an order of the probate court before a legacy "may be legally demanded." 16 MLR 231.

Summary probate proceedings. 19 MLR 833.

The new Minnesota probate code. 20 MLR 1.

Conveyances under the probate code. 20 MLR 106.

Minnesota probate practice. 20 MLR 707.

Ancillary administrations; insolvent estates. 21 MLR 331.

Jury trial in will cases. 22 MLR 513.

Comments on probate code amendments. 23 MLR 997.

2. Jurisdiction of estates of deceased persons

The jurisdiction of the probate court includes the power to construe a will, whenever such construction is involved in the settlement or distribution of the estate of the testator pending before it. State ex rel v Ueland, 30 M 277, 15 NW 245; Appleby v Watkins, 95 M 455, 104 NW 301.

Probate courts have the power to take charge of, preserve and distribute the property of decedents according to law, but the estate being once administered and the personal representative discharged, the matter is out of the jurisdiction of the probate court. State ex rel v Probate Court, 33 M 94, 22 NW 10; Mansseau v Mansseau, 40 M 236, 41 NW 977.

Estates are settled and administered by executors and administrators under the jurisdiction, supervision and control of the probate courts. Culver v Hardenbergh, 37 M 225, 33 NW 793.

The jurisdiction of the probate courts over the estates of deceased persons is for the purpose of administering such estates and includes all matters necessarily pertaining to the proper administration of them. This includes the authority to determine who are creditors, legatees, devisees and next of kin. Mansseau v Mansseau, 40 M 236, 41 NW 977.

To give rise to the jurisdiction of the court a person must die owning property or property rights. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Claims which rest on a will or the law of the property are within the jurisdiction of the probate court, while contracts subject to being specifically enforced are in the jurisdiction of the district court. O'Brien v Lien, 160 M 276, 199 NW 914.

Where there is no dispute as to legal rights, the probate court has exclusive jurisdiction, as also all matters of administrative discretion. O'Brien v Lien, 160 M 276, 199 NW 914.

3. Nature and object of administrative proceedings

Administrative proceedings are in rem, the res being the estate of the deceased, modifying the decision in Wood v Myrick, 16 M 494 (447). Morin v St. P. M. &

Man. 33 M 176, 22 NW 251; Hutchins v St. P. M. & Man. 44 M 5, 46 NW 79; Ladd v Weiskopf, 62 M 29, 64 NW 99.

There must be assets or there can be no administration. A right of action is an asset. Hutchins v St. P. M. & Man. 44 M 5, 46 NW 79.

Where no administration is apparent for within the period fixed by statute, and no claims filed, the heirs entitled to the personal estate may dispense with formal administration, and make amicable distribution; and the heir acquiring a promissory note as his share may sue and recover thereon. Granger v Harriman, 89 M 303, 94 NW 869.

4. Necessity of administration

Where administration is not asked by next of kin or creditors and no claims are filed within five years, the heirs of an intestate may dispense with administration and divide the personal property by agreement. Granger v Harriman, 89 M 303, 94 NW 869.

5. Jurisdiction over persons under guardianship

The jurisdiction of probate courts over persons under guardianship includes not only the appointment of guardians and the control of their official actions, but the care and protection of the estates of the wards formerly vested in the court of chancery. The insane are wards of the probate court. Jacobs v Fause, 23 M 51; State ex rel v Wilcox, 24 M 143, State ex rel v Ueland, 30 M 277, 15 NW 245; In re Final Account of Besondy, 32 M 385, 20 NW 366; Foreman v Board, 64 M 371, 67 NW 207; Kelly v Kelly, 72 M 19, 74 NW 899.

6. Held to have jurisdiction

The probate court has jurisdiction to construe a will whenever such construction is necessary to the administration of the estate of a deceased person. State ex rel v Ueland, 30 M 277, 15 NW 245; Appleby v Watkins, 95 M 455, 104 NW 301; and to make an election for an insane person to take under a will. State ex rel v Ueland, 30 M 277, 15 NW 245; Washburn v Van Steenwyck, 32 M 336, 20 NW 324; Culver v Hardenburgh, 37 M 225, 33 NW 792; State ex rel v Hunt, 88 M 404, 93 NW 314; and to determine a claim to an estate based on a contract by the decedent to make a will in favor of the claimant. Kleeberg v Schrader, 69 M 136, 72 NW 59.

The probate court has jurisdiction to order the witness and attorneys' fees paid out of the estate of an insane person in proceedings for restoration to capacity. Kelly v Kelly, 72 M 19, 74 NW 899.

Where an executor is discharged, leaving the estate unadministered, the probate court may compel an accounting. Betcher v Betcher, 83 M 215, 86 NW 1.

Laws 1897, Chapter 157, authorizes a decree of heirship upon the petition of an heir to an estate where the same has not been administered for five years after the death of an intestate. To render such decree is within the authority delegated to probate courts by Minnesota Constitution, Article 6, Section 7. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Under section 525.145, an action may now be maintained in the district court against the representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for the improvement of the homestead at the request of the deceased, without first presenting the claim to the probate court for allowance, the deceased leaving no estate except the homestead. Anderson v Johnson, 208 M 152, 293 NW 131.

7. Held not to have jurisdiction

The probate court does not have jurisdiction to entertain an action by a representative to recover real or personal property alleged to belong to the estate, or to recover a debt owing the estate. State ex rel v Probate Court, 33 M 94, 22 NW 10.

Nor to determine a controversy between an heir or devisee and a third party claiming from him. State ex rel v Probate Court, 33 M 94, 22 NW 10; Farnham v Thompson, 34 M 330, 26 NW 9.

Nor may the probate court make partition of real estate after it has been assigned to those entitled to it. Hurley v Hamilton, 37 M 160, 33 NW 912.

The probate court is without jurisdiction to declare and enforce a trust arising from the purchase by a guardian of real estate with money of the ward, the guardian subsequently dying. Bitzer v Bobo, 39 M 18, 38 NW 609.

It has no authority to determine a claim to real property under a conveyance from the deceased; nor to determine that a party has no right to the specific performance of a contract to convey made by deceased. Mansseau v Mansseau, 40 M 236, 41 NW 977.

Nor to bring an action to recover the purchase price of land belonging to minors sold by a guardian. Peterson v Baillif, 52 M 386, 54 NW 185.

It has no jurisdiction of an action by distributees against personal representatives for shares assigned to them by the court. Schmidt v Stark, 61 M 91, 63 NW 255; State ex rel v Probate Court, 84 M 289, 87 NW 783.

Nor of an action to specifically enforce a contract for the conveyance of real estate. Svanberg v Fosseen, 75 M 350, 78 NW 4; Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Nor power to order a payment to be made to an executor in his individual capacity. Wrigley v Watson, 81 M 251, 83 NW 989.

Nor compel a representative to make a further accounting after final decree, such decree being unreversed and unmodified. State ex rel v Probate Court, 84 M 289, 87 NW 783.

Nor of an action for the recovery of real property. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

A suit by third parties against the surviving partners to recover on liabilities of the firm and of the surviving partners, is within the jurisdiction of the district court. Fulton v Okes, 195 M 247, 262 NW 570.

Specific performance of a contract to make a will disposing of property may be granted in the district court by a judgment against the representative heirs, legatees and devisees, without interfering with the probate court's exclusive jurisdiction of estates of decedents. Jannetta v Jannetta, 205 M 266, 285 NW 619.

Probate court has no jurisdiction over actions between the representative of the estate, or those claiming under him, with strangers claiming adversely, nor of collateral actions. Bank v Mullins, 205 M 562, 287 NW 233.

8. Presumption of jurisdiction

The probate court is a court of superior jurisdiction and it enjoys the same presumptions of jurisdiction as does the district court. Its judgments and decrees are not subject to collateral attack for want of jurisdiction nor affirmatively appearing on the face of the record. Davis v Hudson, 29 M 27, 11 NW 136; Culver v Hardenburgh, 37 M 225, 33 NW 792; Menage v Jones, 40 M 254, 41 NW 972; Stahl v Mitchell, 41 M 325, 43 NW 385; Logenfiel v Richter, 60 M 49, 61 NW 826; Kurtz v St. P. & Dul. Ry. 61 M 18, 63 NW 1; McNamara v Casserly, 61 M 335, 63 NW 880; State ex rel v Kilbourne, 68 M 320, 71 NW 396; Fitzpatrick v Simonson, 86 M 140, 90 NW 378; Hadley v Bourdeaux, 90 M 177, 95 NW 1109; Doran v Kennedy, 122 M 1, 141 NW 851; Wilkoroske v Lynch, 124 M 492, 145 NW 378; Grieger v Meinke, 199 M 511, 272 NW 779.

A judgment in an action brought by an administrator within the scope of his statutory authority is binding upon the heirs. Rule applied where administrator sued one in possession of land for an accounting of rents and profits and the defendant by cross-bill had a deed from himself to the deceased declared a mortgage. Lamereaux v Higgins, 171 M 423, 214 NW 267.

Presumptions on sales of land in probate court. 8 MLR 516.

525.02 POWERS.

HISTORY. 1889 c. 46 ss. 310, 311, 314, 315; G.S. 1894 ss. 4726, 4727, 4729, 4730; R.L. 1905 s. 3633; G.S. 1913 s. 7211; 1923 c. 256 s. 1; G.S. 1923 s. 8701; M.S. 1927 s. 8701; 1935 c. 72 s. 2; M Supp s. 8992-2.

The probate of a will cannot be vacated for failure to appoint a guardian ad litem for minors interested in the estate. In re Mansseau, 30 M 202, 14 NW 887.

An order allowing a claim may be vacated to allow the claim to be contested. In re Gragg Estate, 32 M 142, 19 NW 651.

The court may vacate an order, judgment or decree procured by fraud, misrepresentation, or through surprise or excusable inadvertence or neglect. In re Gragg Estate, 32 M 142, 19 NW 651; Guardianship of Hause, 32 M 155, 19 NW 973; Larson v Howe, 71 M 250, 73 NW 966; Levi v Longini, 82 M 324, 84 NW 1017, 86 NW 333; In re Estate of Koffel, 175 M 527, 222 NW 68; Sellars v Sellars, 196 M 143, 264 NW 425.

The court loses power to vacate its orders and judgments when the subject matter passes beyond its jurisdiction. State ex rel v Probate Court, 33 M 94, 22 NW 10; In re Thompson's Estate, 57 M 109, 58 NW 682; McNamara v Casserly, 61 M 335, 63 NW 880; Kurtz v St. P. & Dul. Ry. 65 M 60, 67 NW. 808; Mahoney's Estate, 195 M 431, 263 NW 465.

It requires a strong case to vacate a decree after a lapse of two years. Fern v Leuthold, 39 M 212, 39 NW 399.

Where the petitioner's only excluse for not appearing at the final hearing was his reliance on the integrity of the administration, the allowance to the administrator will not be vacated. In re Kidders' Estate, 53 M 529, 55 NW 738.

The legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the deceased from the jurisdiction of the court, and to render the office of the administrator, functus officio. State ex rel v Probate Court, 84 M 289, 87 NW 783.

In all proceedings except the deed the land was described as being in range five, while in fact it was located in range six. The sale was void, and the order of the probate court taken 27 years after the closing of the estate, and attempting to correct the error, was invalid. Hanson v Ingwaldson, 77 M 533, 80 NW 702.

A final decree of distribution may be vacated to allow a claim to be presented against the estate. State ex rel v Bazille, 89 M 440, 95 NW 211.

The court may change a former order by vacating it entirely or in part, by substituting another for it, or by vacating it in part and substituting something else in lieu of the part; but not after the time for taking an appeal has expired. Thomlinson v Phelps, 93 M 350, 101 NW 496; Flannagan's Estate, 196 M 141, 364 NW 433.

A final decree of distribution cannot be set aside to the prejudice of bona fide purchasers from distributors. St. P. Gas Light v Kenny, 97 M 150, 106 NW 344.

The jurisdiction of the probate court is entire, exclusive, plenary, and, where the jurisdiction has attached, the court has full equity powers necessary to the settlement and distribution of the estate. It may apply the law to the facts whether the law be statutory, common law, or the principles of equity. State ex rel v Probate Court, 133 M 124, 155 NW 906, 158 NW 234; State v Probate Court, 199 M 297, 271 NW 879.

Having jurisdiction it has the same power to vacate its decrees as has the district court. Sovela v Erickson, 138 M 99, 163 NW 1029; First Trust v U.S.F. & G. 163 M 168, 203 NW 612.

Irregularities in procedure in amending or revoking its orders is not assailable in collateral proceedings. Amundson v Hanson, 150 M 291, 185 NW 252.

District courts have no jurisdiction to inquire into the merits of judgments rendered by the probate court except upon appeals from such judgments. First Trust v U.S.F. & G. Co. 163 M 168, 203 NW 612.

An application to vacate a decree of descent of the probate court on the ground of mistake and inadvertence invokes the exercise of judicial discretion, and on appeal to the district court that court exercises a like discretion. In re Estate of Holum, 179 M 315, 229 NW 133.

The court was justified in finding that the inadvertent neglect of the attorneys in failing to ascertain the filing of the claim and date of hearing was excusable; and in determining whether judicial discretion should relieve against a claim allowed as on default, it is proper to consider the statement of the claim as filed and the objections or defense proposed thereto. In re Estate of Walker, 183 M 325, 236 NW 485.

Under the facts, the district court did not abuse its discretion in denying appellant's application to vacate the order of the probate court on account of laches and long acquiescence in the order after having actual notice thereof. In re Estate of Butler, 183 M 595, 237 NW 592.

The probate court, like the district court, may within one year after notice thereof correct its records and decrees and relieve a party from his mistake. In re Estate of Simon, 187 M 399, 246 NW 31.

The probate court is without jurisdiction to annul for fraud a contract between the executrix and third parties. State v Probate Court, 199 M 297, 271 NW 879.

The probate court cannot adjudicate the respective rights growing out of claims against or contracts with the heirs claimed by third parties. Schaefer v Thoeng, 199 M 610, 273 NW 190.

The equitable doctrine of estoppel applied. Clover v Peterson, 203 M 337, 281 NW 275.

While the orders and judgments of the probate court are not subject to collateral attack, a motion by a ward to expunge from the record erroneous statements is not a collateral attack. In re Guardianship of Carpenter, 203 M 477, 281 NW 867.

While the original jurisdiction incident to administration is exclusion and complete in the probate court, and in such administration it exercises equitable powers, it has no independent jurisdiction in equity or law over controversies between representatives of estate or those claiming under it, with strangers claiming adversely. This rule applies in respect to attorney's fees. State ex rel v Probate Court, 204 M 5, 283 NW 515.

The probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing because of mistake and inadvertence on the part of the court; and such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. Henry v Ringey, 207 M 609, 292 NW 249.

Approval of the final account and discharge of an executor or administrator is not conclusive that the estate has been fully administered so as to preclude further administration upon unadministered assets. Whitney v Daniel, 208 M 420, 294 NW 465.

The probate court is vested with power to correct, modify, or amend its records to conform to the facts; and that authority is as great as that possessed by the district court in similar matters. Peters v Walling, 212 M 272, 3 NW(2d) 494.

Allowance of claims of creditors is in effect a judgment and conclusive except reversed upon appeal. National Surety v Ellison, 88 F(2d) 400.

Summary probate proceedings. 19 MLR 833.

Minnesota probate practice. 20 MLR 718.

525.03 BOOKS OF RECORD.

HISTORY. 1889 c. 46 s. 7; G.S. 1894 s. 4414; R.L. 1905 s. 3625; G.S. 1913 s. 7203; G.S. 1923 s. 8693; M.S. 1927 s. 8693; 1935 c. 72 s. 3; M. Supp. s. 8992-3.

Except as provided in section 525.70, the records import absolute verity and are not subject to collateral attack. Dayton v Mintzer, 22 M 393; Davis v Hudson, 29 M 27, 11 NW 136; Curran v Kuby, 37 M 330, 33 NW 907; Menage v Jones, 40 M 254, 41 NW 972; Logenfiel v Richter, 60 M 49, 61 NW 826; Kurtz v St. P. & Dul. Ry. 61 M 18, 63 NW 1; Cater v Steeves, 95 M 225, 103 NW 885.

In making entries it is not necessary to impress the seal of the court. Tidd v Rines, 26 M 201, 2 NW 497.

The record of letters of guardianship is competent evidence without the production of the original letters and without accounting for them. Davis v Hudson, 29 M 27, 11 NW 136.

Entries may be made by the clerk under the direction of the judge. While they should be made promptly, a delay, even of years, is not fatal, at least not if made during the term of the judge. Davis v Hudson, 29 M 27, 11 NW 136.

Interlocutory orders defined. An order granting or denying the application of a person under guardianship to be restored to capacity should be recorded. State ex rel v Probate Court, 83 M 58, 85 NW 917.

525.031 COPIES.

HISTORY. 1889 c. 46 s. 318; G.S. 1894 s. 4733; R.L. 1905 s. 3634; G.S. 1913 s. 7212; G.S. 1923 s. 8704; M.S. 1927 s. 8704; 1935 c. 72 s. 4; M. Supp. s. 8992-4.

Charges and fees in cases where the state appeals directly from the probate to the supreme court. 1936 OAG 155, Aug. 3, 1936 (346c); 1936 OAG 156, Aug. 12, 1936 (346c).

PERSONNEL

525.04 ELECTION OF PROBATE JUDGE; BOND.

HISTORY. R.S. 1851 c. 8 art. 6 s. 1; P.S. 1858 c. 7 s. 76; 1860 c. 76 ss. 1 to 3; 1863 c. 26 ss. 1, 2; 1864 c. 27 ss. 1, 2; G.S. 1866 c. 8 s. 188; G.S. 1878 c. 8 s. 219; G.S. 1894 s. 818; R.L. 1905 s. 3623; G.S. 1913 s. 7201; G.S. 1923 s. 8691; M.S. 1927 s. 8691; 1935 c. 72 s. 5; M. Supp. s. 8992-5.

Section 525.04 supersedes Mason's Statutes, Section 8691, and the bond which under section 8691 ran to the "county board" now runs to the "state". Where a bond executed prior to the passage of Laws 1935, Chapter 72, was payable to the state it was ineffective and a new bond should be executed. It did not conform with section 8691 at the time it was given, and could not have been in conformity with Laws 1895, Chapter 72, Section 5. 1936 OAG 160, June 3, 1935 (347a).

525.041 WRITTEN DECISION SHALL BE FILED WITHIN 90 DAYS; MANDATORY.

HISTORY. 1903 c. 394; R.L. 1905 ss. 3635, 3644; G.S. 1913 ss. 7213, 7233; G.S. 1923 ss. 8705, 8716; M.S. 1927 ss. 8705, 8716; 1935 c. 72 s. 6; M. Supp. s. 8992-6.

The notice required by General Statutes 1913, Section 7233 (525.041) to be given by the judge of the probate court to the parties appearing in his court at a trial, when such court renders an appealable order, judgment or decree, is not a notice that limits the time of appeal therefrom. Timme v Branch, 133 M 20, 157 NW 709.

In order to set running the 30 days allowed for an appeal from an order, judgment or decree of the probate court, actual service of the notice of the filing is sufficient. While section 543.18 (service by mail) in its technical and statutory sense is not authorized, yet if such a notice is mailed and actually received by the addressee, the service is good. In re Nelson's Estate, 180 M 570, 231 NW 218.

In response to an application seasonably made, the probate court vacated a previous appealable order after time for appeal had expired upon the ground that its failure to notify the party of the order constituted excusable neglect within the statute. On appeal from such order to the district court, that court should decide the merits of the application and it was error to vacate the probate court's vacating order upon the ground that the probate court acted without jurisdiction in entertaining the application. Mpls. Branch v Saucier, 209 M 539, 297 NW 111.

525.05 JUDGE OR REFEREE; GROUNDS FOR DISQUALIFICATION.

HISTORY. 1889 c. 46 s. 12; G.S. 1894 s. 4412; 1899 c. 181; 1901 c. 331; R.L. 1905 s. 3628; G.S. 1913 s. 7206; G.S. 1923 s. 8696; M.S. 1927 s. 8696; 1935 c. 72 s. 7; 1937 c. 435 s. 3; M. Supp. s. 8992-7.

525.051 SUBSTITUTION OF JUDGES.

HISTORY. 1889 c. 46 s. 12; G.S. 1894 s. 4412; 1899 c. 181; 1901 c. 331; R.L. 1905 s. 3629; G.S. 1913 s. 7207; 1923 c. 401 s. 1; G.S. 1923 s. 8697; M.S. 1927 s. 8697; 1935 c. 72 s. 8; M. Supp. s. 8992-8.

This section does not authorize a probate judge of an adjoining county to act in place of a deceased judge; nor has the duly qualified probate clerk any authority to give notices 1930 OAG 180, May 25, 1938 (348).

A visiting judge serving in place of one who is ill receives his expenses from the county wherein he holds court, but his salary from his own county. OAG March 19, 1945 (347i).

525.052 INSANITY OF JUDGE.

HISTORY. 1885 c. 164; G.S. 1878 Vol. 2 (1888 Supp.) c. 8 s. 223a; 1889 c. 46 s. 319; G.S. 1894 ss. 817, 4734; R.L. 1905 s. 3630; G.S. 1913 s. 7208; G.S. 1923 s. 8698; M.S. 1927 s. 8698; 1935 c. 72 s. 9; M. Supp. s. 8992-9.

525.053 DELIVERY TO SUCCESSOR.

HISTORY. R.S. 1851 c. 8 art. 6 s. 3; P.S. 1858 c. 7 s. 79; G.S. 1866 c. 8 s. 190; G.S. 1878 c. 8 s. 221; G.S. 1894 s. 820; R.L. 1905 s. 3624; G.S. 1913 s. 7202; G.S. 1923 s. 8692; M.S. 1927 s. 8692; 1935 c. 72 s. 10; M. Supp. s. 8992-10.

525.06 ANNUAL ASSEMBLAGE; RULES.

HISTORY. 1923 c. 400 ss. 1, 2; G.S. 1923 ss. 8702, 8703; M.S. 1927 s. 8702, 8703; 1935 c. 72; M. Supp. s. 8992-11.

Adoption of rules. District Court Rules, Minnesota Statutes 1941, Page 3983; 8 MLR 179, 268; 12 MLR 207.

525.07 ACTING AS COUNSEL PROHIBITED.

HISTORY. 1889 c. 46 ss. 13 to 15; G.S. 1894 ss. 4420 to 4422; R.L. 1905 s. 3632; 1911 c. 44 s. 1; G.S. 1913 s. 7210; G.S. 1923 s. 8700; M.S. 1927 s. 8700; 1935 c. 72 s. 12; M. Supp. s. 8992-12.

Rules. 12 MLR 207.

Practice. 20 MLR 344, 708.

525.08 SALARIES.

HISTORY. 1935 c. 72 s. 13; M. Supp. s. 8992-13.

Within statutory limits, the salary of the clerk is fixed by the probate judge. No action of the county board is necessary. 1936 OAG 158, Oct. 17, 1935 (348a); OAG Feb. 17, 1939 (348a).

The salary of the judge, by legislative enactment, may be reduced during the term for which he was elected. OAG March 10, 1939 (347i).

525.09 CLERKS; APPOINTMENT; POWERS.

HISTORY. 1852 c. 10 ss. 1 to 4; P.S. 1858 c. 59 ss. 47 to 50; G.S. 1866 c. 8 ss. 191, 192; G.S. 1878 c. 8 ss. 222, 223; G.S. 1894 ss. 821, 822; R.L. 1905 s. 3631; G.S. 1913 s. 7209; G.S. 1923 s. 8699; M.S. 1927 s. 8699; 1935 c. 72 s. 14; 1937 c. 435 s. 4; M. Supp. s. 8992-14; 1945 c. 209 s. 1.

The clerk's entries in the records are made under the supervision of the probate judge, and as such import absolute verity. Davis v Hudson, 29 M 27, 11 NW 136.

The clerk of the probate court of Ramsey county is authorized to authenticate and certify copies of the records of such court, and the use of its seal upon a certificate in proper form for that purpose entitles the same to use as evidence. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Upon the death of a probate judge, the clerk loses his authority to act. 1938 OAG 180, May 25, 1938 (348).

525.095 CLERK MAY ISSUE ORDERS UNDER DIRECTION OF THE COURT.

HISTORY. 1915 c. 286 s. 1; 1917 c. 216 s. 1; G.S. 1923 s. 8711; M.S. 1927 s. 8711; 1935 c. 72 s. 15; 1937 c. 435 s. 5; M. Supp. s. 8992-15.

525.10 REFEREE; APPOINTMENT; BOND.

HISTORY. 1929 c. 271 ss. 1 to 11; 1935 c. 72 s. 16; M. Supp. s. 8992-16.

The controlling statute, Laws 1929, Chapter 271, makes a decision of a referee in the probate court of Hennepin county the decision of the court and appealable as such. In re Estate of Parker, 183 M 191, 236 NW 206.

525.101 COMPENSATION OF REFEREE.

HISTORY. 1929 c. 271 ss. 1 to 11; 1935 c. 72 s. 17; M. Supp. s. 8992-17.

525.102 REFERENCE.

HISTORY. 1929 c. 271 ss. 1 to 11; 1935 c. 72 s. 18; M. Supp. s. 8992-18.

525.103 DELIVERY OF BOOKS AND RECORDS.

HISTORY. 1929 c. 271 ss. 1 to 11; 1935 c. 72 s. 19; M. Supp. s. 8992-19.

525.11 REPORTER; APPOINTMENT AND DUTIES.

HISTORY. 1935 c. 72 s. 20; M. Supp. s. 8992-20.

The reporter in taking acknowledgments need not attach a seal. 1936 OAG 162, May 22, 1935 (346g).

525.111 COMPENSATION; TRANSCRIPT FEES.

HISTORY. 1935 c. 72 s. 21; M. Supp. s. 8992-21.

525.112 COURT REPORTERS FOR PROBATE COURT, HENNEPIN COUNTY.

HISTORY. 1935 c. 373 s. 1; M. Supp. s. 8992-21a.

525.113 TO BE ADDITIONAL EMPLOYEE.

HISTORY. 1935 c. 373 s. 2; M. Supp. s. 8992-21b.

525.12 AUDITOR; APPOINTMENT.

HISTORY. 1927 c. 355 ss. 1 to 3; M.S. 1927 ss. 8717-1, 8717-2, 8717-3; 1935 c. 72 s. 22; M. Supp. s. 8992-22.

525.121 POWERS.

HISTORY. 1927 c. 355 ss. 4, 5; M.S. 1927 ss. 8717-4, 8717-5; 1935 c. 72 s. 23; M. Supp. s. 8992-23.

525.122 COMPENSATION OF AUDITOR.

HISTORY. 1927 c. 355 s. 6; M.S. 1927 s. 8717-6; 1935 c. 72 s. 24; M. Supp. s. 8992-24.

INTESTATE SUCCESSION

525.13 ESTATE.

HISTORY. 1935 c. 72 s. 25; M. Supp. s. 8992-25.

At common law an illegitimate child has no right of inheritance from the father. Rights of inheritance are purely statutory. Reilly v Shapiro, 196 M 376, 265 NW 284.

Where two persons are victims of common disaster there is no presumption as to which survived the other. The decision depends upon the facts as proved. (See

simultaneous death act, Laws 1943, Chapter 248, Minnesota Statutes 1941, Section 525.90). Miller v McCarthy, 198 M 497, 270 NW 559.

The statute providing that the estate of an illegitimate child dying intestate without spouse or issue surviving, shall descend to his mother or, if mother predeceased him, to the mother's heirs, changes the common law rule that such child has no heirs except his issue. Descent of property is entirely with the legislature, and the law being plain, the courts cannot question the merit of the law. Werder v Luscher, 219 M 176, 17 NW(2d) 309.

525.14 DESCENT OF CEMETERY LOT.

HISTORY. 1935 c. 72 s. 26; M. Supp. s. 8992-26.

525.145 DESCENT OF HOMESTEAD.

HISTORY. 1889 c. 46 s. 63; G.S. 1894 s. 4470; R.L. 1905 s. 3647; G.S. 1913 s. 7237; G.S. 1923 s. 8719; M.S. 1927 s. 8719; 1935 c. 72 s. 27; 1937 c. 435 s. 7; M. Supp. s. 8992-27; 1943 c. 329 s. 1.

The rights of the surviving spouse do not depend upon any formal selection of the homestead. The purpose of selection is to ascertain the boundaries, so that any excess of the tract may be subject to administration. Wilson v Proctor, 28 M 13, 8 NW 830; Snortum v Snortum, 155 M 230, 193 NW 304.

The exemption of the homestead from the debts of the deceased is absolute, and does not depend on the occupancy of the land by the surviving spouse as a home. It is not exempt from the debts of the surviving spouse unless occupied as a home. Holbrook v Wightman, 31 M 168, 17 NW 280; Gowan v Fountain, 50 M 264, 53 NW 862; Clark v Dewey, 71 M 108, 73 NW 639.

The estate of a surviving spouse in case there are children is an absolute unconditional estate for life. Holbrook v Wightman, 31 M 168, 17 NW 280; McCarthy v Van der Mey, 42 M 189, 44 NW 53.

Where a homestead has been lost by removal and failure to file the statutory notice, it does not descend to the surviving spouse as such. Bailiff v Gerhard, 40 M 172, 41 NW 1059.

The surviving spouse has the sole right to the use, enjoyment and disposition of the estate during his or her life without regard to the children. The estate is not qualified by or subject to a right of occupancy by the children. McCarthy v Van der Mey, 42 M 189, 44 NW 53.

A surviving spouse cannot be allowed to waive a claim to the homestead fixed by law and take a part thereof to the injury of other parties interested in the distribution of decedent's estate. Mintzer v St. Paul Trust, 45 M 323, 47 NW 973.

The homestead rights of the widow are limited to the land which her husband had actually devoted to homestead purposes, and occupying as such at the time of his death. King v McCarthy, 54 M 190, 55 NW 960.

The bona fide payment of a debt due to a person dying intestate, made to the sole heir at law and the sole distributee of the funds of the estate, before administration is granted, will, if equity requires, operate as a discharge of the debtor from liability to a subsequently appointed administrator; but if danger of the estate being insolvent, the case against the debtor might be stayed until further administration of the estate. Vail v Anderson, 61 M 552, 64 NW 47.

A judgment creditor who has acquired no lien prior to the death of the debtor must proceed to establish and collect his claim as a general creditor, and in the due course of administration. Byrnes v Sexton, 62 M 135, 64 NW 155.

While the surviving wife's distributive share (aside from the homestead) partakes somewhat of the nature of dower, it has many attributes of the distributive share of heir and next of kin, and, for the purpose of subjecting it to the debts of the deceased, must be classed with such distributive share as well as under General Statutes 1894, Sections 5918 to 5925. Lake Phalen v Lindeke, 66 M 209, 68 NW 974.

The assent in writing, required under General Statutes 1894, Section 4470, of the surviving spouse to a testamentary disposition, at least of a testator leaving

children, may be executed and given after the decease of the testator. Rodl v Rodl, 72 M 81, 75 NW 111.

Under the terms of General Statutes 1894, Section 4470, a testamentary disposition of the statutory homestead, assented to in writing by a surviving spouse, will not render the property liable to the satisfaction of the debts of the testator. Eckstein v Rodl, 72 M 95, 75 NW 112; Overvold's Estate, 186 M 359, 243 NW 439.

The word "surviving" refers to the time of the death of the testator, and not to the time the will was executed. Penstock v Wentworth, 75 M 2, 77 NW 420.

A failure to exercise the right of election under section 525.212 has the same effect on a testamentary disposition as a written assent, and it has this effect although the result is to cut off rights of surviving children in the homestead. Jones v Jones, 75 M 53, 77 NW 551.

The provisions of section 525.212 are not applicable where there is no child nor issue of a deceased child surviving the testator. Tracey v Tracey, 79 M 267, 82 NW 635.

Where the statutory homestead stands in the wife's name, it is she who is the freeholder, not her husband. Hamilton v Village, 85 M 83, 88 NW 419.

If the surviving spouse renounces the will, the homestead descends to such spouse and the children unaffected by the will. Schacht v Schacht, 86 M 91, 90 NW 127.

If there are no children surviving, a spouse takes an absolute title to the homestead. Fraser v F. & M. Bank, 89 M 482, 95 NW 307.

Children by a former marriage stand on the same footing as the children of the marriage existing at the time of the decedent's death. Rosbach v Weidenbach, 95 M 343, 104 NW 137.

The assent in writing of a surviving spouse to a testamentary disposition of a homestead may, at least if there be no children, be executed after the decease of the testator. An antenuptial contract, cutting off homestead right of husband and his statutory one-third interest in his wife's property, is not prohibited. Appleby v Appleby, 100 M 408, 111 NW 305.

Where a decedent, leaving no spouse or child, or issue of deceased child, disposes of his homestead by will, the devisee takes it free from claims of creditors of the decedent, unless the testator clearly stated that he wishes the homestead to be liable for the payment of his debts. Larson v Curran, 121 M 104, 140 NW 337.

Where the testator instructed that his property be sold, the proceeds invested and an annual income be paid to his widow, and she assented to the will, such assent precluded her from claiming the proceeds of the sale of the homestead. Connelly v McMahon, 122 M 113, 142 NW 16.

A renunciation, even of a foreign will, when properly made, will estop the survivor from thereafter claiming under the will in this state or elsewhere. Boeing v Owsley, 122 M 190, 142 NW 129.

Where the husband procures his wife to consent in writing to his will and also to added codicils, there is cast upon him the affirmative duty of making a fair disclosure of his property so that she may have knowledge of the effect of the will upon her rights; and if such is not made, a surviving wife, not being guilty of laches, nor precluded by estoppel, may after his death rescind her consent and take under the statute. State ex rel v Probate Court, 129 M 442, 152 NW 845; In re Flannagan's Estate, 196 M 140, 264 NW 433.

The rights of the surviving spouse in the homestead vest and become absolute at the death of the deceased spouse. The fee vested in the children subject only to the life estate of the surviving husband, and such title cannot be waived, impaired or hindered by the surviving husband either as tenant for life, or as administrator. Nordlund v Dahlgren, 130 M 462, 153 NW 876.

The widow of a testate, who renounces the will must pay inheritance tax on the statutory one-third, less exemptions. She need not pay a tax on the support allowance nor on the personal effects selected as authorized by statute. State ex rel v Probate Court, 137 M 238, 163 NW 285; In re Murphy's Estate, 146 M 418, 178 NW 1003, 179 NW 728; In re Extrum's Estate, 159 M 231, 198 NW 459.

A testamentory disposition of the homestead in a will which makes no provision for the surviving spouse, is void unless the spouse consents in writing. No

provision being made for the widow, she is not put to an election and not having lost her rights at the time of her death, the children may demand that the homestead descend as provided by statute. Hawkinson v Oleson, 140 M 298, 168 NW 13.

Homestead owned by a man and occupied by himself and a woman to whom he was not married, upon his death intestate descended to his lawful wife and children and their rights therein vested on the day he died without any acts on their part or on the part of the probate court. A deed, not signed by the lawful wife, was void. Rux v Adam, 143 M 35, 172 NW 912; St. Dennis v Mullin, 157 M 266, 196 NW 258.

Co-tenants in remainder may compel partition, although the life tenant is in possession. Heintz v Wilhelm, 151 M 195, 186 NW 305.

An order of the probate court setting aside the consent of the surviving spouse to a will, and decreeing that he take as under the statute, is interlocutory, and not appealable. Neither is it reviewable by certiorari. Patterson v Hall, 155 M 46, 192 NW 342.

A husband, not a parent, made a bequest to his wife, who died eight days after his decease without consenting to the husband's disposition of his property, and without receiving any of it, and without making an election. The wife's administrator is entitled to the share in the husband's estate which she would have received under the statute. Hentges v Haye, 158 M 402, 197 NW 852.

A gift by the testator to his wife of all the property which she could take under the statutes, which standing alone, there being no children, would operate as a gift of the entire estate to the wife, is construed, the will providing specific legacies with residue to others, to mean that portion of the estate which the wife could take under the statutes as against any adverse testamentary disposition. In re Martin's Estate, 166 M 269, 207 NW 618.

An adopted child inherits from his natural parent. Roberts v Roberts, 160 M 140, 199 NW 581.

The petition presents as grounds for amendment mistake of law and not mistake of fact, and no proof was adduced of either. The decree correctly assigned the homestead to the widow. In re Turner's Estate, 181 M 528, 233 NW 305.

The constitution is not violated by those statutes which deprive the probate court of jurisdiction over claims against the homestead, and conferring such jurisdiction on the district court. Peterson's Estate, 198 M 45, 268 NW 707.

Upon the owner's death, his title to the homestead vests at once in the children, subject to the life estate of the widow, and no waiver or other act on her part can impair the rights secured to the children by statute. The widow cannot convert the homestead into assets of the estate nor subject the children's interest to any burdens. Kohrt v Mercer, 203 M 494, 282 NW 129.

Where a testator imposed a legacy as a charge upon real estate part of which is a homestead, it was improper for the probate court to license a sale of the tract to pay debts, expenses or legacy. The homestead should be decreed to the persons to whom it was devised, subject to such payment, leaving to a court of equity the enforcement of the charge. Anderson's Estate, 202 M 513, 279 NW 266; Schultz's Estate, 203 M 565, 282 NW 471.

Under this section an action may now be maintained in the district court against the representatives and heirs to enforce a lien or charge for work and materials furnished for the improvement of the homestead at the request of the deceased, without presenting the claim to probate court for allowance, the decedent leaving no property except homestead. Anderson v Johnson, 208 M 152, 293 NW 131.

As to non-homestead property, the widow having elected to take under the will, she takes as purchaser. The value of the remainder of the property should first have been subject to payment of debts and expenses, thereby preferring the devise to the widow. Paulson v Swenson, 208 M 231, 293 NW 607.

Trial court was jjustified in directing a sale of property held in co-tenancy where there were 15 individual owners who had interests varying in extent and value, so that division in kind could not be made without harm. Contribution among co-tenants does not mature until the party owing a common liability has

paid more than his just share of the obligation. Hoverson v Hoverson, 216 M 228, 12 NW(2d) 501.

The surviving spouse takes the homestead as property set apart by law for her benefit and that of the children. The spouse does not take by right of survivorship. Maruska v Equitable, 21 F. Supp. 841.

In all cases where the homestead descends to the spouse or children, said homestead is not subject to claims based on old age assistance. 1936 OAG 316, April 6, 1936 (521p-3).

The claim of the county against an estate based on old age assistance is on the same plane as any common creditor. OAG April 15, 1936 (521g).

Where an old age recipient dies leaving no spouse or children, the homestead is subject to payment of the county's claim. 1940 OAG 242, April 5, 1939 (521g); OAG March 8, 1939 (521p-3).

Attachment of old age pension lien to homestead. OAG Jan. 28, 1944 (521p-3); OAG July 19, 1944 (521-g); OAG Oct. 18, 1944 (521p-4).

Adverse possession as against a remainderman. 2 MLR 139.

Inheritance tax and statutory one-third interest of surviving spouse. 2 MLR 380.

Fraudulent conveyances; homestead exemption. 2 MLR 392.

Summary probate proceedings. 19 MLR 833.

Probate practice. 20 MLR 709, 713.

Summary probate proceedings; the homestead. 20 MLR 105.

Constitutionality of statutory limitations on jurisdiction of probate courts; creditor's claim against homestead. 21 MLR 211.

Minnesota tax inheritance procedure. 23 MLR 125.

Validity of contracts between husband and wife who do not have separation in mind. Payments in satisfaction of duty to support. 23 MLR 979.

Protection of an interest in real property acquired by a purchaser in good faith at an execution sale. 24 MLR 807.

Descent of homestead. 25 MLR 73.

Necessity of filing claim in probate court when decendent's only property is a homestead. 25 MLR 385.

Homesteads; old age pensions; validity of homestead lien law. 25 MLR 521.

525.15 ALLOWANCES TO SPOUSE.

HISTORY. 1889 c. 46 s. 70; 1893 c. 116 s. 6; G.S. 1894 s. 4477; 1899 c. 149; 1903 c. 334; R.L. 1905 s. 3653; G.S. 1913 s. 7243; 1915 c. 331 s. 1; 1915 c. 350 s. 1; 1921 c. 173 s. 1; 1923 c. 347 s. 1; G.S. 1923 s. 8726; M.S. 1927 s. 8726; 1935 c. 72 s. 28; M. Supp. s. 8992-28.

Statutory allowances received during administration are not payments upon a widow's annuity under an antenuptial contract. Desnoyer v Jordan, 30 M 80, 14 NW 259.

The right of the surviving spouse to renounce the will and take under the statute was first introduced by Laws 1889, Chapter 46, Section 5. Johnson v Johnson, 32 M 513, 21 NW 725; Rausch's Estate, 35 M 291, 28 NW 920; State ex rel v Hunt, 88 M 404, 93 NW 314.

The right of allowance is absolute. Appropriation of the prescribed amount by widow and sale by her before the formal order of allowance, is sustained. Benjamin v Laroche, 39 M 334, 40 NW 156.

The rule that a will speaks as of the day it takes effect as to the persons who are to take under it, is not an unyielding one, and in the instant case where decedent died after passage of Laws 1889, Chapter 46, the words "heirs at law" mean "next of kin". Swenson's Estate, 55 M 300, 56 NW 1115; Lake Phalen v Lindeke, 66 M 209, 68 NW 974; Benson v Benson, 156 M 366, 194 NW 767.

The allowance may be made out of rents and profits of realty; and before election under section 525.212. Blakeman v Blakeman, 64 M 315, 67 NW 69.

A widow electing to take under a will is not entitled to an allowance in addition to provisions of the will as against other devisees. Blakeman v Blakeman, 34 M 315, 67 NW 69.

Common law marriage defined. Hulett v Carey, 66 M 327, 69 NW 31.

Where a specific legacy is set apart from an estate for a minor legatee to be given at a time in the future, such legacy is vested, and on the death of the legatee before its receipt, descends to her heirs. Fox v Hicks, 81 M 197, 83 NW 538.

An allowance may be made before inventory or appraisal. Stanch v Uhler, 95 M 304, 104 NW 535.

Laws 1903 amending Laws 1889, Chapter 46, Section 70, made it unlawful for a childless spouse to dispose of all his or her personal property by will to another to the entire exclusion of the spouse of such testator, and entitled the surviving spouse to the same interest in both real and personal property of the deceased, unaffected by contrary testamentary disposition. Modifying Percy v Hunt, 88 M 404, 93 NW 314. Hayden v Lamberton, 100 M 384, 111 NW 278.

Laws 1903, Chapter 334, Section 1, allowing certain personal property to a widow vests in the widow an unqualified right to the property at once on the death of the husband, and selection by the wife is not essential. An abandonment by the wife does not annul the right. Saumors v Highbie's Estate, 103 M 448, 115 NW 265.

Recovery in a wrongful death case does not inure to the benefit of the estate of the deceased person, but solely for the benefit of the next of kin. Aho v Republic, 104 M 322, 116 NW 590; Mayer v Mayer, 106 M 484, 119 NW 217.

The allowance to the widow of the personal wearing apparel and certain household goods from the husband's estate is, under Revised Laws 1905, Section 3653, confined to the articles specified. Stromberg v Stromberg, 119 M 325, 138 NW 428.

Contract between attorneys to divide fees earned in recovery of damages for death by wrongful act, is sustained as a legal contract. Comstock v Baldwin, 125 M 357, 147 NW 278.

The widow is entitled, under Revised Laws 1905, Section 3653, to her statutory allowance irrespective of whether or not she assents to the will. Horbach v Horbach, 127 M 223, 149 NW 303.

The right of the surviving spouse to select personal property to the statutory value, if not exercised in his lifetime, may be exercised by his administrator. Nordlund v Dahlgren, 139 M 462, 153 NW 876; Poupore v Stone, 132 M 409, 157 NW 648.

Neither upon the allowance made for support of the widow and family, pending administration, nor upon the personal property selected by her as allowed by statute, may a state inheritance tax be imposed. State ex rel v Probate Court, 137 M 238, 163 NW 285.

The probate court controls the property of an estate through an administrator, and its jurisdiction over him and over the estate is exclusive. An action by a widow to recover her allowance cannot, in the first instance, be brought in district court. Fischer v Hintz, 145 M 161, 176 NW 177.

A widow has an absolute right to personal property of her deceased husband to the amount of $500.00, and such amount is not subject to the payment of funeral expenses. A widow residing in a foreign country is entitled to the benefit of the statute. Barrett v Heim, 152 M 147, 188 NW 207.

Where the wife dies soon after husband, her administrators may make the election as to accepting or renouncing the terms of the husband's will. Hentges v Haye, 158 M 402, 197 NW 852.

The probate court has no jurisdiction over proceeds from collection of damages for death by wrongful act. The district court has. The widow cannot select her statutory allowance therefrom. Masek v Hedlund, 162 M 291, 202 NW 732.

The legacy to the widow, plus her statutory allowance, plus expenses of last illness and funeral expenses, should be paid from the corpus of the estate. Snow v Jones, 166 M 315, 207 NW 629.

Claims of the estate against third parties may be compounded under order of the probate court without notice to persons interested in decedent's estate. Stampka's Estate. 168 M 283, 210 NW 85.

The Minnesota probate court has complete jurisdiction over the property of a non-resident decedent in the hands of an ancillary administrator appointed by it and may dispose of same in accordance with Minnesota statute. Fultz' Estate, 177 M 334, 225 NW 152.

A soldier holding a war risk insurance certificate died in 1918, and his brother, the residuary legatee, in 1924. The remaining payments under the certificate are collectible by an administrator de bonis non of the soldier's estate. Spongberg v Lidstrom, 187 M 650, 245 NW 636, 247 NW 679.

The personal property allowed a surviving spouse is not an asset of the estate, and consent to the will did not operate to deprive the plaintiff of his right to select his allowance. McBride v McBride, 195 M 319, 263 NW 105.

Sections of the probate code which deprive it of jurisdiction over claims against the homestead and confer such jurisdiction on the district court, are constitutional. Peterson's Estate, 198 M 45, 268 NW 707.

The appellant is estopped by reason of several years acquiescence from objecting to prior payment of legacies. Clover v Peterson, 203 M 337, 281 NW 275.

Inheritance tax and the statutory one-third to the surviving spouse. 2 MLR 377.

Allowance to non-resident widow. 2 MLR 391.

Life estate of widow in homestead; inheritance tax. 5 MLR 156.

Elements of compensation for the death of a minor child. 16 MLR 416.

Summary probate proceedings. 19 MLR 838.

Deductions; inheritance tax. 23 MLR 124.

525.16 DESCENT OF PROPERTY.

HISTORY. 1889 c. 46 ss. 64, 70; 1893 c. 116 s. 6; G.S. 1894 ss. 4471, 4477; 1899 c. 149; 1901 c. 33; 1903 c. 334; R.L. 1905 ss. 3648, 3653; 1907 c. 36 s. 1; G.S. 1913 ss. 7238, 7243; 1915 c. 331 s. 1; 1915 c. 350 s. 1; 1917 c. 272 s. 1; 1921 c. 173 s. 1; 1923 c. 347 s. 1; G.S. 1923 ss. 8720, 8726; M.S. 1927 ss. 8720, 8726; 1935 c. 72 s. 29; 1937 c. 435 s. 8; 1939 c. 270 s. 3; M. Supp. s. 8992-29.

NOTE: See annotations under sections 5259.14, 525.145, 525.15.

1. Wife's interest in husband's realty
2. Husband's interest in wife's realty
3. Title vests on death of ancestor
4. Liability for debts
5. Sale to pay legacies.
6. Assent to disposition
7. Election
8. Generally

1. Wife's interest in husband's realty

The wife's interest is one the law recognizes and which she may protect. Williams v Stewart, 25 M 516; Roberts v Meighen, 74 M 273, 77 NW 139; Tracy v Tracy, 79 M 267, 82 NW 635; Mpls. & St. L. v Lund, 91 M 45, 97 NW 452.

It was formerly held that the statutory interest of a wife in her husband's realty given by this section was merely an enlargement of common law dower and was construed in accordance with common laws rules regarding dower. Gotzian's Estate, 34 M 159, 24 NW 920; Rausch's Estate, 35 M 291, 28 NW 920; McGowan v Baldwin, 46 M 477, 49 NW 251; Dayton v Corser, 51 M 406, 53 NW 717; Holmes v Holmes, 54 M 352, 56 NW 46.

Since 1893 it has been held that the wife's interest is purely statutory without any of the essential interests of dower and such interest is not to be construed in accordance with common law rules regarding dower. Scott v Wells, 55 M 274, 56 NW 828;. Merrill v Sec. Trust, 71 M 61, 73 NW 640; Johnson v Minn. Loan, 75 M 4, 77 NW 421.

During the husband's life the wife's interest is inchoate and contingent. It is not an estate or even a vested interest. It is a mere expectancy. Rausch's Estate, 35 M 291, 28 NW 920; Hamilton v Village, 85 M 83, 88 NW 419; Stitt v Smith, 102 M 253, 113 NW 632; Cocker v Cocker, 215 M 565, 10 NW(2d) 734.

On the death of the husband, it becomes vested at once. Scott v Wells, 55 M 274, 56 NW 828; Byrnes v Sexton, 62 M 135, 64 NW 155.

On the death of the husband it becomes a freehold estate, if such was the estate of the husband. Hamilton v Village, 85 M 83, 88 NW 419.

The right which the wife has by virtue of Laws 1875, Chapter 40, and Laws 1876, Chapter 37, in the lands of her husband during coverture is inchoate and contingent and may at any time before it becomes consummate by death of the husband, be diminished or entirely taken away by the legislature. Griswold v McGee, 102 M 114, 112 NW 1020, 113 NW 382.

The wife is not a necessary party to an action against the husband for the purpose of having determined that he held title to land as mortgagee, and not as owner, but she is bound by the judgment. Stitt v Smith, 102 M 253, 113 NW 632.

The signature of the wife as a witness to a contract by husband for sale of his real estate does not constitute her written consent; but such contract may be specifically enforced as to him. Stromme v Rieck, 107 M 177, 119 NW 948.

There being no surviving spouse, issue, father, mother, brother or sister, the estate descends to nieces and nephews to the exclusion of children of deceased nieces and nephews. Fretheem's Estate, 156 M 366, 194 NW 766.

A wife's inchoate interest in her husband's property cannot be subjected to the husband's indebtedness beyond the amount to which she joins in the mortgage, although it may be reached by execution or judicial sale. Wade v Citizens Bank, 158 M 231, 197 NW 277.

Upon divorcement, the wife was the owner in fee and entitled to the possession of an undivided one-third, subject, in its just proportion with other real estate to the payment of such debts of the husband as could not be paid from his personal property, and she would be entitled to partition. Keith v Mellenshire, 92 M 527, 100 NW 366.

Under a contract for the sale of lands by the terms of which the vendee pays part, and covenants to pay the balance in payments, and pay taxes, and enters and makes improvements, the vendee has an equitable title to which the wife's statutory marital right attaches. Wellington v St. P. M. & Man. Ry. 123 M 483, 144 NW 222.

A gift of the entire estate to a wife, there being no issue, is limited by the presence of specific legacies. Martin's Estate, 166 M 269, 207 NW 618.

Where there is a recovery because of death by wrongful act, the mother is entitled to one-half the net received, although she had deserted the family years before, and she herself had suffered no loss. Murphy v Duluth-Superior Bus, 200 M 345, 274 NW 515.

In a suit to cancel a deed for non-delivery to the grantee, the wife of one of the defendants was joined as a defendant. Her default in failing to answer to the complaint did not qualify her to testify for her husband as to a conversation between plaintiff and witness's husband. Cocker v Cocker, 215 M 565, 10 NW(2d) 734.

2. Husband's interest in wife's realty

The nature of a husband's interest in his wife's realty other than her homestead is the same as her interest in his. It is not the common law estate by curtesy, but is purely an interest given by statute. Johnson v Minn. Loan, 75 M 4, 77 NW 421; Appleby v Appleby, 100 M 408, 111 NW 305.

The wife's will gives the homestead to a third party with the provision that the surviving spouse shall have the exclusive control of it during his lifetime, does not give him the same rights in it which he would have if he took under the statute. Patterson v Hall, 155 M 46, 192 NW 342.

3. Title vests on death of ancestor

A bona fide debt payment of a debt due to a person dying intestate, made to the sole heir and distributee, before administration is granted, will, if equity re-

quires, operate as a discharge from liability to a later appointed administrator. Vail v Anderson, 61 M 552, 64 NW 47.

Under this section the title to lands of an intestate vests in the surviving spouse and heirs immediately on his death, and without administrative proceedings. Their estate is subject to alienation, devise and attachment. A purchaser, whether at a voluntary or compulsory sale, acquires the estate subject to the rights of creditors. The estate is not subject to the lien of a judgment rendered against the intestate before his death but not docketed until thereafter. Byrnes v Sexton, 62 M 135, 64 NW 155; Nordlund v Dahlgren, 130 M 462, 153 NW 876; Snortum v Snortum, 155 M 230, 193 NW 304.

As of 1908, whether a widow, who has murdered her husband for purpose of acquiring his real estate, may inherit, quaere. Decree of probate court assigning to widow her statutory interest in real estate is held final. Wellner v Eckstein, 105 M 444, 117 NW 830.

Title to an intestate's personal property vests in the administrator of the estate, while title to real estate vests in the heirs. Miller's Estate, 196 M 543, 265 NW 333.

4. Liability for debts

The doctrine of rebutter by collateral warranty is not a part of the common law of this state. The interest of the surviving spouse can only be subjected to liabilities of the decedent through and in administrative proceedings. Goodwin v Kumm, 43 M 403, 45 NW 853; Johnson v Minn. Loan, 75 M 4, 77 NW 421.

Prior to Laws 1901, Chapter 33, the inchoate interest of one spouse was unaffected by a sale on execution against the other spouse. Dayton v Corser, 51 M 406, 53 NW 717; Williamson v Selden, 53 M 73, 54 NW 1055; Kimball v Sec. Trust, 71 M 61, 73 NW 640; Roberts v Meighen, 74 M 273, 77 NW 139; Johnson v Minn. Loan, 75 M 4, 77 NW 421; Aretz v Kloos, 89 M 432, 95 NW 216, 769; Mpls. & St. L. v. Lund, 91 M 45, 97 NW 452.

The interest of a surviving spouse under this section is subject to the payment of debts in the course of administration, the same as the estate of other heirs. Scott v Wells, 55 M 274, 56 NW 828; Lake Phalen v Lindeke, 66 M 209, 68 NW 974; Merrill v Security Trust, 71 M 61, 73 NW 640; Johnson v Minn. Loan, 75 M 4, 77 NW 421; Kelly v Slack, 93 M 489, 101 NW 797.

This section has no application to secured claims. Byrnes v Sexton, 62 M 135, 64 NW 155.

Laws 1901, Chapter 33, excepting lands divested by execution or judicial sale, assignment for creditors, or insolvency or bankruptcy proceedings, applied to those cases in which marriage and seisin occurred prior to the enactment. Griswold v McGee, 102 M 114, 112 NW 1020, 113 NW 382.

A state inheritance tax cannot be collected when computed on support money, nor on her statutory selection of personal property, but may be collected on her statutory one-third. Tax is not computed on the life estate of the spouse. Pettit v Probate Court, 137 M 238, 163 NW 285; Murphy's Estate, 146 M 418, 178 NW 1003, 179 NW 728.

A wife's inchoate interest in her husband's property cannot be subjected to the husband's indebtedness beyond the amount to which she joins in the mortgage, although it may be reached by execution or judicial sale. Wade v Bank, 158 M 231, 197 NW 277.

5. Sale to pay legacies

If the estate cannot be equitably divided, the entire estate including the undivided one-third interest of a surviving spouse, may be sold to pay legacies. Kelly v Slack, 93 M 489, 101 NW 797.

6. Assent to disposition

The interest of the spouse is subject to the equitable doctrine of election or estoppel. Washburn v Van Steenwyck, 32 M 336, 20 NW 324; Sorensen v Carey, 96 M 202, 104 NW 958.

A quitclaim deed, signed by husband and wife, will bar the statutory interest of wife. Ortman v Chute, 57 M 452, 59 NW 533.

7. Election

The provisions of section 525.212 are applicable to this section. Radl v Radl, 72 M 81, 75 NW 111; Eckstein v Radl, 72 M 95, 75 NW 112; Hentges v Haye, 158 M 402, 197 NW 852.

Where there is no surviving child, a surviving spouse who renounces a will takes one-half of the property of the testator. Pagel's Estate, 202 M 96, 277 NW 417.

Upon renonuncing her rights to take under her husband's will, a widow takes an undivided interest in all real estate. Lenahan v Taylor, 213 M 509, 7 NW(2d) 320.

8. Generally

Next of kin in equal degree take per capita; in unequal degree, per stirpes. Where the next of kin were six nephews and nieces, two of them being children of one deceased brother and four of them of another, it was held that they all took equal shares. Stanbitz v Lambert, 71 M 11, 73 NW 511; Swanson v Lewison, 135 M 145, 160 NW 253; Fretheim's Estate, 156 M 266, 194 NW 766.

Common law marriage defined. Hulett v Carey, 66 M 327, 69 NW 31.

Prior to the 1905 revision, a father took the entire estate, to the exclusion of the mother. Fox v Hicks, 81 M 206, 83 NW 538.

Under General Statutes 1874, Section 4471, Subdivision 7, real property inherited by a child from his father's estate descended, the child being unmarried, without issue and a minor, to his surviving brothers and sisters. St. P. Gas Light v Kenny, 97 M 150, 106 NW 344.

The rights of a surviving spouse as statutory heir under Revised Laws 1905, Section 3648 (525.16), are not affected by Revised Laws 1905, Section 3652 (525.17), relating to computation of "degrees of kindred", and excluding those not of the blood of the ancestor from inheritance where the property is ancestral. Boeing v Owsley, 122 M 190, 142 NW 129.

A co-tenant in remainder may compel partition, although the life tenant is in possession of the property. Heintz v Wilhelm, 151 M 195, 186 NW 305.

An adopted child inherits from his natural parent. Roberts v Roberts, 160 M 140, 199 NW 581.

If one is entitled to specific performance of an oral contract to adopt, he may establish such right in an action to establish heirship. Firle's Estate, 197 M 1, 265 NW 818.

Those sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead, and assigning the jurisdiction to the district court are in accord with the provisions of the constitution. Peterson's Estate, 198 M 47, 268 NW 707.

Where the testator fails to dispose of the whole of the estate, mere negative words of exclusion do not prevent the rest of the property from passing under the provisions of the statutes of descent and distribution. Beur's Estate, 205 M 43, 284 NW 833.

Where there is recovery under the death by wrongful act statute, distribution is to widow and next of kin, rather than to employee's dependents under the compensation act. Joel v Dale, 206 M 580, 289 NW 524.

Where there was a devise of non-homestead property to the widow for life and remainder over, the land when sold brought less than the value of the widow's life estate. Having lost her right to renounce, she takes by purchase, and the value of the remainder should first be resorted to in paying expenses, thereby preferring the devise to the widow. Paulson v Swenson, 208 M 231, 293 NW 607.

The will of a testatrix left her property to heirs at law to be divided as if she left no will. There survived her, one sister, 12 nephews and nieces, and six grand

nephews and nieces, none of whose parents were living. The estate was properly distributed per stirpes. Galbraith's Estate, 210 M 356, 298 NW 253.

Under statute providing that intestate's kindred of half blood shall inherit equally with those of whole blood in same degree, unless inheritance comes to intestate from one of his ancestors, in which case all who are not of such ancestor's blood shall be excluded from inheritance, intestate's kindred who are not of ancestor's blood, such as children of intestate's deceased half-brother, are entitled to inherit to exclusion of kindred of such blood who belong to more remote class such as intestate's first and second cousins. McDonnall v Drawz, 212 M 283, 3 NW(2d) 419.

If there are no debts, personal property vests in the heirs without administration. Holtan v Fischer, 218 M 81, 15 NW(2d) 206.

Where father without consideration conveyed land to first son under oral trust for use of second son, and at second son's request first son conveyed the land to the second son's creditor, who paid taxes and made improvements, and second son's wife never consented in writing to transfer of her inchoate interest in the land, an undivided one-third interest descended to her upon second son's death, and vested in her children upon her death. Peterson v Anderson, 218 M 383, 16 NW(2d) 185.

Where an illegitimate son died intestate without spouse or issue, his estate was properly ordered to be distributed to brothers and sisters of his predeceased mother and to issue of the mother's deceased brothers and sisters by right of representation. Werder v Luscher, 219 M 176, 17 NW(2d) 309.

Abatement or indemnity for outstanding inchoate dower interest. 29 MLR 283.

Equitable interests; land contracts. 2 MLR 62.

Inheritance tax and statutory one-third interest in surviving spouse. 2 MLR 378.

Future interests; possibility of reverter. 3 MLR 327.

Election of remedies; between property and devise. 6 MLR 344.

Right of dower in estates terminated by death. 8 MLR 256.

Equality of property interests between husband and wife. 8 MLR 579.

Protection of the inchoate right of dower. 11 MLR 355.

Compensation for the death of a minor child. 16 MLR 416.

Summary probate proceedings. 19 MLR 833.

Probate practice. 20 MLR 707.

Guardianship and commitments under the code. 20 MLR 334.

Confusion of descent and dower rights. 20 MLR 10, 11, 13.

Minnesota inheritance procedure. 23 MLR 125.

Right of state to contest will. 23 MLR 250.

Administration right of set-off against a descendent of a predeceased heir apparent of an intestate. 23 MLR 976.

Probate code amendments. 23 MLR 997.

Ancestral estates; preference of kindred of the half-blood not of the blood of the ancestor to kindred of the whole blood of a more remote statutory class. 27 MLR 313, 314.

525.17 DEGREE OF KINDRED.

HISTORY. 1889 c. 46 s. 68; G.S. 1894 s. 4475; R.L. 1905 s. 3652; G.S. 1913 s. 7242; G.S. 1923 s. 8725; M.S. 1927 s. 8725; 1935 c. 72 s. 30; M. Supp. s. 8992-30.

The rights of a surviving spouse as statutory heir under section 525.16 are not affected by section 525.17. Boeing v Owsley, 122 M 190, 142 NW 129.

Intestate's kindred who are not of ancestor's blood, such as children of intestate's deceased half-brother, are entitled to inherit to exclusion of kindred of such blood who belong to more remote class, such as intestate's first and second cousins. McDonnall v Drawz, 212 M 283, 3 NW(2d) 419.

The blood kindred of the ancestor are preferred to the exclusion of half blood kindred of the intestate only where both classes are "in the same degree" or class entitled to inherit. McDonnall v Drawz, 212 M 283, 3 NW(2d) 419.

Confusion of descent and dower rights. 20 MLR 10, 11, 13.

Ancestral estates; preference of children of the half-blood not of the blood of the ancestor to kindred of the whole blood of a more remote statutory class. 27 MLR 313, 314.

525.171 POSTHUMOUS CHILD.

HISTORY. 1935 c. 72 s. 31; M. Supp. s. 8992-31.

525.172 ILLEGITIMATE AS HEIR.

HISTORY. 1889 c. 46 s. 66; G.S. 1894 s. 4473; R.L. 1905 s. 3650; G.S. 1913 s. 7240; G.S. 1923 s. 8723; M.S. 1927 s. 8723; 1935 c. 72 s. 32; M. Supp. s. 8992-32.

The writing whereby the father of an illegitimate child acknowledges himself to be the father of such child, as provided in General Statutes 1894, Section 4473 (525.172), need not be made for the express purpose of acknowledging the paternity of the child. Pederson v Christofferson, 97 M 491, 106 NW 958.

A "competent attesting witness" under General Statutes 1913, Section 7240 (525.172), is a competent witness who, at the request of the person making the writing containing the declaration of legitimacy, subscribes the same as such witness. Williams v Reid, 130 M 256, 153 NW 324, 593; Anderson v Oleson, 143 M 328, 173 NW 665.

An adopted child inherits from his natural parent. Roberts v Roberts, 160 M 140, 199 NW 581.

The marriage of the mother of an illegitimate child to its father legitimates the child, and the child so legitimated is an heir if other children are born to its parents. Geisler v Geisler, 160 M 463, 200 NW 742.

The fact of legitimacy is provable by family history, reputation and tradition, and by declarations of deceased members of the family. Interested heirs may testify to the tradition. Geisler v Geisler, 160 M 463, 200 NW 742; Estate of Holum, 179 M 315, 229 NW 133.

Through legal proceedings to which he made no defense, the decedent was required to contribute to the support of an illegitimate child. A subsequent written agreement to pay a lump sum is not sufficient to entitle the child to inherit, he not having acknowledged paternity. Snethun's Estate, 180 M 202, 230 NW 483.

At common law an illegitimate child has no right of inheritance from its father. Reilly v Shapiro, 196 M 376, 265 NW 284.

There being no marriage contract operative eo instante; and no written acknowledgment of parentage, the child in the instant case could not recover for the death of the claimed father under the workmen's compensation act. Guptil v Dahlquist, 197 M 211, 266 NW 748.

525.173 HEIRS TO ILLEGITIMATE.

HISTORY. 1889 c. 46 s. 67; G.S. 1894 s. 4474; R.L. 1905 s. 3651; G.S. 1913 s. 7241; G.S. 1923 s. 8724; M.S. 1927 s. 8724; 1935 c. 72 s. 33; M. Supp. s. 8992-33.

Where an illegitimate child dies intestate without spouse or issue, and his mother predeceases him, his estate descends to the heirs of his mother. Werder v Lusher, 219 M 176, 17 NW(2d) 309.

Right of mother to recover for the death of an illegitimate child. 6 MLR 171.

Dower rights. 20 MLR 15.

Probate practice. 20 MLR 709.

WILLS

525.18 EXECUTION OF WILL.

HISTORY. 1889 c. 46 ss. 16, 19; 1893 c. 116 s. 2; G.S. 1894 ss. 4423, 4426; R.L. 1905 s. 3659; G.S. 1913 s. 7250; G.S. 1923 s. 8735; M.S. 1927 s. 8735; 1935 c. 72 s. 34; M. Supp. s. 8992-34.

1. Requisites of execution
2. Interpretation
3. Capacity; undue influence
4. Contract to will
5. Distribution
6. Agreement between beneficiaries

1. Requisites of execution

The erasures and interlineations though attested by subscribing witnesses held to be insufficient, and the original will must stand. Penniman's Estate, 20 M 245 (220); Thomas v Thomas, 76 M 237, 79 NW 104.

If the witnesses sign in the immediate and conscious presence of the testator, it is not necessary that he should see them do so. It is not necessary that he should formally request them to attest his will. Allan's Will, 25 M 39; Kroschel v Drusch, 138 M 322, 164 NW 1023.

Where another signs for the testator by the latter's "express direction" the direction must precede the signing and the signing must be in obedience to the direction. Subsequent acquiescence by the testator is insufficient. If the direction is by gestures, they must be as unambiguous as words. Waite v Frisbie, 45 M 361, 47 NW 1069.

A letter acknowledging a debt as a proper claim against the estate of the writer was not properly attested and not a will. Fitzgerald v English, 73 M 266, 76 NW 27.

The right to dispose of property by will is statutory and the statutory mode of execution must be followed with reasonable strictness. If it is not, the will is void. A will must be signed by the testator in the presence of the subscribing witnesses, or, if not so signed, the testator must acknowledge to such witnesses that the signature thereto attached is his, or in some other way unequivocally indicate to them that the will about to be signed by them as witnesses, is his last will, and has been signed by him. Tobin v Haack, 79 M 101, 81 NW 758; Humes v Huston, 81 M 30, 83 NW 439; Pederson v Christofferson, 97 M 491, 106 NW 958; Geraghty v Kilroy, 103 M 286, 114 NW 838; Thomas v Williams, 105 M 88, 117 NW 155.

Where the witnesses subscribed to the will in a room adjoining that in which the testator lay in bed but immediately after signing showed him their signatures, and he pronounced it "all right" after examination, it was held sufficient. Cunningham v Cunningham, 80 M 180, 83 NW 58.

Whether the will was properly attested was a question of fact for the trial court. Church v Brannan, 97 M 349, 107 NW 141.

The making of his mark to his proposed will by the testator, who is unable to write, is a signing thereof within the meaning of the statute, 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 M 286, 114 NW 838.

It is not necessary that witnesses sign as such in the presence of each other, though each must sign at the instance, express or implied, of the testator and in his conscious presence. Legal attestation is a question of fact for the trial court. Gates v Gates, 149 M 391, 183 NW 958.

Where a decision hinges upon oral evidence to establish that which the statute of frauds and the statute of wills require to be in writing, the oral evidences must be clear, unequivocal, and convincing. Ives v Pillsbury, 204 M 142, 283 NW 140.

A will in order to be valid need not be signed at the bottom or end of the will by the testator. It is sufficient if the signature appears elsewhere on the instrument and is shown to have been put there for the purpose of executing the will. Craven's Estate, 177 M 437, 225 NW 398.

Right to make a will is a statutory right subject to the will of the legislature. Crosby's Estate, 218 M 149, 15 NW(2d) 501.

Revival of revoked will; effect of express revocation in a subsequent will. 7 MLR 158.

Is signature at beginning of will sufficient. 12 MLR 307.

Formal changes made by new Minnesota probate code, Laws 1935, Chapter 72. 20 MLR 3.

2. Interpretation

Power of appointment. Laws 1943, Chapter 322.

Though a will prepared from instructions and directions given by the testator, and signed by him upon the assurance that it expresses his wishes, will be invalid if the language thereof does not in legal effect make the provisions intended by him, it will not necessarily be invalid if by the will, construed in connection with the statutes of inheritance, the property passes to the person intended. Church v Brannan, 97 M 349, 107 NW 141.

The trust deed in the instant case was not testamentary in character. Smith v Wold, 125 M 190, 145 NW 1067.

The test of a gift, as distinguished from a will, is that, in case of a gift some interest vests at once in right. The gift in this case was not testamentary in character and it was valid. Innes v Potter, 130 M 320, 153 NW 604.

"After the payment of such funeral expenses and debts, I give, devise and bequeath to my legal heirs according as the law provides" is effectual as a disposition of the estate to those who would have taken in case of intestacy. Fretheim's Estate, 156 M 366, 194 NW 766.

A husband, not a parent, made a bequest to his wife, who died eight days after his decease without having made an election as to taking under the will. Held, the administrator of the wife's estate is entitled to the share the wife would have received under the statute. Hentges v Haye, 158 M 403, 197 NW 852.

The residuary clause attempted to appoint two persons "a commission to divide anything not bequeathed to societies and institutions in New Ipswitch, N. H." It was fatally defective, and incapable of being made definite by parol. Preston v Batcheller, 162 M 433, 203 NW 225.

Extrinsic evidence or parol testimony may be received to disclose a latent ambiguity as to the identity of a legatee or beneficiary, and the same sort of evidence is admissible to remove the ambiguity disclosed as where the will names a legatee not in existence, or there is a misnomer. Hendrickson's Estate, 163 M 176, 203 NW 778.

Deceased abandoned his wife, faked suicide, came to Minnesota and remarried. He and another, after forming a corporation, each insured his life making a trust company trustee to turn the insurance money over to the widow of the one dying first, the stock to go to the survivor. This was held to be a conventional life insurance trust and contractual and as such a transaction inter vivos rather than testimonial in character, so the money went to the woman with whom he contracted a second marriage. Soper's Estate, 196 M 60, 264 NW 427.

Within the limits allowed by statute, it is not an obligation due to the donee, but the clear intent of the donor that governs. Erickson v Erickson, 197 M 71, 266 NW 161, 267 NW 426.

Delay due to general financial conditions and change in plan of building was not such as created a forfeiture of the express trust, or a declaration of a resulting trust. Wyman v Trustees, 197 M 62, 266 NW 165.

A deposit in a savings bank in trust was not a testamentary disposition. Coughlin v Farmers & Mechanics, 199 M 102, 272 NW 166.

The right of one spouse to accept by gift inter vivos, or to take under the will of the other spouse, is not affected by an antenuptial agreement between them, except where it is found that by such gift or agreement it was intended that there be satisfaction or a redemption thereof. Berg v Berg, 201 M 179, 275 NW 836.

The trust should be so construed and administered as to carry out the intent of the testator. Pagel's Estate, 202 M 96, 277 NW 417; Peterson's Estate, 202 M 31, 277 NW 529; Jones v Trust Co. 202 M 187, 277 NW 899; Thompson's Estate, 202 M 648, 279 NW 574.

Where decedent in his lifetime borrowed money from plaintiff, and assigned his interest in the Ristine estate as security, and upon the closing of the Ristine estate and the allowance of plaintiff's claim in decedent's estate, brought suit in

district court to enforce its lien, it is held that the court had jurisdiction and the complaint states a cause of action. Marquette Bank v Mullin, 205 M 562, 287 NW 233.

Controlling factor in the interpretation of a will is always the intent of the testator. Estate of Nonnemacher, 215 M 604; 11 NW(2d) 147.

Mere inequality of distribution is in no way evidence of undue influence nor of unsound mind. Marsden's Estate, 217 M 1, 13 NW(2d) 765.

In determining testator's intent, the court will look to the entire contents of the will, keeping in mind that the language chosen by testator is presumed to express his intentions. An experienced lawyer in drawing a will will give to the words chosen their usual and accepted meaning, without enlargement or restrictions. Boutelle's Estate, 218 M 158, 15 NW(2d) 506.

Testator's intention concerning nature and source of payment to wife is ascertained by consideration of the entire instrument viewed in the light of circumstances existing when it was executed, and based upon the ordinary meaning of the language used. Congdon v Commissioner, 99 F(2d) 318.

3. Capacity; undue influence

What constitutes a "sound mind". Pinney's Will, 27 M 280, 6 NW 791, 7 NW 144; Brown's Will, 38 M 112, 35 NW 726; Nelson's Will, 39 M 204, 39 NW 143; Hammond v Dike, 42 M 273, 44 NW 61; Young v Otto, 57 M 307, 59 NW 199; Little v Little, 83 M 324, 86 NW 408; Reed v McIntyre, 86 M 163, 90 NW 319; Bush v Hetherington, 132 M 379, 157 NW 505.

A will, void because testator was not of sound mind, cannot be held invalid as to personal property and valid as to real property. Sheeran v Sheeran, 96 M 484, 105 NW 677.

In the instant case the evidence was sufficient to show that the will was the result of undue influence exerted by the second wife. Tyner v Varien, 97 M 181, 106 NW 898.

Whether the testator was of sound or unsound mind, or mentality competent to make a will was on the evidence a question of fact for the trial court. Church v Brannan, 97 M 349, 107 NW 141; Kennedy v Kelly, 123 M 259, 143 NW 726; Buck v Buck, 126 M 275, 148 NW 117; Kroshel v Drusch, 138 M 322, 164 NW 1023; Larson's Estate, 141 M 373, 170 NW 348.

The attesting witnesses to a will are competent to testify and give an opinion as to the testamentary capacity of the testator. Geraghty v Kilroy, 103 M 286, 114 NW 838.

Where the issue is the mental capacity of the testator at the time of making the will, evidence of incapacity within a reasonable time before and after is relevant and admissible. McAllister v Rowland, 124 M 27, 144 NW 412; Moe v Paulson, 128 M 277, 150 NW 914.

A person who is unable to understand, without being prompted, the nature and importance of the business she is transacting has not capacity to make a will. She must understand the nature, situation, and extent of her property, and claims of others upon her bounty or her remembrance, and she must be able to hold these things in her mind long enough to form rational judgment concerning them. Schliederer v Gergen, 129 M 248, 152 NW 541.

There is a rebuttable presumption that a person who has been adjudged insane and committed as an insane person, though at liberty on parole, is incompetent to make a will. Woodville v Morrill, 130 M 92, 153 NW 131.

To establish undue influence the evidence must warrant the conclusion that the mind of the testator was subjected to that of another so that the will is that of the other and not of the testator. Mere opportunity and motive are not sufficient. Jenks' Estate, 164 M 377, 205 NW 271; Mazanec's Estate, 204 M 406, 283 NW 745.

Evidence sustains the findings of the trial court that testatrix was not induced by undue influence and that she was of sound and disposing mind. Lynch v Rasmussen, 156 M 100, 194 NW 318; Knopf, v Ebel, 160 M 480, 200 NW 632; Christ v Christ, 166 M 374, 208 NW 22; Nagel v Nagel, 167 M 63, 208 NW 425.

The jury is sustained in finding that a will made in 1911 was destroyed in 1916 and a new will made in 1916, and these acts were induced by undue influence. Boynton v Simmons, 156 M 144, 194 NW 330; 166 M 65, 207 NW 189.

The evidence supports the verdict that testatrix did not have testamentary capacity when she signed the will. A medical expert may, upon a properly framed hypothetical question, give an opinion based on facts adduced most favorable to the party calling the expert. Weller's Estate, 163 M 389, 204 NW 52.

If the court and jury found, as they did, that decedent was mentally competent to establish the trusts in question, the question of testamentary capacity is out of the case. Coughlin v Farmers & Mechanics, 199 M 102, 272 NW 166.

Neither fraud nor undue influence is presumed, but must be proved, and the burden of proof rests upon him who asserts it. Berg v Berg, 201 M 179, 275 NW 836; Mazanec's Estate, 204 M 406, 283 NW 745; Osbon's Estate, 205 M 419, 286 NW 306.

That the will was executed with great formality in the presence of many persons, including friends and neighbors of testatrix and her attorneys and physician, negatives rather than proves undue influence. Marsden's Estate, 217 M 1, 13 NW(2d) 765.

The trial court's finding that testator possessed testamentary capacity at a time of execution of the will was binding upon the supreme court when not clearly and manifestly against the evidence. An attorney present at the making of the will, but who did not sign as a witness, cannot state his opinion on the testamentary capacity of the decedent without testifying as to facts within his knowledge. Crosby's Estate, 218 M 149, 15 NW(2d) 501.

4. Contract to will

In the lifetime of Sarah Lebenbaum, she and Minna Kleeberg entered into an agreement whereby the former agreed to give and leave at the time of her death all her property to the latter, and whereby the latter agreed to support the former during life. Kleeberg performed on her part, and when Lebenbaum's estate was about to be distributed, appeared and claimed the estate under the contract. Mrs. Lebenbaum was one of the heirs of the Wemberg estate and it was held that Kleeberg was successor to Lebenbaum's rights. Kleeberg v Schrader, 69 M 136, 72 NW 59.

The courts are strict in scrutinizing and weighing the evidence offered to establish such a contract, and it must be clear, satisfactory and convincing. Plaintiff did not assume that peculiar and personal relation to the decedent essential to entitle her to enforce an oral contract as claimed. Greenfield v Peterson, 141 M 475, 170 NW 696; Hinkle v Berg, 156 M 307, 194 NW 637.

A transaction by which each of the children transferred to their mother their interest in the estate in consideration of her promise to leave the estate to the children in equal shares, is enforceable. Anderson v Anderson, 197 M 252, 266 NW 841.

On proper showing, the burden being on the plaintiff, it was held that decedent contracted to leave or will certain property to plaintiff and the contract was enforceable. Hauge v Nordin, 197 M 493, 267 NW 432.

In an action for specific performance of a contract to leave property, the evidence sustains the making of the contract, and performance on the part of the plaintiff, and that the contract was of such character it could not be liquidated by money payment. Hanson v Bowman, 199 M 70, 271 NW 127.

Agreement to will all property in return for support for life was a contract indivisible, and an entirety and must be enforced as such. The probate court has no jurisdiction to grant specific performance, and the district court on appeal has only such jurisdiction as had the probate court. Umbreit v Carley, 202 M 217, 277 NW 549.

Specific performance of a contract to make a will may be granted in district court by a judgment against the representative heirs, legatees, and devisees without interfering with the probate's jurisdiction; and where there is a reasonable probability that plaintiff may establish a cause of action, and the status quo should

be preserved, the issuance of an injunction is within the discretion of the trial court. Jannetta v Janetta, 205 M 266, 285 NW 619.

Contracts to transfer property on death of promissor. 23 MLR 112.

5. Distribution

Where the widow accepted one-third of the crop for a number of years, she is precluded from claiming the right to have the property disposed of; and not having the power to dispose of the property at the time the judgment creditor made a levy, the levy is inoperative. Stucky v Buchholtz, 198 M 445, 270 NW 141.

The relationship of the decedent to his grandchildren is insufficient to justify an implication that he intended to make either the income or the corpus available to their support. His will created a spendthrift trust under which the beneficiaries were protected until the inheritance was actually received by the beneficiaries. Erickson v Erickson, 197 M 71, 266 NW 161, 267 NW 426.

No rule of construction can be allowed to frustrate the clearly expressed intention of the testator to postpone the vesting of the legacies of the nine children in his residuary estate until the time of the entry of the decree of distribution. Ryan v Schmidt, 197 M 162, 266 NW 461, 267 NW 143.

The prime purpose of the construction of a will is to arrive at the intent of the testator. Specific bequests are not favored by law. Pagel's Estate, 202 M 100, 277 NW 417.

A devise or bequest, outright in form, to a charitable institution is, in practical effect, a charitable trust; and the corporation formed to implement the charity takes, not beneficially, but as trustee. Swenson v Board, 202 M 31, 277 NW 529.

Where no spouse or child survives the testator, the homestead should be decreed to the persons to whom it was devised subject to the payment of such legacies as the will discloses to be a charge on the homestead, leaving to a court of equity the duty of enforcement. Anderson's Estate, 202 M 513, 279 NW 266.

The court rightly construed the will to require the distribution of one-half of the estate in equal shares to two children of one of the testator's daughters, and the other one-half in equal shares to six children of the other of testator's daughters, to the exclusion of parties further removed under the rule that children do not take in competition with living parents, unless the testator clearly so intends. Thompson's Estate, 202 M 648, 279 NW 574.

A tenant in common, as heir with others, and who is himself primarily liable for the payment he makes, is not entitled to contribution on account thereof from his cotenants or co-heirs. Parten v Bank, 204 M 200, 283 NW 408.

Where the holding company was organized and until his death conducted by the testator and settlor of the trust, the fact that he took all increases in capital as income is inadmissible to show that his trustee and life tenant could do the same. The will expressly limited her to income. Clarke v Bennett, 204 M 574, 284 NW 876.

A gift by will, given to discharge a debt or obligation and not as a bounty, does not lapse upon the death of the beneficiary before that of the testator even though the debt is not legally binding. Estate of Nonnemacher, 215 M 604, 11 NW(2d) 147.

Where life estate was given coupled with power of disposition and right to use the proceeds for necessary comfort and support of the life tenant, and equity court had ordered judicial sale of the entire fee, the proceeds would be held as a substitute for the land, and life tenant would have the same right to encroach on proceeds of sale in hands of trustee which she would have had if she had exercised power of sale and held funds herself. Beliveau v Beliveau, 217 M 235, 15 NW(2d) 360.

The fundamental essential of any trust is a separation of the legal estate from the beneficial enjoyment. Courts of equity have long been recognized as possessed of authority to supervise the administration of trusts. Wertin v Wertin, 217 M 51, 13 NW(2d) 749.

Request of all "books of account" pertaining to testator's practice of law to his trusted and loyal employee for more than 30 years carried with it the accounts evidenced by such books. Boutelle's Estate, 218 M 158, 15 NW(2d) 506.

Where testator gave his entire estate to a corporation which he used as an instrumentality to effect his wishes in disposition of his estate, the beneficiary is

entitled to all of the yearly income, and may not be content with such dividends as the trustee sees fit to have the corporation declare. Koffend's Will, 218 M 206, 15 NW(2d) 590.

6. Agreement between beneficiaries

The rule that a will cannot be modified by contract between the beneficiaries does not estop them from agreeing among themselves to make such arrangement and disposition of their respective property rights as may best serve their respective interests. Schaefer v Thoeng, 199 M 610, 273 NW 190.

Where, as here, the case hinges upon oral evidence to establish that which the statute of frauds, and the statute of wills require to be in writing, the oral evidence to establish the facts claimed must be clear, unequivocal, and convincing. As it was not so proven, the case of plaintiff falls. Ives v Pillsbury, 204 M 142, 283 NW 140.

Equity looks with favor upon agreements within families forestalling controversies concerning disposition of the parents' property and will uphold it although there was no dispute when made. Jannetta v Jannetta, 205 M 270, 285 NW 619.

Where there are no creditors, or where their claims are barred, the heirs entitled to decedent's estate may dispense with formal administration by amicable settlement of their rights and distribution of their property. Holtan v Fischer, 218 M 81, 15 NW(2d) 206.

525.181 COMPETENCY OF WITNESSES.

HISTORY. 1889 c. 46 s. 19; G.S. 1894 s. 4426; 1899 c. 338; R.L. 1905 s. 3660; G.S. 1913 s. 7251; G.S. 1923 s. 8736; M.S. 1927 s. 8736; 1935 c. 72 s. 35; M. Supp. s. 8992-35.

Attesting witnesses to a will must be such as are competent at the date of attestation, and, if then competent, their subsequent incompetency from whatever cause, will not prevent the probate of the will. Competency is that defined by statute. Holt's Will, 56 M 33, 57 NW 219.

Formal changes in new probate code, Laws 1935, Chapter 72. 20 MLR 3.

525.182 NUNCUPATIVE WILLS.

HISTORY. 1889 c. 46 ss. 20, 38; G.S. 1894 ss. 4427, 4445; R.L. 1905 ss. 3661, 3691; G.S. 1913 ss. 7252, 7282; G.S. 1923 ss. 8737, 8767; M.S. 1927 ss. 8737, 8767; 1935 c. 72 s. 36; M. Supp. s. 8992-36.

Wills of soldiers and seamen. 2 MLR 271.

525.183 WILLS MADE ELSEWHERE.

HISTORY. 1889 c. 46 s. 47; G.S. 1894 s. 4454; 1901 c. 114; R.L. 1905 s. 3662; G.S. 1913 s. 7253; G.S. 1923 s. 8738; M.S. 1927 s. 8738; 1935 c. 72 s. 37; M. Supp. s. 8992-37.

The statute, providing that, upon administration of the estate of a non-resident testator, the real estate be assigned according to the will, is not a statute of devolution; but merely declares that real estate shall be so assigned, as in the case of a domestic will, subject to any conditions imposed by the statutes of the state. Boeing v Owsley, 122 M 190, 142 NW 129.

Where a testator executes a will in another state while a resident therein, and dies a resident of this state, it is valid here if executed as required by the laws of either state. The presumptions are favorable to the validity of the will. Lott v Lott, 174 M 13, 218 NW 447.

Conveyances under the probate code of 1935. 20 MLR 115.

525.184 BENEFICIARY A WITNESS.

HISTORY. 1889 c. 46 ss. 21, 22; G.S. 1894 ss. 4428, 4429; R.L. 1905 s. 3663; G.S. 1913 s. 7254; G.S. 1923 s. 8739; M.S. 1927 s. 8739; 1935 c. 72 s. 38; M. Supp. s. 8992-38.

The statute makes void a legacy to an attesting witness. But this provision does not apply to the husband or wife of such witness. Neither has any present, direct, or certain interest in a legacy to the other. Holt's Will, 56 M 33, 57 NW 219.

The will of a member of a religious order devising and bequeathing all her property to the corporation, was witnessed by two other members of the order. Each member under the rules of the order was required to give all her property to the order. The witnesses did not have such present, certain, vested pecuniary interest in the property so as to disqualify them as witnesses. Will v Sisters of St. Benedict, 67 M 335, 69 NW 1090.

A person who is named in a will as executor is a competent attesting and subscribing witness to its execution. Geraghty v Kilroy, 103 M 286, 114 NW 838; Burmeister v Gust, 117 M 247, 135 NW 980.

Since this section annuls the interest of a devisee or legatee in a will where he is an attesting witness, and there is but one other attesting witness, such devisee or legatee is a competent witness to prove the will. Benrud v Anderson, 144 M 111, 174 NW 617.

525.19 REVOCATION OF WILL.

HISTORY. 1889 c. 46 s. 23; G.S. 1894 s. 4430; R.L. 1905 s. 3665; G.S. 1913 s. 7256; G.S. 1923 s. 8741; M.S. 1927 s. 8741; 1935 c. 72 s. 39; M. Supp. 8992-39.

On May 26, 1871, testator made his will in due form of law. On Aug. 21, 1871, he drew his pen through certain words and wrote in certain interlineations. These changes were attested by two subscribing witnesses. Held, the changes were not made in accordance with the statute, and the will as originally made is entitled to probate. Penniman's Will, 20 M 245 (220).

A later will, properly executed as such, and containing a clause revoking former wills, is effectual as a revocation, although having been lost or destroyed, its contents (other than the revocatory clause) cannot be proved or admitted to probate. Cunningham's Will, 38 M 169, 36 NW 269.

Express revocation of a will can only be shown by evidence of some of the acts designated by statute. Revocation may be implied by subsequent changes in the condition or circumstances of the testator. A valid sale of an estate devised will effect a revocation pro tanto. Graham v Burch, 47 M 171, 49 NW 697.

Where a part of a will is canceled or erased by the testator himself, with a view to a new disposition of the property, and the new proposed disposition of the property fails for want of authentication, the will as originally executed will stand. Thomas v Thomas, 76 M 237, 79 NW 104.

Revocation in express terms revokes the named provision, even though the superseding disposition of the property be invalid. Board v Scott, 88 M 386, 93 NW 109.

A writing in the form of a contract, complete in itself and unambiguous, though having to do with matters of property and support between beneficiaries, did not constitute a revocation of the will. Lindesmith v Lindesmith, 96 M 147, 104 NW 825.

The common law rule of implied revocation by changed circumstances is adopted by this section. Settlement in anticipation of divorce by which the husband made over to the wife one-third of his property, coupled with the fact of divorce, revoked by implication a will in which he had devised to her the amount of property conveyed to her in settlement. Donaldson v Hall, 106 M 502, 119 NW 219.

Testator devised his real estate, consisting of three farms, one farm to each of three children. He bequeathed to each daughter money to be paid to each by the son. The three children were residuary legatees. During his lifetime, the farms were conveyed to the children. Held, the specific legacies were not revoked by the conveyances, and the son is bound to pay the required moneys to each of the daughters. Miller v Klossner, 135 M 377, 160 NW 1025.

The subsequent leasing of property devised for 100 years did not revoke the will or trust. Evans' Estate, 145 M 252, 177 NW 126.

Existence of the will in contemplation of law, unrevoked, is all that is required for its allowance. Physical existence of the will at the time of the death of the decedent is not required. Havel's Estate, 156 M 253, 194 NW 633.

The revocation resulted from the testator's acts, was not dependent upon the acts of another, did not invoke the doctrine of "dependent relative revocation", and resulted in a complete and valid revocation. Nelson's Estate, 183 M 295, 236 NW 459.

Existence of will at time of testator's death; fraudulent revocation; dependent relative revocation; statute of revocation. 8 MLR 51, 52, 54.

Divorce as implied revocation. 9 MLR 169.

Revocation of wills. 20 MLR 16.

Conveyance under the probate code. 20 MLR 115.

Probate practice. 20 MLR 717.

525.191 REVOCATION BY MARRIAGE OR DIVORCE.

HISTORY. R.L. 1905 s. 3666; 1909 c. 53 s. 1; G.S. 1913 s. 7257; G.S. 1923 s. 8742; M.S. 1927 s. 8742; 1935 c. 72 s. 40; M. Supp. s. 8992-40.

This provision is new with the 1905 revised code. Prior to Revised Laws 1905, Section 3666, the fact that under the law a wife might inherit from her husband did not change the common-law rule that the will of a man is not revoked by his subsequent marriage alone, without birth of issue. Hulett v Carey, 66 M 327, 69 NW 31.

Prior to the enactment of Revised Laws 1905, Section 3666, the will of a woman was not revoked by her subsequent marriage. The rule of the common law to the contrary was abrogated by the statute conferring upon married women testamentary capacity. Kelly v Stevenson, 85 M 247, 88 NW 739.

The common-law rule of implied revocation of wills by "changed conditions and circumstances" of the testator arising subsequent to the execution of the will was affirmatively adopted in Minnesota by Revised Laws 1905, Sections 3665, 3666. Donaldson v Hall, 106 M 502, 119 NW 219.

Recovery under federal employers liability act for benefit of remoter beneficiary when immediate beneficiary dies before commencement of the action. 9 MLR 71.

Revocation of wills. 20 MLR 16.

525.20 AFTER-BORN CHILD.

HISTORY. 1889 c. 46 s. 39; G.S. 1894 s. 4446; R.L. 1905 s. 3668; G.S. 1913 s. 7259; 1915 c. 343 s. 1; G.S. 1923 s. 8744; M.S. 1927 s. 8744; 1935 c. 72 s. 41; M. Supp. s. 8992-41.

Legislation making provision for omitted children originated in Massachusetts, and Minnesota took her original statute on the subject from Wisconsin. They appear with unimportant changes in verbiage in Revised Statutes 1851, and in two sections in the 1866 revision. The two sections, modified, were enacted into Revised Laws 1905, Sections 3668, 3669, and modified slightly by Laws 1915, Chapter 343. A child omitted from the will takes the share he would have taken if the parent died intestate "unless it appears that such omission was intentional" and parol evidence is admissible to show intention, and those claiming the omission is intentional must carry the burden of proof. Whitely v Matz, 125 M 40, 145 NW 623.

The 1935 code provision. 20 MLR 17.

Probate practice. 20 MLR 712.

525.201 OMITTED CHILD.

HISTORY. 1889 c. 46 s. 40; G.S. 1894 s. 4447; R.L. 1905 s. 3669; G.S. 1913 s. 7260; G.S. 1923 s. 8745; M.S. 1927 s. 8745; 1935 c. 72 s. 42; M. Supp. s. 8992-42.

See notes under section 525.20.

Where a will bequeathed $10.00 to a daughter, even if no special provision was made for payment thereof, it was not a case of unintentional omission to provide for

a child, within the meaning of Revised Statutes 1851, Chapter 53, Section 27. Case v Young, 3 M 209 (140).

Property left to wife with the proviso "and her rights under the residuary provision shall not be affected or changed by the birth of any child of mine born before or after my decease." The plaintiff's child was born Nov. 11, 1864, decedent died Nov. 21, 1864. The will was made in 1861. The child is not entitled to any share in decedent's estate. Prentiss v Prentiss, 14 M 18 (5).

The property rights of an adopted child are now the same as those of a natural child. A parent may by will entirely disinherit a child. The rights given by this section to a pretermitted child must be enforced in the probate court, and if not so enforced are barred by the final decree of the court. Odenbrest v Utheim, 131 M 56, 154 NW 741.

The antenuptial contract is legal and binding and the matter being entirely administrative, the jurisdiction is entirely in the probate court. The antenuptial contract is in lieu of maintenance and other right. This and the character of the plaintiff's demand require the probate court to make a proper order upon application. O'Brien v Lien, 160 M 276, 199 NW 914.

When the name of either an adopted or a natural child is omitted from the will of a parent, the presumption is that the omission was not intentional and such child will inherit as if the parent had died intestate. The burden of proof is on one claiming the omission intentional. Bakke v Bakke, 175 M 193, 220 NW 601.

An appellant's application to share in his grandfather's estate on the ground that unintentionally he had been omitted from the will, the communications between the testator and the attorney who drew and attested the will were properly received in evidence and were not privileged. Wunsch's Estate, 177 M 169, 225 NW 109.

A pretermitted grandchild who by contract with the children of testator acquired an interest in the residue of his estate is a party aggrieved by an order of the probate court allowing a claim against the estate, and entitled to appeal to the district court. Burton's Estate, 203 M 275, 281 NW 1.

Extrinsic evidence to prove intentional omission of testator's child from will. 15 MLR 255.

525.202 APPORTIONMENT.

HISTORY. 1889 c. 46 s. 41; G.S. 1894 s. 4448; R.L. 1905 s. 3670; G.S. 1913 s. 7261; G.S. 1923 s. 8746; M.S. 1927 s. 8746; 1935 c. 72 s. 43; M. Supp. s. 8992-43.

525.203 DECEASED BENEFICIARY.

HISTORY. 1889 c. 46 s. 42; G.S. 1894 s. 4449; R.L. 1905 s. 3671; G.S. 1913 s. 7262; G.S. 1923 s. 8747; M.S. 1927 s. 8747; 1935 c. 72 s. 44; M. Supp. s. 8992-44.

In the absence of other provisions in a will expressing a contrary intent, a legacy payable at a specified time in the future is not contingent and vests immediately. The intent of the testator will be determined from an examination of the instrument itself, if possible, without resorting to special canons of interpretation. Brookhouse v Pray, 92 M 448, 100 NW 235.

Construed in connection with the balance of the will, the distributive clause means that, upon the death of one of the testator's children without issue, the others shall take his share, whether such death occur before or after the death of testator. Heffelfinger v Appleton, 144 M 209, 175 NW 105.

Unless grandnephews and grandnieces can come under the designation of nephews and nieces, or grandchildren under that of children, many expressions in the will are without meaning. The intention of the testator to have the children of a nephew who died five years before the will was made take the bequest which their father would have taken had he survived the testator appears from the language of the will. Kittson's Estate, 177 M 469, 225 NW 439.

Except for the statutory exception, section 525.203, a legacy lapses upon the death of the legatee before that of the testator. A gift by will, given to discharge an obligation and not as a bounty, does not lapse upon the death of the beneficiary

before that of the testator, even though the debt or obligation is not legally binding. Nonnemacher's Estate, 215 M 604, 11 NW(2d) 147.

Set-off against substituted legatee of debt owed testator by original legatee. 23 MLR 400.

525.21 QUANTITY OF ESTATE DEVISED.

HISTORY. 1889 c. 46 s. 17; G.S. 1894 s. 4424; R.L. 1905 s. 3672; G.S. 1913 s. 7263; G.S. 1923 s. 8748; M.S. 1927 s. 8748; 1935 c. 72 s. 45; M. Supp. s. 8992-45.

The widow has a life estate in both real and personal property, coupled with the power of sale, and charged with the support and education of the children. Oertle's Estate, 34 M 173, 34 NW 924.

Where the client exercises his legal right to settle with his adversary, in good faith and without purpose to defraud the attorney out of his compensation, the latter may receive only the reasonable value of the services rendered by him down to the time of the settlement. Krippner v Matz, 205 M 497, 287 NW 19.

525.211 AFTER-ACQUIRED PROPERTY.

HISTORY. 1889 c. 46 s. 18; G.S. 1894 s. 4425; R.L. 1905 s. 3673; G.S. 1913 s. 7264; G.S. 1923 s. 8749; M.S. 1927 s. 8749; 1935 c. 72 s. 46; M. Supp. s. 8992-46.

The will did not dispose of a certain parcel of real estate acquired by the testatrix after the making of the will, and that as to such real estate she died intestate. Bedell v Fradenburgh, 65 M 361, 68 NW 41.

Leasing part of the real estate previously devised in trust, by a 100-year lease, did not revoke the will by implication of law, since the trust can be carried out notwithstanding the lease. Evans' Estate, 145 M 252, 177 NW 126.

Effect of residuary clause. 7 MLR 396.

Wills; after-acquired real property. 9 MLR 691.

525.212 RENUNCIATION AND ELECTION.

HISTORY. 1889 c. 46 s. 65; 1893 c. 116 s. 5; G.S. 1894 s. 4472; 1897 c. 240; R.L. 1905 s. 3649; G.S. 1913 s. 7239; G.S. 1923 s. 8722; M.S. 1927 s. 8722; 1935 c. 72 s. 47; M. Supp. s. 8992-47.

Dower was abolished by Laws 1875, Chapter 40, Sections 1, 5. The statute of descents by Laws 1876, Chapter 37, Section 3. Prior to those dates our statute in respect to dower and election by the widow was that of Wisconsin, as defined by General Statutes 1866, Chapter 48, Sections 1, 18, 19, and was substantially at common law. Real estate is exclusively subject to the laws of the government within whose territory it is situated. No devise by a husband not assented to by the wife either before or after the death of the husband, can of itself interrupt the law of descent. Although, as applicable to the early cases, there was no statutory provision concerning election by surviving husband or wife, the estate created by will is subject to the application and ordinary effect of the equitable doctrine of election or of estoppel. The widow being disqualified, as an insane person, the probate court may make the election or cause her guardian to do so. State v Ueland, 30 M 277, 15 NW 245; Washburn v Van Steenwyck, 32 M 336, 20 NW 324; Gotzian's Estate, 34 M 159, 24 NW 920; State ex rel v Hunt, 88 M 404, 93 NW 314; Nordquist v Sohlhom, 114 M 329, 131 NW 323.

In the instant case the wording of the will did not require an election, and she may take not only what she is entitled to under the law, but also the bequest, and her share of the amount available by death of one of the devisees. Johnson v Johnson, 32 M 513, 21 NW 725.

A gift or devise by a testator to his wife of "one half of all I own" is not to be construed as intended to include the estate or interest of the wife in the homestead, which is incapable of being disposed of by him by will. She is not put to an election. She takes under both provisions. McGowan v Baldwin, 46 M 477, 49 NW 251.

Election of the widow to take under the will bars her from claiming realty conveyed by her husband during coverture without her consent. Fairchild v Marshall, 42 M 14, 43 NW 563; Howe v Parker, 105 M 310, 117 NW 518.

Failure to file a writing renouncing and refusing to take under will is an election to take under the will. Eddy v Kelly, 72 M 32, 74 NW 1020.

An assent to a will in writing may be executed after as well as before decease of the testator. Election and renouncement applies to testamentary disposition of homesteads as well as other lands. Radl v Radl, 72 M 81, 75 NW 111; Eckstein v Radl, 72 M 95, 75 NW 112.

A testamentary disposition of the statutory homestead, assented to in writing by the surviving spouse, does not render the property liable to the satisfaction of the debts of the testator. Eckstein v Radl, 72 M 95, 75 NW 112.

Failure to elect has the same effect on testamentary disposition of the homestead as a written assent, and it has this effect although the result is to cut off the rights of surviving children in the homestead. Jones v Jones, 75 M 53, 77 NW 551.

The failure of the widow to elect does not have the effect of giving her late husband's judgment creditor a lien on the land which would have descended to her under the statute. New Hampshire v Barrows, 77 M 138, 79 NW 660.

If there be no child, nor lawful issue of a deceased child, living, the statutory homestead of a deceased person descends, under the laws to a surviving spouse, free from any testamentary devise or other disposition to which such survivor shall not have assented in writing, and free from all debts or claims upon the estate. Tracy v Tracy, 79 M 267, 82 NW 635.

If a surviving spouse renounces a will, the homestead descends to such spouse and the children unaffected by the will. Schacht v Schacht, 86 M 91, 90 NW 127.

The right of election is personal to the survivor, and even if the surviving spouse is insane, the right does not pass to his or her personal representative and heir. Nordquist v Sohlbom, 114 M 329, 131 NW 323.

With reference to the devise by non-residents of lands in this state, section 525.272 is not a statute of devolution, but merely declares that real estate assigned is subject to conditions and restrictions imposed by our statutes; and the surviving spouse of a non-resident testator has the same rights of election and renouncement as has a resident. Boeing v Owsley, 122 M 190, 142 NW 129.

Beneficiaries under a will cannot modify the terms of the will, but they may by contract among themselves make disposition of the property rights acquired under the will. Rogers v Benz, 126 M 83, 161 NW 395, 1056.

Under the provisions of sections 525.145, 525.15, 525.16, the surviving spouse who has consented to her husband's will, and codicils, cannot arbitrarily withdraw her consent and elect to take under the statute instead of under the will. State ex rel v Probate Court, 129 M 442, 152 NW 845.

The bulk of the estate of testatrix was a valuable apartment house. By will she divided her real estate equally between her son and daughter, made bequests, and "seventh" gave "the residue of my personal effects not herein enumerated." After making her will she converted the apartment house into money and securities. Held, the money and securities did not pass under the "seventh" bequest. Barney v May, 135 M 299, 160 NW 790.

Under section 525.145, a testamentary disposition of the homestead which makes no provision for the surviving spouse, is void unless and until such surviving spouse consents thereto in writing; and no provision being made in the instant case, she was not put to an election under section 525.212, and never lost her right to claim that the disposition was void. Hawkinson v Oleson, 140 M 298, 168 NW 13.

Testator devised real estate in trust and thereafter leased the property under a 100-year lease with option to purchase. This contract did not revoke the will and trust by implication, and the trust will merely function as to the leasehold as was directed as to the real estate. Evans' Estate, 145 M 252, 177 NW 126.

A husband, not a parent, made a bequest to his wife, who died eight days after his decease, without consenting nor receiving any portion of the bequest. Held, the wife's administrator is entitled to the share in the husband's estate which she would have received under the statute. Hentges v Haye, 158 M 402, 197 NW 852.

The widow, within the period allowed by statute, filed with the probate court an unconditional election to accept the will; but with it she filed a copy of a

contract with the trustee showing the consent to be conditional upon the contract being valid. Held, even if both consent and contract are void, the effect would be that the widow is bound by the terms of the will, she not having within six months made an express election. Butler v Butler, 180 M 134, 230 NW 575.

Where the surviving spouse at the time the will was executed, duly consented in writing to the disposition of the homestead as made in the will, such consent validates the disposition made, and it is immaterial then whether or not the will makes any provision for such spouse. Overvold's Estate, 186 M 359, 243 NW 439.

Consent of the surviving husband to take under the will of the wife, which left him nothing, did not affect his right to the personal property allowed him under section 525.15. McBride's Estate, 195 M 319, 263 NW 105.

There was a devise of non-homestead real estate to the widow. She elected to take under the will. The property being sold to pay debts and expenses, the residue was less than the value of her life estate. Held, she takes as a purchaser, and the value of the remainder should first have been resorted to, thereby preferring the devise to the widow. Paulson's Estate, 208 M 231, 293 NW 607.

Election between continuation and termination of contractual relations. 6 MLR 347.

Formal changes in the law made by Laws 1935, Chapter 72. 20 MLR 3.

Probate practice. 20 MLR 717.

525.22 DEPOSIT OF WILLS.

HISTORY. 1903 c. 72; R.L. 1905 s. 3674; G.S. 1913 s. 7265; G.S. 1923 s. 8750; M.S. 1927 s. 8750; 1935 c. 72 s. 48; M. Supp. s. 8992-48.

525.221 DUTY OF CUSTODIAN.

HISTORY. 1889 c. 46 s. 24; G.S. 1894 s. 4431; R.L. 1905 s. 3667; G.S. 1913 s. 7258; G.S. 1923 s. 8743; M.S. 1927 s. 8743; 1935 c. 72 s. 49; M. Supp. s. 8992-49.

The law does not cast upon the person nominated as executor in a will the legal duty of procuring its probate; and such person, though acting in good faith, is not entitled to payment out of the fund for his services and expenses in an ultimately unsuccessful effort to probate the will against a contest by the heir upon the ground of want of testamentary capacity, though successful in the first instance in securing its allowance in the probate court. Kelly v Kennedy, 133 M 278, 158 NW 395.

Upon the death of an inmate, the secretary of the soldier's home board should file the testator's will with the proper probate court. OAG Jan. 26, 1945 (394e).

May an executor recover attorney's fees and expenses incurred in an unsuccessful attempt to sustain legacies of a valid will. 4 MLR 282.

525.222 PROBATE ESSENTIAL.

HISTORY. 1889 c. 46 s. 31; G.S. 1894 s. 4438; R.L. 1905 s. 3664; G.S. 1913 s. 7255; G.S. 1923 s. 8740; M.S. 1927 s. 8740; 1935 c. 72 s. 50; M. Supp. s. 8992-50.

The probate of a will is conclusive that it was duly executed in conformity with the statute by the person purporting to execute it; that he had legal capacity to do so; and that it was his last will. It does not determine the legal effect of the will or of its various provisions. Greenwood v Murray, 26 M 259, 2 NW 945; Christman v Colbert, 33 M 509, 24 NW 301; Langevin's Estate, 45 M 429, 47 NW 1123; Graham v Burch, 47 M 171, 49 NW 679; Bogart v Taylor, 144 M 454, 175 NW 913.

Mandamus lies to compel a judge of probate by order to fix the time and place of hearing on a petition for the probate of a will that notice thereof might be given pursuant to section 525.83. Stenzel's Estate, 210 M 509, 299 NW 2.

Existence of will at time of testator's death; dependent relative revocation; construction of statutes governing admission to probate of lost or destroyed wills. 8 MLR 51.

PROBATE OF WILLS

525.23 PETITION FOR PROBATE.

HISTORY. 1889 c. 46 s. 25; G.S. 1894 s. 4432; R.L. 1905 s. 3675; G.S. 1913 s. 7266; G.S. 1923 s. 8751; M.S. 1927 s. 8751; 1935 c. 72 s. 51; M. Supp. s. 8992-51.

While possession of the will is not essential, in the instant case where the creditor resided in Maine, and the debtor died in New Jersey where his will was being probated, and there being no real estate in the state, and only personal property, probate is denied. Putnam v Pitney, 45 M 242, 47 NW 790; Burmeister v Gust, 117 M 247, 135 NW 980.

The law does not cast upon the person nominated executor in a will the legal duty of procuring its probate; and as to fees and expenses he acts at his own risk should his petition be denied. Kelly v Kennedy, 133 M 778, 158 NW 395.

Any person interested in the estate, at any time after the death of the testatrix, may petition the probate court to have the will proved. Bogard v Taylor, 144 M 457, 175 NW 1000.

A literal, strict construction is not to be placed upon the words "person interested in the estate" in determining the jurisdiction of the probate court. The proceeding is one in rem. Eklund's Estate, 174 M 33, 218 NW 235.

Attorney's fees incurred in an unsuccessful attempt to sustain legacies. 4 MLR 286.

Probate practice. 20 MLR 711.

525.231 CONTENTS OF PETITION.

HISTORY. 1889 c. 46 ss. 26, 27; G.S. 1894 ss. 4433, 4434; R.L. 1905 s. 3676; G.S. 1913 s. 7267; G.S. 1923 s. 8752; M.S. 1927 s. 8752; 1935 c. 72 s. 52; M. Supp. s. 8992-52.

525.24 HEARING AND PROOF.

HISTORY. 1889 c. 46 ss. 28, 29; G.S. 1894 ss. 4435, 4436; R.L. 1905 ss. 3677, 3680; G.S. 1913 ss. 7268, 7271; G.S. 1923 s. 8753, 8756; M.S. 1927 ss. 8753, 8756; 1935 c. 72 s. 53; M. Supp. s. 8992-53.

The legal effect of the will is not before the court. Greenwood v Murray, 26 M 259, 2 NW 945; Christman v Colbert, 33 M 509, 24 NW 301; Graham v Burch, 47 M 171, 49 NW 697.

Statutory notice gives the court jurisdiction. It is unnecessary to appoint guardians ad litem for infants. Mousseau's Estate, 30 M 202, 14 NW 887; Balch v Hooper, 32 M 158, 20 NW 124.

Where a probate court legally probates a will it thereby acquires jurisdiction to direct and control the administration; and such jurisdiction continues as one proceeding until its close. Culver v Hardenbergh, 37 M 225, 33 NW 792; Rice v Dickerman, 47 M 527, 50 NW 698; Boltz v Schutz, 61 M 444, 64 NW 48.

The burden is upon the proponent to prove the due execution of the will in conformity with the statute. He must prove the testator was sane. Layman's Will, 40 M 371, 42 NW 286; Tobin v Haack, 79 M 101, 81 NW 758.

The only facts adjudicated by the probate of a will are the validity of its execution and that it is the subsisting will of the testator. Langevin's Estate, 45 M 429, 47 NW 1133; Graham v Burch, 47 M 171, 49 NW 697.

A judgment creditor of an heir may contest the probate. Langevin's Estate, 45 M 429, 47 NW 1133; Starkey v Sweeney, 71 M 241, 73 NW 859.

A decree of a probate court, having jurisdiction, assigning the residue of an estate is conclusive upon all persons interested in the estate, whether in being or not. It is in the nature of a judgment in rem, which binds all the world. Ladd v Weiskopf, 62 M 29, 64 NW 99.

Proof of execution by affidavit of one of the witnesses is insufficient. Larson v Howe, 71 M 250, 73 NW 966.

An order allowing a will may be vacated to permit a contest. Larson v Howe, 71 M 250, 73 NW 966.

Where petitioner for probate of a will assumed the position of contestant, and others assumed the position of proponents, and such contest resulted in an order admitting the will to probate from which contestant appealed to the district court, proponents were estopped from raising the question that contestant had elected to take under will and was estopped from contesting it. Pederson v Christofferson, 97 M 491, 106 NW 958.

The rule that the burden of proof in a will contest rests on the contestant is subject to the modification that when the contestant has made out a prima facie case, the burden is then upon its proponent to show that the instrument is the will of the testator. There is no definite rule as to what showing is required to create this presumption. Inequality in the will, motive and opportunity, on the part of the person preferred, to exert such influence is not sufficient. There must be some evidence that he did exert it. Buck v Buck, 122 M 463, 142 NW 729.

Where a will is contested, neither party is limited to the testimony of the subscribing witnesses, and either party may present other evidence to overcome the adverse testimony of such witnesses. The questions in controversy are to be determined from all the evidence bearing thereon and from the testimony of subscribing witnesses only. Madson v Christenson, 128 M 17, 150 NW 213.

The evidence was sufficient to show the mental capacity of the testatrix at the time she executed the will, within the rule laid down in Layman's case, 40 M 371, 42 NW 286, and insufficient to justify a finding that the will was procured by undue influence. Busch v Hetherington, 132 M 379, 157 NW 505.

The presumption is that the contents of a properly executed will were known to the testator. The wills of the blind are no exception. There being no proof of imposition by fraud or undue influence, a blind testatrix, in full possession of her faculties otherwise, will not be presumed ignorant of the contents of her duly executed and attested will. Bakke's Will, 160 M 56, 199 NW 438.

To establish undue influence, the evidence must warrant the conclusion that the mind of the testator was subjected to that of another, so that the will is that of the other and not of the testator. Showing motive and opportunity without showing undue influence was exerted does not sustain the burden of proof. Jenks' Estate, 164 M 377, 205 NW 271.

Where testator produces and executes a will, he is presumed to know its contents, although he did not read it while subscribing witnesses were present. Jenks' Estate, 164 M 377, 205 NW 271.

When it is made to appear that a beneficiary of a substantial portion of the estate sustains a fiduciary or confidential relation with the testator and acts as the scrivener in drawing the will or controls its drafting, such facts alone will make a prima facie case and will sustain a finding of undue influence. Keeley v Ochs, 167 M 120, 208 NW 535.

The testimony of an attesting witness to a will impeaching the testamentary capacity of the testator, or the recitals in the attestation clause, is subject to close scrutiny and should be viewed and weighed with caution. The subscribing witness is subject to cross-examination. Lott v Lott, 174 M 13, 218 NW 447; Jensen's Estate, 185 M 284, 240 NW 656.

Probate proceedings are in rem, the res being the property of the decedent. The proceedings being in rem, constructive notice is sufficient, and a decree admitting the will to probate is binding on every one interested in the estate, whether they appear at the hearing or not, and whether they have actual notice or not. Mahoney's Estate, 195 M 431, 263 NW 465.

If relative to the issue, proponents of a will may introduce contents of a previously revoked will. Osbon's Estate, 205 M 419, 286 NW 306.

The divorced wife of the decedent cannot testify as to conversation with testator which occurred during marriage. Osbon's Estate, 205 M 419, 286 NW 306.

The Minnesota probate code provides separate and distinct proceedings for the probate of wills under sections 525.23 to 525.252, and for general administration in cases of intestacy under sections 525.28 to 525.292. If a will is offered for probate during the pendency of a petition for letters of administration, the matter of the probate of the will shall be first disposed of, for if the will is admitted to probate no letters of administration may be granted. Stenzel's Estate, 210 M 514, 299 NW 2.

A person financially interested in the allowance of a will in the probate court is a person aggrieved by an order of that court and may appeal from allowance of the will, although present in probate court upon the hearing, filed no written objection thereto, and entered no appearance therein. Langer's Estate, 213 M 482, 7 NW(2d) 359.

The lower court, upon conflicting evidence, found the testator possessed testamentary capacity. The finding of the trial court is binding upon appeal unless clearly against the evidence. Crosby v Hunt, 218 M 149, 15 NW(2d) 501.

The attorney who tried the case for the proponent drew the will and testified as to its execution and also as to mental capacity and lack of undue influence. Counsel had drawn the will and witnessed it. When the will was attacked, it was his duty to take the witness stand to sustain it. Cunningham's Estate, 219 M 80, 17 NW(2d) 85.

Guardianships and commitments. 20 MLR 340.

Probate practice. 20 MLR 711.

525.241 OBJECTIONS.

HISTORY. 1889 c. 46 s. 48; G.S. 1894 s. 4455; R.L. 1905 s. 3679; G.S. 1913 s. 7270; G.S. 1923 s. 8755; M.S. 1927 s. 8755; 1935 c. 72 s. 54; M. Supp. s. 8992-54.

The allowance of a will upon hearing on an application without objections or appeal, is conclusive. The statute provides specifically how and where the objections to the validity of a will shall be made. Bogart v Taylor, 144 M 458, 175 NW 913.

Where an order for hearing proof of a will merely requires parties interested to show cause why petition should not be granted, and does not notify them that it is necessary to file objections before the hearing as the statute requires, heirs, inexperienced in such matters, and who are ignorant of the contents of the will, may be excused for not making timely objections. Hohegger's Estate, 154 M 145, 191 NW 409.

Presumption that the contents of a properly executed will were known to the testator, applies to blind testators. Bakke's Estate, 160 M 56, 199 NW 438.

Where no issue is raised as to validity of a prior will, it is assumed the purpose and intention of the testator, in the disposition of his property, are truly reflected therein, and testimony of his declarations as to such purpose and intention previous to its execution must be excluded. Nagel's Estate, 167 M 63, 208 NW 425.

The question of the rights of the parties in the property transferred by the children to the testator is not properly before the court in this proceeding and may be determined in a proper proceeding instituted for that purpose. Mazanec's Estate, 204 M 410, 283 NW 745.

Persons fit to have custody of minor children. State ex rel v Price, 211 M 568, 2 NW(2d) 39.

See note relating to Langer's estate under section 525.24.

Failure to comply with section 525.241 in the probate court does not prevent a party aggrieved from appealing to the district court. Estate of Langer, 213 M 485, 7 NW(2d) 359.

As to guardianships. Johnson v Johnson, 214 M 463, 8 NW(2d) 620; Campbell v Baker, 216 M 113, 11 NW(2d) 786.

525.242 SECONDARY EVIDENCE.

HISTORY. 1889 c. 46 s. 30; G.S. 1894 s. 4437; R.L. 1905 s. 3678; G.S. 1913 s. 7269; G.S. 1923 s. 8754; M.S. 1927 s. 8754; 1935 c. 72 s. 55; M. Supp. s. 8992-55.

Upon the trial of an appeal from an order admitting a will to probate, an attorney at law, who had been the legal advisor of the testator, may disclose communications made to him by testator and his advice thereon, and this testimony may be weighed in determining the sanity of the testator. Layman's Will, 40 M 371, 42 NW 286.

Proof of execution of the will by an affidavit of attorney Darelius as one of the two subscribing witnesses was insufficient. Larson v Howe, 71 M 252, 73 NW 966.

The rules relating to the evidence required to admit the will of a blind person to probate do not differ from the requirements applicable to persons not blind. Bakke's Will, 160 M 61, 199 NW 438.

Probate practice. 20 MLR 716.

525.243 CERTIFICATE OF PROBATE.

HISTORY. 1889 c. 46 s. 45; G.S. 1894 s. 4452; R.L. 1905 s. 3681; G.S. 1913 s. 7272; G.S. 1923 s. 8757; M.S. 1927 s. 8757; 1935 c. 72 s. 56; M. Supp. s. 8992-56.

525.244 WILL IN OPPOSITION.

HISTORY. 1889 c. 46 s. 49; G.S. 1894 s. 4456; R.L. 1905 s. 3682; G.S. 1913 s. 7273; G.S. 1923 s. 8758; M.S. 1927 s. 8758; 1935 c. 72 s. 57; M. Supp. s. 8992-57.

A beneficiary under a prior will of a testator has the right to contest the probate of a subsequent will which, if allowed, would lessen the interest of such beneficiary. Where the prior will, apparently executed and attested according to law, is received in evidence, and the signature and mental capacity of the testator proved, this is sufficient to permit the proponent to contest the subsequent will. Crowley v Farley, 129 M 460, 152 NW 872.

In an appeal to the district court involving orders relating to two wills, one prior to the other, the district has authority to, and it is its duty to, finally determine which of the two wills is entitled to probate. Davidson's Estate, 179 M 538, 229 NW 875.

In response to an application seasonably made, the probate court vacated a previous appealable order after time for appeal had expired upon the ground that its failure to notify the party of the order constituted excusable neglect within the statute. On appeal from such order to the district court, that court should decide the merits of the application, and it was error to vacate the probate court's vacating order upon the ground that the probate court acted without jurisdiction in entertaining the application. Showell's Estate, 209 M 539, 297 NW 111.

525.25 APPOINTMENT OF REPRESENTATIVE.

HISTORY. 1889 c. 46 ss. 50, 54, 55; G.S. 1894 ss. 4457, 4461, 4462; R.L. 1905 ss. 3692, 3693; G.S. 1913 ss. 7283, 7384; G.S. 1923 ss. 8768, 8769; M.S. 1927 ss. 8768, 8769; 1935 c. 72 s. 58; M. Supp. s. 8992-58.

Where a probate court, having jurisdiction, issues letters to an executor containing proper recitations, such letters constitute an order of appointment of such executor, and unless an appeal is taken are conclusive, and this even though his bond is insufficient. Mumfort v Hall, 25 M 347, 354.

See as to non-application to foreign wills. Babcock v Collins, 60 M 73, 61 NW 1020; Hardin v Jamison, 60 M 112, 61 NW 1018.

On appeal to the district court from the order of the probate court refusing to appoint a legally competent person executor, it is improper for the district court to affirm on the ground that the litigation already had disclosed that there may be ground for his removal. Bett's Estate, 185 M 627, 243 NW 58.

By our present probate code, Laws 1935, Chapter 72, Section 58, the executor named in a will is not entitled to appointment as such unless he be both "suitable and competent." Halterman's Estate, 203 M 519, 282 NW 132; Barck's Estate, 215 M 625, 11 NW(2d) 149.

Under section 525.25 the executor named in the will is not entitled to appointment as such unless he be both suitable and competent. In the instant case a person named, and otherwise competent, was denied appointment because he was a non-resident. Jacques v Marsden, 215 M 625, 11 NW(2d) 149.

Formerly unsuitability was only a ground for removal of an executor, but under our present statute, it is now a ground for refusing appointment. The "suitability" of an executor named by the testator should be determined solely upon the basis of his own acts, conduct, interests, attitude and attributes, and not by comparison with those of the nominee of the heirs. Crosby's Estate, 218 M 149, 15 NW(2d) 501.

525.251 NAMED EXECUTOR A MINOR.

HISTORY. 1889 c. 46 s. 56; G.S. 1894 s. 4463; R.L. 1905 s. 3694; G.S. 1913 s. 7285; G.S. 1923 s. 8770; M.S. 1927 s. 8770; 1935 c. 72 s. 59; M. Supp. s. 8992-59.

525.252 EXECUTOR OF EXECUTOR SHALL NOT ADMINISTER.

HISTORY. 1889 c. 46 s. 60; G.S. 1894 s. 4467; R.L. 1905 s. 3695; G.S. 1913 s. 7286; G.S. 1923 s. 8771; M.S. 1927 s. 8771; 1935 c. 72 s. 60; M. Supp. s. 8992-60.

LOST AND DESTROYED WILLS

525.26 PETITION AND HEARING.

HISTORY. 1889 c. 46 ss. 35, 36; G.S. 1894 ss. 4442, 4443; R.L. 1905 s. 3688; G.S. 1913 s. 7279; G.S. 1923 s. 8764; M.S. 1927 s. 8764; 1935 c. 72 s. 61; M. Supp. s. 8992-61.

525.261 SUFFICIENCY OF PROOF.

HISTORY. 1889 c. 46 s. 36; G.S. 1894 s. 4443; R.L. 1905 s. 3689; G.S. 1913 s. 7280; 1917 c. 334 s. 1; G.S. 1923 s. 8765; M.S. 1927 s. 8765; 1935 c. 72 s. 62; 1937 c. 435 s. 9; M. Supp. s. 8992-62.

Proof that a deceased party executed a will, which he afterwards destroyed, while non compos will not defeat an application for an administrator, unless its contents can be proved with such degree of certainty that it may be established as a will. Ellis' Estate, 55 M 401, 56 NW 1056.

In order to admit to probate a lost or destroyed will, it is not demanded that it should have been in physical existence at the testator's death. Existence of the will in contemplation of law, unrevoked, is all that is required. Havel's Estate, 156 M 253, 194 NW 633.

The burden of proof necessary to establish the existence of a lost will is upon the proponent, who must prove its provisions "clearly" and "distinctly." Colich's Estate, 214 M 292, 8 NW(2d) 337.

Existence of will at time of testator's death; statute governing admission to probate of lost or destroyed wills. 8 MLR 51.

Minnesota code. 20 MLR 17.

525.262 CERTIFICATION.

HISTORY. 1889 c. 46 s. 37; G.S. 1894 s. 4444; R.L. 1905 s. 3690; G.S. 1913 s. 7281; G.S. 1923 s. 8766; M.S. 1927 s. 8766; 1935 c. 72 s. 63; M. Supp. s. 8992-63.

ESTATES OF NON-RESIDENTS

525.27 WILLS PROVED ELSEWHERE.

HISTORY. 1889 c. 46 s. 32; 1893 c. 116 s. 3; G.S. 1894 s. 4439; R.L. 1905 s. 3683; G.S. 1913 s. 7274; G.S. 1923 s. 8759; M.S. 1927 s. 8759; 1935 c. 72 s. 64; M. Supp. 8992-64.

The allowance and probate of a foreign will in this state is sufficient evidence of the death of the testator and the devise of lands. Lyon v Gleason, 40 M 434, 42 NW 286.

A foreign will, executed in accordance with the laws of this state, may be admitted to probate here, and letters with will annexed issued, although the testator left only personal property in this state; but in the instant case the creditor resided in Maine, and the decedent resided in New Jersey where his estate was being probated and there being no real estate in this state the petition of the creditor was denied. Putnam v Pitney, 45 M 242, 47 NW 790.

It is not requisite, in order to probate the will of a deceased person, or in order to have an authenticated copy of a foreign will, and the probate thereof elsewhere allowed, filed and recorded, that proceedings in administration already had

and terminated, be first revoked, set aside, or vacated. Stackhause v Berryhill, 47 M 20, 49 NW 392.

A will filed and allowed under this section operates as if originally probated here, and administration extends to all property in the state. It is error for the probate court to take jurisdiction except on a showing of property in the county. Southard's Will, 48 M 37, 50 NW 932.

Probate of a foreign estate here validates acts done by the foreign executor relating to property in this state done before probate here. Babcock v Collins, 60 M 73, 61 NW 1020.

A foreign executor is entitled to appointment here, unless the court, in the exercise of a sound discretion, should find that there is some good reason why he should not be appointed. The omission of the amendment by Laws 1870, Chapter 64, from the reenactment of General Statutes 1878, Chapter 47, Section 21, indicates that the legislature did not create in the foreign executor a conclusive right of appointment here. Babcock v Collins, 60 M 73, 61 NW 1020; Hardin v Jamison, 60 M 112, 61 NW 1018.

The court may compel non-resident executor to submit to service of process in an action to determine liability against the estate. State ex rel v Probate Court, 66 M 246, 68 NW 1063.

Section 525.272 is not a statute of devolution; and in the administration of the foreign estate the foreign will is subject to all the conditions and restrictions of Minnesota statutes. Boeing v Owsley, 122 M 190, 142 NW 129.

If there is no statute in the state of testator's domicile forbidding bequests to foreign religious or charitable organizations, the courts of that state will award a bequest to such foreign organization when it appears by proper proof that, under the law of the domicile of such legatee, the legatee was competent to take and use the bequest for the purposes intended by the testator. Henrickson v Swedish Baptist, 163 M 176, 203 NW 778.

Real property of a non-resident not sold in course of administration should be assigned under section 525.272 according to the terms of the will. Hencke's Estate, 212 M 406, 4 NW(2d) 353.

Under Wisconsin and Minnesota law the procedure for establishing a will proved in another state is simply pro forma. Canterbury v Mandeville, 130 F(2d) 208.

525.271 ALLOWANCE.

HISTORY. 1889 c. 46 ss. 33, 34; 1893 c. 116 s. 4; G.S. 1894 ss. 4440, 4441; R.L. 1905 ss. 3684 to 3686; G.S. 1913 ss. 7275 to 7277; G.S. 1923 ss. 8760 to 8762; M.S. 1927 ss. 8760 to 8762; 1935 c. 72 s. 65; M. Supp. s. 8992-65.

Where a will devising real property in this state, and admitted to probate in a foreign country, is in practice largely pro forma, its allowance is in no way dependent upon the action of the foreign court in granting or refusing letters to executors appointed by testator in his will, who may or may not be able to qualify. Bloor v Myerscough, 45 M 29, 47 NW 311.

Foreign executor is entitled to letters unless special reason exist to the contrary. The reasons are largely in the discretion of the probate court. Babcock v Collins, 60 M 73, 61 NW 1020; Hardin v Jamison, 60 M 112, 61 NW 1018; Holterman's Estate, 203 M 519, 282 NW 132; Barck's Estate, 215 M 625, 11 NW(2d) 149.

Conveyances under the probate code. 20 MLR 115.

Guardianships. 20 MLR 335.

Probate practice. 20 MLR 712.

525.272 ADMINISTRATION.

HISTORY. 1889 c. 46 s. 34; 1893 c. 116 s. 4; G.S. 1894 s. 4441; R.L. 1905 s. 3687; G.S. 1913 s. 7278; G.S. 1923 s. 8763; M.S. 1927 s. 8763; 1935 c. 72 s. 66; M. Supp. s. 8992-66.

Ancillary jurisdiction will not be granted where there is no real estate and the assets in this state can easily be converted by the foreign executor. Putnam v Pitney, 45 M 242, 47 NW 790.

The widow of a non-resident decedent is entitled to the statutory allowance out of the property of the husband found in this state where it appears her husband left no other property. Stromberg v Stromberg, 119 M 325, 138 NW 428.

This section is not one of devolution; any assignment of real estate under a foreign will will be in accordance with all conditions and restrictions under Minnesota statutes. Boeing v Owsley, 122 M 190, 142 NW 129.

The Minnesota probate court has jurisdiction over the property of the estate of a non-resident decedent in the hands of an ancillary administrator appointed by it and may dispose of same in accordance with provisions of the Minnesota statute. Fultz Estate, 177 M 334, 225 NW 152.

Real property of a non-resident not sold in course of administration under provisions of this section should be assigned in accordance with the terms of the will, rather than sold and the returns transmitted. Hencke's Estate, 212 M 407, 4 NW(2d) 353.

525.273 FOREIGN REPRESENTATIVE.

HISTORY. 1876 c. 41 s. 1; G.S. 1878 c. 81 s. 25; 1889 c. 46 ss. 155, 302 to 304; G.S. 1894 ss. 4562, 4715 to 4717, 6053; R.L. 1905 ss. 3711, 3842; G.S. 1913 ss. 7302, 7455; G.S. 1923 ss. 8792, 8944; M.S. 1927 ss. 8792, 8944; 1935 c. 72 s. 67; 1937 c. 435 s. 10; M. Supp. s. 8992-67.

A foreign administrator may be admitted to defend an action pending against his intestate at the time of his decease. Brown v Brown, 35 M 191, 28 NW 238.

The property within the state does not give the court jurisdiction. The proceedings in attachment, though in form in personam, are in effect in rem; and it is only by attaching the property that the court acquires jurisdiction, and then only to the extent of the property attached. Kenney v Goergen, 36 M 191, 31 NW 210.

A foreign administrator of a mortgagee has the power of sale. This power arises from contract, and not by authority of statute. The statute is not a grant of authority, but a regulation as to the manner of its exercise. Holcombe v Richards, 38 M 38, 35 NW 714.

The probate court of a county in this state in which there is real estate of a ward residing out of this state, under guardianship by virtue of an appointment of a guardian in another state, is the "probate court having jurisdiction" upon an application by the guardian to sell such real estate of the ward. Menage v Jones, 40 M 254, 41 NW 972.

A foreign executor has, without complying with statute, authority to receive in this state a payment voluntarily made. Dexter v Berge, 76 M 216, 78 NW 1111.

The assignee of an executor, appointed in another state, of a mortgagee of lands in this state, containing the usual power of sale, may exercise the power without first filing in the office of the register of deeds where the foreclosure is to be commenced an authenticated copy of the appointment of his assignor as executor. Cone v Nimocks, 78 M 249, 80 NW 1056.

This section provides that a guardian appointed in another state may sue in the state. Held, that a bill is not demurrable for failure to allege a filing of his letters in the probate court of the county where the ward's property is situated. Pulver v Leonard, 176 F 586.

The fact that the Minnesota probate court has approved a release did not deprive the federal court of power to set it aside, if obtained by fraud. Pulver v Leonard, 176 F 586.

Summary proceedings. 19 MLR 833.

Conveyances under the probate code. 20 MLR 115.

Guardianships. 20 MLR 336.

Foreign executors and administrators; statutory right to sell; effect on right of possession of real estate. 23 MLR 373.

GENERAL ADMINISTRATION

525.28 PERSONS ENTITLED.

HISTORY. 1889 c. 46 s. 71; 1893 c. 116 s. 7; G.S. 1894 s. 4478; 1895 c. 98; 1899 c. 149 s. 2; R.L. 1905 s. 3696; G.S. 1913 s. 7287; 1917 c. 513 s. 1; G.S. 1923 s. 8772; M.S. 1927 s. 8772; 1935 c. 72 s. 68; M. Supp. s. 8992-68.

A creditor residing in Maine, having a claim against a debtor who died in New Jersey and whose estate is being probated there, should file his claim in New Jersey and not apply for ancillary administration here where there is personal property only. Putnam v Pitney, 45 M 242, 47 NW 790.

Where there is no probation of the estate within the statutory period, and no claims filed, the heirs may dispense with formal proceedings and divide the assets; and, in the instant case, one who received a note as his share, may sue thereon. Granger v Harriman, 89 M 303, 94 NW 869.

A foreign consul, who resides in this state and who has filed a copy of his appointment with the secretary of state, is, after the surviving spouse or next of kin, entitled to be appointed administrator of the estate of one of his nationals dying in this state, or to nominate the person. The preference applies only in case he makes application within 30 days after receiving the notice required by this section. Austro-Hungarian v Westphal, 120 M 122, 139 NW 300.

A foreign creditor may apply for, and on proper showing obtain, the removal of an administrator. Bank v Towle, 118 M 514, 137 NW 291.

As special administrator, Castigliano had a right to bring suit to recover for Palazzola's death. He had an attorney's lien. The general administrator residing in Missouri had a right to bring suit but did not do so. Defendant settled the claim with the general administrator, but cannot escape responsibility for plaintiff's lien. *Castigliano v Great Northern*, 129 M 279, 152 NW 413.

In case letters of administration be issued to a person not entitled thereto, they are voidable and may be revoked, but are not void ab initio. Fridley v Farmers & Mechanics, 136 M 333, 162 NW 454.

Our probate law does not give the consul of a foreign country the right to be appointed administrator of the estate of a person born in a foreign country but who became a naturalized citizen of this country. Oken v Johnson, 160 M 217, 199 NW 910.

A written agreement among the heirs as to distribution is not avoided by a decree of distribution by the probate court, also agreed to by all the heirs. Barnes v Verry, 174 M 173, 218 NW 551.

It appearing that the heir of a person dying intestate assigned her share of the estate to one who is in possession, a mere creditor of the heir, assignor has no standing to petition for administration. Leskela Estate, 176 M 223, 223 NW 133.

A widow is not estopped from claiming that property is being held in trust for her by the fact that she allowed the property to be listed as part of the estate. This includes property purchased in the name of the decedent but for the wife and with her money. Reifsteck's Estate, 197 M 315, 267 NW 259.

Evidence did not rebut the presumption that person, missing for more than seven years, and from whom there had been no tidings, a portion of whose estate, if any there be, was claimed by appellant as next of kin, was no longer living at expiration of seven-year period. There were no unusual circumstances appearing to explain the absence. Hakanson's Estate, 198 M 428, 270 NW 689.

Differences in proceedings between the probating of wills, and in cases of intestacy. Stenzel's Estate, 210 M 514, 299 NW 2.

Where the will requested the person named as executor, if unable or unwilling to act, to name another in his place, and the person named by formal instrument requested a named bank be appointed in his stead, such bank was the "executor named in the will." Crosby's Estate, 218 M 149, 15 NW(2d) 501.

Determination of the necessity of probating an estate owning a motor vehicle is an administrative decision to be made by the registrar. OAG Nov. 20, 1944 (632e-19).

Where trust agreement gave an option to Ohio corporation to purchase shares of stocks referred to in trust and directed that the trustee was not to deliver the stock to the beneficiary giving corporation an option to purchase stock, but the option was required to be exercised either upon sale or disposal of the stock during the lifetime of beneficiary, a Minnesota resident, or upon its passing by descent or devise, the option did not violate the "rule against perpetuities." Warner v Rusterholz, 41 F. Supp. 498.

525.281 CONTENTS OF PETITION.

HISTORY. 1889 c. 46 s. 72; G.S. 1894 s. 4479; R.L. 1905 s. 3697; G.S. 1913 s. 7288; G.S. 1923 s. 8773; M.S. 1927 s. 8773; 1935 c. 72 s. 69; M. Supp. s. 8992-69.

If letters are issued to a person not entitled thereto, they are voidable, and may be revoked, but are not void ab initio. Fridley v Farmers & Mechanics, 136 M 333, 162 NW 454.

The probate court acquires jurisdiction of an estate on filing of a proper petition for administration and such jurisdiction continues until the estate is fully administered. Barlow's Estate, 152 M 249, 188 NW 282.

Guardianships. 20 MLR 335, 340.

525.282 HEARING.

HISTORY. 1889 c. 46 ss. 73, 74; G.S. 1894 ss. 4480, 4481; R.L. 1905 s. 3698; G.S. 1913 s. 7289; G.S. 1923 s. 8774; M.S. 1927 s. 8774; 1935 c. 72 s. 70; M. Supp. s. 8992-70.

Letters of administration issued by a court having jurisdiction are not subject to collateral attack for error or irregularity. Moreland v Lawrence, 23 M 84; Mumford v Hall, 25 M 347; Davis v Hudson, 29 M 38, 11 NW 136; Culver v Hardenbergh, 37 M 225, 33 NW 792; Minn. Loan v Beebe, 40 M 7, 41 NW 232.

In all cases to which the administration, as such, is a party, for the purpose of showing his representative capacity and authority to act in the premises, the letters are at least prima facie evidence of every fact on which such capacity and authority depend, including the death of the person on whose estate they issued. Pick v Strong, 26 M 303, 3 NW 697.

A judgment of a probate court in a foreign state, declaring certain persons to be the heirs-at-law of one L, deceased, and that they were entitled by the laws of that state to inherit the real estate of the deceased is not, in an action in this state involving the title to lands here, admissible in evidence, against a stranger to the proceedings in the foreign court, as proof of the death of L, or of the inheritance of lands under the laws of our state. Morin v St. P. M. & Man. 33 M 176, 22 NW 251.

Upon a sale of real estate of a deceased person, under license of probate court, the order of confirmation passes on nothing but the acts of the executor or administrator (or possibly the administrator de facto) in making the sale. Culver v Hardenbergh, 37 M 225, 33 NW 792.

When a probate court appoints a first administrator it thereby acquires jurisdiction to direct and control the administration; and such jurisdiction continues over the administration, as one proceeding, until its close. Culver v Hardenbergh, 37 M 225, 33 NW 792; Rice v Dickerman, 47 M 527, 50 NW 698; Boltz v Schutz, 61 M 444, 64 NW 48.

Where time of hearing was improperly set for two days previous to expiration of publication, the appointment on that day was merely irregular and the validity of subsequent proceedings cannot be raised in collateral proceedings. Hanson v Nygaard, 105 M 30, 117 NW 235.

Issuance of letters is conclusive in collateral action, unless want of jurisdiction appears affirmatively on the face of the record. Doran v Kennedy, 122 M 1, 141 NW 851.

Where a common-law wife demands the right to administer the estate, the burden is on her to show a factual marriage. Walker's Estate, 196 M 447, 265 NW 273.

Right to contest will of deceased spouse; interested party within meaning of the statute. 8 MLR 455.

Guardianship. 20 MLR 340.

Probate practice. 20 MLR 711.

Right of the state to contest. 23 MLR 250.

525.29 SUBSEQUENT ADMISSION OF WILL.

HISTORY. 1889 c. 46 ss. 80, 81; G.S. 1894 ss. 4487, 4488; R.L. 1905 s. 3699; G.S. 1913 s. 7290; G.S. 1923 s. 8775; M.S. 1927 s. 8775; 1935 c. 72 s. 71; M. Supp. s. 8992-71.

It is not requisite that before proving a domestic, or authenticating a foreign will, a previous order appointing an administrator be first revoked, set aside, or vacated. Stackhouse v Berryhill, 47 M 20, 49 NW 392.

Appraisal of the different proceedings required to prove a will from that of the appointment of an administrator. Stenzel's Estate, 210 M 509, 299 NW 2.

Probate practice. 20 MLR 712.

525.291 ADMINISTRATION D.B.N.

HISTORY. 1889 c. 46 ss. 59, 61, 298; G.S. 1894 ss. 4466, 4468, 4711; 1897 c. 231 s. 1; R.L. 1905 s. 3701; G.S. 1913 s. 7292; G.S. 1923 s. 8777; M.S. 1927 s. 8777; 1935 c. 72 s. 72; M. Supp. s. 8992-72.

Power to appoint may be exercised whenever the estate unadministered in whole or in part. Winne Estate, 15 M 159 (123).

The appointment, even if irregular, is not subject to collateral attack. Culver v Hardenbergh, 37 M 225, 33 NW 792.

An administrator de bonis non may maintain an action to enforce the liability on his predecessor's bond. Vukminovich v Nickolich, 123 M 165, 143 NW 255; Beckman v Beckman, 202 M 328, 277 NW 355.

No petition was presented to the probate court for the appointment of a special administrator. Such petition is jurisdictional, and without it the probate court has no jurisdiction, and a settlement of a death case by such alleged special administrator is a nullity. Bombolis v M. & St. L. Ry. 128 M 112, 150 NW 385.

Guardianship. 20 MLR 340.

525.292 ADMINISTRATOR C.T.A.

HISTORY. 1889 c. 46 ss. 54, 55, 57; G.S. 1894 ss. 4461, 4462, 4464; R.L. 1905 s. 3700; G.S. 1913 s. 7291; G.S. 1923 s. 8776; M.S. 1927 s. 8776; 1935 c. 72 s. 73; M. Supp. s. 8992-73.

The administrator with will annexed has the powers of an executor. Cheever v Converse, 35 M 179, 28 NW 217; St. Paul Trust v Mintzer, 65 M 124, 67 NW 657.

SPECIAL ADMINISTRATION

525.30 APPOINTMENT.

HISTORY. 1889 c. 46 s. 76; G.S. 1894 s. 4483; R.L. 1905 s. 3702; G.S. 1913 s. 7293; 1917 c. 251 ss. 1, 5; G.S. 1923 ss. 8778, 8779, 8783; M.S. 1927 ss. 8778, 8779, 8783; 1935 c. 72 s. 74; M. Supp. s. 8992-74.

An appeal pending from an order of the probate court admitting a will to probate does not affect an order appointing an executor, unless an appeal is also taken from such order. Dutcher v Culver, 23 M 415; Foster v Gordon, 96 M 142, 104 NW 765.

Failure to give proper notice to interested parties renders the appointment irregular and voidable on motion or appeal, but the validity of subsequent proceedings cannot be questioned in collateral proceedings. Hanson v Nygaard, 105 M 30, 117 NW 235.

The order of the probate court appointing the plaintiff special administrator was not appealable. Castigliano v Great Northern, 129 M 279, 152 NW 413.

No appeal lies from an order appointing a special administrator, as to mandamus, quaere. OAG June 12, 1939 (346c).

Short form of administration. 9 MLR 176.

Summary proceedings. 19 MLR 836.

Guardianships. 20 MLR 335, 340.

525.301 POWERS.

HISTORY. 1889 c. 46 s. 77; G.S. 1894 s. 4484; R.L. 1905 s. 3703; G.S. 1913 s. 7294; G.S. 1923 s. 8784; M.S. 1927 s. 8784; 1935 c. 72 s. 75; M. Supp. s. 8992-75.

The powers of a special administrator are limited to those prescribed by the statute. He cannot avoid a fraudulent conveyance made by the deceased, nor contract generally. Richmond v Campbell, 71 M 453, 73 NW 1099; Larson v Johnson, 72 M 441, 75 NW 699; McAlpine v Kratka, 92 M 411, 100 NW 233.

An heir at law may appeal from an order admitting a will to probate, and if he dies during the running of the time for appealing, a special administrator may, within the time limited, perfect the appeal. Sheeran v Sheeran, 96 M 484, 105 NW 677.

A special administrator is a personal representative of the decedent, within the meaning of section 573.02, and may bring an action for the recovery of damages for death of the decedent by wrongful act or omission. Jones v Minn. Transfer, 108 M 130, 121 NW 606.

Where a special administrator brings an action for an accounting and while it is pending becomes administrator with the will annexed prosecutes the case to final judgment, he cannot afterwards claim in his capacity as administrator that the judgment was void for lack of authority of the special administrator to bring the action. Lamoreaux v Higgins, 166 M 320, 207 NW 639.

An order of the probate court consenting to the compounding of a claim due from an insolvent debtor of the decedent is not invalid because the order was made without notice to the persons interested in decedent's estate. Stampka's Estate, 168 M 283, 210 NW 85.

Appointment of a special administrator ordinarily continues effective until the probate court determines that the administrator has executed his trust and the court has entered an order finally discharging him as such. Schueller v Palm, 218 M 469, 16 NW(2d) 773.

Summary probate proceedings under the code. 19 MLR 836.

Guardianships. 20 MLR 340.

525.302 INVENTORY AND APPRAISAL.

HISTORY. 1889 c. 46 ss. 78, 79; G.S. 1894 ss. 4485, 4486; R.L. 1905 s. 3704; G.S. 1913 s. 7295; 1917 c. 751 s. 2; G.S. 1923 ss. 8780, 8785; M.S. 1927 ss. 8780, 8785; 1935 c. 72 s. 76; M. Supp. s. 8992-76.

As long as a special administrator remains in office his control over the estate is exclusive. Schueller v Palm, 218 M 472, 16 NW(2d) 773.

525.303 TERMINATION OF POWERS.

HISTORY. 1889 c. 46 ss. 78, 79; G.S. 1894 ss. 4485, 4486; R.L. 1905 s. 3704; G.S. 1913 s. 7295; G.S. 1923 s. 8785; M.S. 1927 s. 8785; 1935 c. 72 s. 77; M. Supp. s. 8992-77.

Until the general administrator qualified the special administrator continued in office. Schueller v Palm, 218 M 472, 16 NW(2d) 773.

525.304 FINAL ACCOUNT AND DISCHARGE.

HISTORY. 1917 c. 251 ss. 4, 5; G.S. 1923 s. 8782, 8783; M.S. 1927 ss. 8782, 8783; 1935 c. 72 s. 78; M. Supp. s. 8992-78.

DETERMINATION OF DESCENT

525.31 ESSENTIALS.

HISTORY. 1897 c. 157; 1901 c. 346 s. 1; 1903 c. 23; R.L. 1905 s. 3654; G.S. 1913 s. 7245; G.S. 1923 s. 8729; M.S. 1927 s. 8729; 1935 c. 72 s. 79; M. Supp. s. 8992-79; 1941 c. 444 s. 1.

Laws 1897, Chapter 157, authorizes a decree of heirship upon the petition of an heir to an estate where the same has not been administered for five years after the death of an intestate, and provides for a final judgment that is conclusive upon all parties interested. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Under Laws 1901, Chapter 346, as amended by Laws 1903, Chapter 23, the probate court of any county wherein lies part of the lands of a decedent in which

a proper petition is first filed for a decree of distribution, has jurisdiction to determine the descent of all lands of decedent in this state. Chadbourne v Alden, 98 M 118, 107 NW 148.

The Burke act of May 27, 1902 (32 St. 275) is general in its operation and applies to allotted lands on the White Earth Indian Reservation, and impairs no vested rights of the Chippewa Indians. A recital in a petition for administration in Norman county, that the deceased was a resident of Becker county, is not fatal to the jurisdiction of the probate court. Horn v Clark, 155 M 77, 192 NW 363.

The probate court does not have jurisdiction to act upon a petition to determine descent under sections 525.31 to 525.312, where the estate has previously been completely administered. Carlson v Carlson, 169 M 420, 211 NW 578.

A petition for a decree of descent filed more than six years after the death of an old age assistance recipient is barred by the statute of limitations. OAG Oct. 24, 1944 (521g).

Summary probate proceedings. 19 MLR 841.

Probate practice. 20 MLR 719.

525.311 CONTENTS OF PETITION.

HISTORY. 1901 c. 346 s. 2; R.L. 1905 s. 3655; G.S. 1913 s. 7246; G.S. 1923 s. 8730; M.S. 1927 s. 8730; 1935 c. 72 s. 80; M. Supp s. 8992-80; 1941 c. 444 s. 2.

525.312 DECREE OF DESCENT.

HISTORY. 1901 c. 346 ss. 1, 3; 1903 c. 23; R.L. 1905 ss. 3656, 3657; G.S. 1913 s. 7247, 7248; G.S. 1923 ss. 8731, 8732; M.S. 1927 ss. 8731, 8732; 1935 c. 72 s. 81; 1937 c. 435 s. 11; M. Supp. s. 8992-81; 1941 c. 444 s. 3.

BONDS

525.32 CONDITION.

HISTORY. R.L. 1905 s. 3809; G.S. 1913 s. 7416; G.S. 1923 s. 8907; M.S. 1927 s. 8907; 1935 c. 72 s. 82; M. Supp. s. 8992-82.

The surety on an administrator's bond, executed pursuant to the provisions of this section, is liable thereon where the principal converts the proceeds of a settlement of the cause of action given by section 573.02 for the wrongful death of the intestate, and the administrator D.B.N. may maintain an action to enforce such liability. Verkminovich v Nickolich, 123 M 165, 143 NW 255.

In this action on an executor's bond, based on the failure of the executors to pay a claim against the estate that had been allowed and ordered paid, such decree was conclusive against the surety on the bond, though it was not a party to the litigation. The principal having broken the bond, the surety is liable. Connec. Ins. Co. v Schurmeier, 125 M 368, 147 NW 246.

In an action to recover on the bond of the administratrix, the failure of the administratrix to pay over to her successor the amount found due from her to the estate by an order of the probate court, was a breach of the bond for which the surety is liable. The surety may be heard in the probate court on an application to correct the order or set it aside for fraud. Pierce v Maetzold, 126 M 445, 148 NW 302.

The matter of the sale of the ward's real property, when rendered necessary by the condition of the estate, and all acts pertaining thereto, including an accounting for the proceeds of the sale, are duties imposed upon the guardian by statute, the faithful performance of which is secured by the general guardian's bond. The special or sale bond is additional or cumulative security, and not a substitute for the general bond. Frederickson v Amer. Surety, 135 M 346, 160 NW 859.

The probate court has exclusive jurisdiction of the settlement of the account of an administrator, and its judgment in the accounting proceeding is not subject to collateral attack. The administrator's bond is "conditioned for the faithful discharge of all duties of his trust according to law." The surety is barred by the probate judgment on an accounting, though not a party to the proceedings. First Trust v U.S.F. & G. 156 M 231, 194 NW 376.

Although a defalcation occurred before the bond was given, the surety is liable because of the guardian's failure to perform the duty finally to account for and pay over to his successor the amount of the defalcation. Distinguished from the rule on official fidelity bonds. Bromen v O'Connell, 185 M 409, 241 NW 54.

Where the executor embezzled a trust fund directed to be paid to a trustee by false and fraudulent misrepresentations had himself appointed trustee, had qualified, and procured from the probate court an order discharging him as executor and releasing the surety on the bond, which order the probate court, on discovery of the fraud, vacated, the right of the beneficiary to redress in court against the execution and his surety accrued upon discovery by the beneficiary of the fraud. Swan v U. S. F. & G. 199 M 538, 272 NW 597.

The representative of the estate of a decedent represents the estate, the heirs, and all persons interested in the estate in suing to enforce a claim due the estate; and a judgment in such action, whether upon a claim or a set-off asserted by the defendant, is binding and conclusive upon the representative, the heirs, and such interested persons even though the latter are not parties to the action. Beckman v Beckman, 202 M 328, 277 NW 355.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v New Amsterdam, 205 M 391, 285 NW 885.

The sureties on the bond of a special administrator are not liable for costs and disbursements awarded against him in an action brought by him in his representative capacity where there were no assets in the estate. Mpls. St. Ry. v Rosenbloom, 208 M 187, 293 NW 256.

A judgment obtained by administrator de bonis non in default action against former administrator in state district court for value of property belonging to the estate was not res judicata in subsequent action in federal court against surety on former administrator's bond, where surety had had no notice or opportunity to defend state court action. First Nat'l v Nat'l Surety, 25 F. Supp. 392.

Where defendant, which had assumed certain liabilities of the company which was surety on administratrix' bond, claimed that indebtedness of administratrix was not one in respect of which defendant assumed liability, issue involved only interpretation of contract and did not present issue of fact, as regards propriety of judgment on pleadings. The corporation, assuming liability of surety on administratrix' bond, after consent of administrator of goods not administered to assumptor's agreement, became principal obligor, and liability of original surety was secondary. Nat'l Surety v Ellison, 88 F(2d) 399.

Conditions of the bond before sale of land and of the original qualifying bond should be equally broad. OAG Feb. 3, 1944 (349a-27).

Guardianship. 20 MLR 336.

525.321 JOINT OR SEPARATE BONDS.

HISTORY. 1889 c. 46 s. 58; G.S. 1894 s. 4465; R.L. 1905 s. 3811; G.S. 1913 s. 7418; G.S. 1923 s. 8909; M.S. 1927 s. 8909; 1935 c. 72 s. 83; M. Supp. s. 8992-83.

Where the two guardians of an incompetent gave separate bonds, the sureties for one did not become co-sureties with those of the other, so as to give rise to the right of contribution where one surety made good a default which as between the guardians was chargeable to its own principal alone. Southern Surety v Tessum, 178 M 495, 228 NW 326.

525.322 APPROVAL AND PROSECUTION.

HISTORY. 1889 c. 46 s. 286; G.S. 1894 s. 4699; R.L. 1905 s. 3814; G.S. 1913 s. 7421; G.S. 1923 s. 8912; M.S. 1927 s. 8912; 1935 c. 72 s. 84; M. Supp. s. 8992-84.

An action on an executor's or administrator's bond cannot be maintained unless the claim has been ordered paid by the probate court. Wood v Myrick, 16 M 494 (447); Waterman v Millard, 22 M 261.

The statute of limitations does not begin to run against an action by a creditor or next of kin upon the bond of an executor or administrator until leave is granted to bring the action. Wood v Myrick, 16 M 494 (447); Lanier v Irvine, 24 M 116; O'Gorman v Lindeke, 26 M 93, 1 NW 841.

A creditor may, in his own name, bring an action upon a probate bond, although his claim against the estate has not been ordered, by a decree of distribution, to be paid. (Distinguishing, Wood v Myrick, 16 M 494 (447); and Waterman v Millard, 22 M 261.) Forepaugh v Hoffman, 23 M 295.

Decision relating to (1) release of estate of one of the bondsmen; (2) whether action should be brought in name of creditor or judge; (3) legality of the decree of distribution; (4) whether an extension of time named in order released the bondsman; (5) legality of decree; and (6) effect of statute of limitation. Lanier v Irvine, 24 M 116.

Where an executor or administrator dies before a final accounting, it is the duty of his executor or administrator to settle the account of the deceased executor or administrator. The order of the probate court that the bond be prosecuted does not make it imperative to join all. O'Gorman v Lindeke, 26 M 93, 1 NW 841.

Although the statute now allows a creditor to bring this action, the complaint was insufficient for the reason it does not appear therein that plaintiff's claim was ever properly or legally allowed against the estate of the deceased debtor. First Nat'l v How, 28 M 150, 9 NW 626.

Where, upon appeal, the claim is allowed, and the executor has assets with which to pay, and payment has been demanded of him and refused, an action may be brought on his bond by the aggrieved party against the executor and his bondsmen. Berkey v Judd, 31 M 271, 17 NW 618.

The administrator de bonis non is a proper party, by petition to the probate court, to set in motion proceedings to collect funds due from his predecessor, and on collection the money should be paid to the D.B.N. to be disposed of by him according to law, for the payment of the debts of his decedent or otherwise. Palmer v Pollock, 26 M 433, 4 NW 1113; Balch v Hooper, 32 M 158, 20 NW 124; McAlpine v Kratka, 98 M 151, 107 NW 961.

An executor or administrator and his sureties cannot be charged by a suit with a breach of the conditions of the administrator's bond in respect to paying legacies until there shall have been an order or decree of probate court directing payment, and a failure to comply therewith. Huntsman v Hooper, 32 M 163, 20 NW 127.

Leave of court is not a part of the cause of action and need not be alleged in the complaint. Hantzch v Massolt, 61 M 361, 63 NW 1069; Ganser v Ganser, 83 M 199, 86 NW 18.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the final decree of distribution (overruling Wood v Myrick, 16 M 494 (447)). Ganser v Ganser, 83 M 199, 86 NW 18.

Consent of the probate court is a necessary prerequisite to maintain an action against sureties upon a guardian's bond. Eaton v Gale, 96 M 161, 104 NW 833.

In an action by administrator D.B.A. against his predecessor, the district court has jurisdiction to entertain the action upon the bond to enforce the liability, and prima facie the amount of the liability of the sureties is the amount received by the principal, not to exceed the face of the bond. McAlpine v Kratka, 98 M 151, 107 NW 961.

An order of the probate court consenting to the compounding of a claim due the estate from an insolvent debtor, is not invalid because the order was made without notice to interested parties. Stampka's Estate, 168 M 283, 210 NW 85.

The fact that the probate judge, instead of the guardian, is named in the depository bond as obligee does not invalidate. It is not necessary to reform the bond. The ward is the real party in interest and may sue on the bond. Snicker v Byers, 176 M 541, 224 NW 152.

525.323 INCREASE AND REDUCTION.

HISTORY. 1889 c. 46 s. 287; 1893 c. 115 s. 1; 1893 c. 116 s. 26; G.S. 1894 s. 4700; R.L. 1905 ss. 3813, 3815; G.S. 1913 ss. 7420, 7422; G.S. 1923 ss. 8911, 8913; M.S. 1927 ss. 8911, 8913; 1935 c. 72 s. 85; M. Supp. s. 8992-85.

Consent of the probate court is a necessary prerequisite to maintain an action against sureties upon guardian's bond. Eaton v Gale, 96 M 161, 104 NW 833.

The special or sale bond is additional or cumulative security, and not a substitute for the general bond. Frederickson v American Surety, 135 M 346, 160 NW 859.

Neither bond was signed by both guardians. Each signed a separate bond which recited that it was his bond "as principal" and that of the sureties who signed with him. The two bonds were dated, filed, and approved at the same time. Neither can be considered the joint obligation of the two guardians. Each is held the separate bond of the guardian who signed it. Southern Surety v Tessum, 178 M 495, 228 NW 326.

525.324 DISCHARGE ON SURETY'S APPLICATION.

HISTORY. 1889 c. 46 s. 287; 1893 c. 115 s. 1; 1893 c. 116 s. 26; G.S. 1894 s. 4700; R.L. 1905 s. 3816; G.S. 1913 s. 7423; G.S. 1923 s. 8914; M.S. 1927 s. 8914; 1935 c. 72 s. 86; M. Supp s. 8992-86.

A guardian's bond was conditioned, as required by statute, for "faithful discharge of all the duties of his trust according to law." Although the defalcation occurred before that bond was given, the surety is liable because of the guardian's failure to perform the duty finally to account for and pay over to his successor the amount of the defalcation. Bromen v O'Connell, 185 M 409, 241 NW 54.

MANAGEMENT OF ESTATE; INVENTORY AND APPRAISAL

525.33 CONTENTS OF INVENTORY.

HISTORY. 1889 c. 46 ss. 82, 84; G.S. 1894 ss. 4489, 4491; R.L. 1905 s. 3712; G.S. 1913 s. 7305; 1919 c. 385 s. 1; G.S. 1923 s. 8794; M.S. 1927 s. 8794; 1935 c. 72 s. 87; M. Supp. s. 8992-87.

The probate code prescribes the form of a probate inventory. The taxing authorities have no power over such inventories. An inventory in probate proceedings in the administration of a decedent's estate showing the value for purposes of inheritance tax determination of property acquired before January 1, 1933, by a taxpayer by devise, bequest or inheritance from the decedent is not an inventory within the meaning of Laws 1933, Chapter 405, Section 19, for purposes of determining gain or loss from a sale or disposition of the property. State v Stickney, 213 M 89, 5 NW(2d) 351.

Summary proceedings. 19 MLR 837.

Procedural rules. 20 MLR 5.

Guardianship. 20 MLR 336.

Probate practice. 20 MLR 718.

525.331 APPRAISAL.

HISTORY. 1889 c. 46 ss. 81, 83; G.S. 1894 ss. 4490, 4492; R.L. 1905 s. 3713; G.S. 1913 s. 7306; G.S. 1923 s. 8795; M.S. 1927 s. 8795; 1935 c. 72 s. 88; M. Supp. s. 8992-88.

See notes under section 525.33.

Minnesota inheritance tax procedure. 23 MLR 121.

COLLECTION OF ASSETS

525.34 POSSESSION.

HISTORY. 1889 c. 46 ss. 88 to 90, 219; G.S. 1894 ss. 4495 to 4497, 4632; R.L. 1905 s. 3705; G.S. 1913 s. 7296; G.S. 1923 s. 8786; M.S. 1927 s. 8786; 1935 c. 72 s. 89; M. Supp. s. 8992-89.

The title to realty vests immediately in the heir or devisee on the death of the ancestor with right of possession until the executor or administrator asserts his right under the statute. Paine v St. P. & Pacific, 14 M 65 (49); State ex rel v Probate Court, 25 M 22; Greenwood v Murray, 26 M 259, 2 NW 945; Noon v Finnegan, 29 M 418, 13 NW 197; Sloggy v Dilworth, 38 M 179, 36 NW 451; Kern v Cooper, 91 M 121, 97 NW 648; Jenkins v Jenkins, 92 M 310, 100 NW 7; State Bank v Dixon, 214 M 39, 7 NW(2d) 351.

Under early statutes the executor or administrator could not bring an action to quiet title until he had taken possession. Paine v St. P. & Pacific, 14 M 65 (49).

The statute is not operative in favor of an executor until he has proved the will. Pott v Pennington, 16 M 509 (460).

Executor or administrator may sue for possession of real property without an order of court. Miller v Hoberg, 22 M 249; Jordan v Secombe, 33 M 220, 22 NW 283.

The representative has no title to or interest in the realty save only the privilege to claim the possession during administration. Noon v Finnegan, 29 M 259, 13 NW 197.

He may recover for trespass to the realty if he takes possession. Noon v Finnegan, 29 M 259, 13 NW 197; Noon v Finnegan, 32 M 81, 19 NW 391.

As trustee and for a particular purpose, the representative may dispose of the personalty with order or license of the court. State ex rel v Probate Court, 25 M 22.

A representative may lease the real estate but only for the term of the administration. Smith v Park, 31 M 70, 16 NW 490; Ness v Wood, 42 M 427, 44 NW 313.

A probate court, in assigning the real property of a decedent, has authority to determine to whom the estate passed upon the death of the decedent, and to what extent the share of such person has been affected by administration, but has no jurisdiction to determine the rights of one claiming, through acts of an heir or devisee, the real estate to which such heir or devisee succeeded upon the death of the decedent. Farnham v Thompson, 34 M 331, 26 NW 9.

A sole occupant in adverse possession dying, leaving his personal property on the premises, and a stranger (afterwards appointed administrator) taking charge and caring for it in behalf of the estate, the adverse possession may be deemed to continue without interruption during the time reasonably necessary for the appointment of a personal representative. Ricker v Butler, 45 M 545, 48 NW 407.

The title to personalty vests in the representative on his appointment and he has the right to reduce it to his possession; not in his own right, but as a trustee and for a particular purpose. Vail v Anderson, 61 M 552, 64 NW 47.

A special administrator cannot maintain an action, as such administrator, to set aside and cancel, together with the record thereof, a deed of conveyance of real estate, made, executed, and delivered to a third party by a decedent in his lifetime. Larson v Johnson, 72 M 441, 75 NW 699.

Ejectment will lie against a representative in possession of realty. Pabst v Small, 83 M 445, 86 NW 450.

The defendant was owner of a real estate mortgage, and on the death of his mortgagor was appointed administrator of the estate. He foreclosed his mortgage while acting as administrator and in good faith purchased the property for the full amount of the mortgage, plus costs. He had a right to so proceed and become a purchaser in his own right at the sale. Fleming v McCutcheon, 85 M 152, 88 NW 433.

Where there is no probation of the estate, nor claims filed within the statutory limit of time, the heirs may agree upon and make a division of the personal property, and one allotted a note payable to the decedent may bring suit thereon. Granger v Harriman, 89 M 303, 94 NW 869.

Pending administration, an executor or administrator is entitled to recover real estate in possession of the heir, without affirmatively showing that such recovery is necessary for the purpose of administration, and the burden of proof is upon the heir to show the contrary. Kern v Cooper, 91 M 121, 97 NW 648; 97 M 509, 106 NW 962.

In an action to determine adverse claims, plaintiff's administrator was properly substituted as plaintiff. Quinn v Mpls. Threshing M. Co. 102 M 256, 113 NW 689.

In the case at bar it was competent for the district court, in order to preserve the property in statu quo, to restrain the executor as an individual and others from disposing of shares of stock involved in the proper administration of the estate. Brown v Strom, 113 M 1, 129 NW 136.

An executor being entitled to possession of the real estate, and since damages in condemnation proceedings start in place of the land, the executor may demand, and if necessary go into court to protect, the rights of the estate. Eyre v Faribault, 121 M 233, 141 NW 170.

Though the sole heir of an Indian allottee conveyed the premises to defendant and received the consideration, the administrator may maintain an action for the purchase price. Vachon v Nichols, 126 M 304, 144 NW 223, 148 NW 288.

The personal representative of a decedent can maintain an action to set aside the decedent's contract of sale of real property upon the ground of mental incompetency. Wheeler v McKeon, 137 M 92, 162 NW 1070.

One who obtains possession of the personal property of a decedent as administrator of his estate may be required by the probate court to account for and deliver to the widow of decedent the portion of such property she is entitled to select as her allowance. The probate court controls the property through the administrator, and its jurisdiction over him and over the estate is exclusive. An action by the widow to recover such property cannot, in the first instance be brought in district court. Fischer v Hintz, 145 M 161, 176 NW 177.

An administrator cannot bind the estate by contract for public improvements such as an extensive drainage ditch project. Glencoe v Martin, 148 M 176, 181 NW 108.

Plaintiff sued as administrator of the estate of the grantee in the deed. There were heirs not parties to the suit. It was not error for the court to adjudge the deed void and the record of the deed, and the registration certificate issued thereon canceled. Crane v Veley, 149 M 84, 182 NW 915.

The finding of the court that all of the heirs of a decedent who died in 1911, of whose estate the plaintiff was appointed administrator in 1919, consented to the possession and use of the farm by the defendant who was an heir, and the payment of rent therefor to the widow, is sustained. The plaintiff is not entitled to an accounting from the defendant nor can she charge him as an executor de son tort. McHugo v Norton, 159 M 90, 198 NW 141.

The terms of the contract for the exchange of land described in the opinion made plaintiff's intestate the owner of the land in equity, with right of possession after a given date, and the administrator to the reasonable value of the landlord's share of the grain raised. Boeck v Johnson, 161 M 248, 201 NW 311.

The pledging of shares of stock to a bonding company to protect the devisees from loss in a bank liquidation though arranged through four of the six devisees, is a wrongful appropriation of estate property. Samels v Hartford, 163 M 209, 203 NW 620.

Where a special administrator brings an action for an accounting and during the pendency of the suit he becomes administrator, he is estopped from claiming the judgment void because he had no authority as special administrator to institute the action. Lamoreaux v Higgins, 166 M 320, 207 NW 639.

In the absence of special circumstances, the representative of the estate of a deceased person is the only one who may maintain an action to recover personal property belonging to the estate. Weis v Kundert, 172 M 274, 215 NW 176.

Surviving partners are entitled to possession of partnership property to wind up partnership affairs, and when the firm funds are garnished in a suit by a partnership creditor, the representatives of the deceased partner are proper parties to the suit and garnishment. Money and property in the hands of the representatives are subject to garnishment. Fulton v Okes, 195 M 247, 262 NW 570.

There was a purchase and option agreement between decedent and his partner. The surviving partner cannot rescind the contract merely because of delay in completing deliveries, the delay being due to litigation pending regarding the estate. Miller's Estate, 196 M 543, 265 NW 333.

The personal representative of a decedent is entitled to the rents of land only from the time he asserts his right of possession, and until that time both title and possession, with right to rents, are in the heirs without accountability therefor to the representative. Bowen v Williard, 203 M 289, 281 NW 256.

The representative of an estate on qualification becomes vested with title and immediate right of possession of decedent's personal property. This includes earn-

ings, income, increase, accretions, and accessions, subject to the representative's title limited to purposes of administration. The decedent's property descends to his heirs. Butler's Estate, 205 M 60, 284 NW 889.

Specific performance of a contract to make a will disposing of property may be granted in district court by a judgment against the representative, heirs, legatees, and devisees, without interfering with the probate court's exclusive jurisdiction of estates of decedents. Jannetta v Jannetta, 205 M 266, 285 NW 619.

Compensation for representative's services is to repay him for time, labor and responsibility, and reward him for his fidelity in the discharge of his trust. In the instant case, the court was justified in refusing the administrator an allowance for his services and in further surcharging his account. Baker's Estate, 208 M 379, 294 NW 222.

The tenancy which existed in 1937, not having been determined by the owner's death in December 1937, continued into 1938. Upon the owner's death the title to the real estate passed immediately to his devisees, the minor defendants, by operation of law and without decree of court, subject to the right of the executor to possession for purposes of administration. State Bank v Dixon, 214 M 44, 7 NW(2d) 351.

The matter of facility of possession may be considered in appraising the suitability of a candidate for appointment as executor. Estate of Barck, 215 M 625, 11 NW(2d) 149.

Where special administratrix of pledger of stock intermingled dividends with estate funds, and pledger's claim in probate for balance due on note secured was allowed on condition that pledgee surrender or exhaust securities held by it, pledgee's right to dividends was a "debt" rather than a "security" within terms of the condition and pledgee was not barred by waiver or estoppel from claiming dividends. McGhie v First and American Bank, 217 M 325, 14 NW(2d) 436.

An express trust is one created by the parties in language directly and expressly pointing out the persons, property, and purposes of the trust. The district court as a court of equity has jurisdiction and control not only of the individuals concerned, but also of the corpus of the estate as a proceeding in rem. Fitzpatrick v City of St. Paul, 217 M 51, 13 NW(2d) 749.

The administrator having ceased to hold possession of the tenement, the option clause became inoperative. Church of St. Martin v Frissell, 217 M 597, 15 NW(2d) 20.

Personal property purchased by decedent with corporate funds, but which funds could have been drawn by her as salary, became her property in fact and by acquiescence on the part of the corporation. Lund's Estate, 217 M 617, 15 NW(2d) 426.

There being no existing creditors, the heirs may dispense with formal administration and distribute the assets by amicable settlement. Holtan v Fischer, 218 M 81, 15 NW(2d) 206.

Where a person creates a corporation of which he is sole stockholder, to take over all his assets, and act as machinery for the distribution of his estate and all income of the estate to go to his widow, the profit from the estate should be paid to the widow, rather than merely the dividends paid by the corporation. Koffend's Will, 218 M 206, 15 NW(2d) 590.

Taxes which became due on the first of May and hence were a lien at decedent's death, and a claim against his estate, are deductible from gross value of the estate in determining transfer tax. Thompson v United States, 8 F(2d) 175.

Judgments in state court actions between administrator and decedent's son, determining that son was owner of certain premises and that administrator had no estate or interest therein, is res judicata in subsequent action by decedent's widow against his son in federal court involving title to same realty. Lamoreaux v Lamoreaux, 26 F(2d) 47.

Guardianships. 20 MLR 336.

Effect of statutory right to sue on right to possession of realty by foreign administrator. 23 MLR 374.

525.35 LIMITATION; LIABILITY OF REPRESENTATIVE.

HISTORY. 1889 c. 46 ss. 198, 219 to 222, 224; G.S. 1894 ss. 4605, 4632 to 4635, 4637; R.L. 1905 ss. 3706, 3764; G.S. 1913 ss. 7297, 7359; G.S. 1923 ss. 8787, 8847; M.S. 1927 ss. 8787, 8847; 1935 c. 72 s. 90; M. Supp. s. 8992-90.

The personal representative is accountable for the income of real estate while it remains in his possession; and he is liable if he neglects to raise money by collecting the debts due the decedent's estate. State ex rel v Probate Court, 25 M 22.

If, at a sale of real estate by an executor, administrator or guardian, he purchases through another, or is interested in the purchase of real estate, the sale is not void, but is voidable by the parties interested in the estate sold, and cannot be avoided by them as against a bona fide purchaser. White v Iselin, 26 M 487, 5 NW 359; Davis v Hudson, 29 M 39, 11 NW 136; Cain v McGeenty, 41 M 194, 42 NW 433; Turner v Fryberger, 94 M 433, 103 NW 217.

There are exceptions to the rule when the administrator has a lien or an equitable interest in the property sold, acquired prior to the death of the decedent, and the sale is confirmed by the court. Baber v Bowen, 47 M 118, 49 NW 684; Lewis v Welch, 47 M 193, 48 NW 608.

The bona fide payment of a debt due to a person dying intestate made to the sole heir at law of the deceased will, if equity requires it, operate as a discharge of the debtor from liability to a subsequently appointed administrator. Vail v Anderson, 61 M 552, 64 NW 47.

The executor is liable for interest on trust funds used for its personal advantage. Kittson v St. Paul Trust, 62 M 408, 65 NW 74.

Evidence insufficient to charge the administrator with the loss of certain property, or to surcharge his estate with its value. Paupore v Stone, 133 M 421, 158 NW 703.

The district court has jurisdiction of an action brought by a ward against his guardian, and those who purchased estate's property under order of court, the complaint alleging fraud and an interest acquired by the guardian under the purchase. The fact that the guardian might apply for relief to the probate court does not deprive the district court of jurisdiction. Wilson v Erickson, 147 M 260, 180 NW 93.

At common law a sale by an administrator to himself was not void but voidable at election of heirs, but such a sale is fraudulent as a matter of law. Persons interested may exercise their option to avoid the sale by proving only the fact of sale. Sprain's Estate, 199 M 511, 272 NW 779.

Beneficiaries of an estate may be estopped by their acts from objecting to improper allowances, or loss due to retention of assets. Clover v Peterson, 203 M 337, 281 NW 275.

After the wards became of age, a settlement between them and their guardian by which he gave each certain cash and kept for himself a mortgage payable to himself as guardian was held to be a legal arrangement. Bauman v Katzenmeier, 204 M 240, 283 NW 242.

The evidence was sufficient to sustain the finding of the trial court that the executor was free from negligence as to its performance of its duties and obligations and fully accounted for all funds going into its custody. The liability of the special administrator to the estate was compromised and settled by the executor and the surety. The probate court was fully advised and approved the settlement. The surety was properly released. Lund's Estate, 217 M 617, 15 NW(2d) 426.

It is the duty of the administrator to take possession of real estate, and if necessary to sell in order to pay debts, to do so promptly after the allowance of the claims. Nat'l Surety v Erickson, 88 F(2d) 399.

Liability of the sureties for a debt which the executor owed the testator. 9 MLR 75.

Procedural rules. 20 MLR 5.

Conveyance under the probate code. 20 MLR 111.

Guardianships. 20 MLR 336.

Constructive trusts. 25 MLR 700.

525.36 ACCORD WITH DEBTOR.

HISTORY. 1889 c. 46 s. 94; G.S. 1894 s. 4501; R.L. 1905 s. 3716; G.S. 1913 s. 7309; G.S. 1923 s. 8798; M.S. 1927 s. 8798; 1935 c. 72 s. 91; M. Supp. s. 8992-91.

An order of the probate court consenting to the compounding of a claim due from an insolvent debtor of the decedent is not invalid because the order was made without notice to the persons interested in decedent's estate. Stampka's Estate, 168 M 283, 210 NW 85.

From the distributive share of money due a legatee from the estate of a decedent the debt of the legatee may be deducted, even though such debt is barred by the statute of limitations. Lindmeyer's Estate, 182 M 607, 235 NW 377.

The pledgee of a chose in action, under the extreme circumstances of this case, indicating that a loss to all concerned would have resulted if it had not accepted the exchange of securities provided for by the reorganization in bankruptcy of the debtor, held to have accepted the exchange by the representatives of pledgee's estate having participated in proceedings without objection to procedure or result. Bank v Whiteside, 207 M 537, 292 NW 770.

525.37 FORECLOSURE OF MORTGAGES.

HISTORY. 1889 c. 46 s. 95; G.S. 1894 s. 4502; R.L. 1905 s. 3717; G.S. 1913 s. 7310; G.S. 1923 s. 8799; M.S. 1927 s. 8799; 1935 c. 72 s. 92; M. Supp. s. 8992-92.

One of the mortgagees having died, the proceedings were conducted by the survivor. The property was sold and the title passed and the year for redemption expired. The mortgagor could recover the excess attorney's fees charged and collected on the sale from the surviving mortgagee or from the executor. Eliason v Sidle, 61 M 285, 63 NW 730.

Where the executors attempted to foreclose a real estate mortgage under power of sale, but the sheriff's certificate ran to the "estate of H. H. deceased," as grantee. The sale was not completed by sale to a legal entity and was void. Kenaston v Lorig, 81 M 454, 84 NW 323.

The mortgagee was appointed administrator of the estate of the mortgagor. He foreclosed and at the sale purchased the property for the amount of the mortgage and costs. This was done under court confirmation. Held valid proceeding and sale. Fleming v McCutcheon, 85 M 152, 88 NW 433.

525.38 REALTY ACQUIRED.

HISTORY. 1889 c. 46 ss. 96 to 98; G.S. 1894 ss. 4503 to 4505; R.L. 1905 ss. 3718, 3719; 1911 c. 345 s. 1; G.S. 1913 ss. 7311, 7312; 1915 c. 40 s. 1; G.S. 1923 s. 8800, 8801; M.S. 1927 ss. 8800, 8801; 1935 c. 72 s. 93; 1937 s. 435 s. 12; M. Supp. s. 8992-93.

Summary proceedings. 19 MLR 833.

Conveyances under the probate code. 20 MLR 115.

Guardianships. 20 MLR 336.

525.39 PROPERTY SET APART.

HISTORY. 1889 c. 46 ss. 86, 87; G.S. 1894 ss. 4493, 4494; R.L. 1905 ss. 3714, 3715; G.S. 1913 ss. 7307, 7308; G.S. 1923 ss. 8796, 8797; M.S. 1927 ss. 8796, 8797; 1935 c. 72 s. 94; M. Supp. s. 8992-94.

A widow having selected such personal property as was allowed by statute, sold same, and after her death the probate court having sanctioned and approved the sale, good title was in her vendee. Benjamin v Laroche, 39 M 334, 40 NW 156.

The allowance for support of the family may be made by the probate court before the return of the inventory and appraisal. Stanch v Uhler, 95 M 304, 104 NW 535.

A widow of a non-resident decedent is entitled to the statutory allowance out of the decedent's property found in this state if he left no other property. Stromberg v Stromberg, 119 M 325, 138 NW 428.

The allowance of the widow of certain household goods and wearing apparel is confined to the articles specified, and she has no right to select money or other property in lieu thereof. Stromberg v Stromberg, 119 M 325, 138 NW 428.

State homestead laws apply to the equity the decedent had in lands acquired through the federal government. Doran v Kennedy, 122 M 1, 141 NW 851; Boeing v Owsley, 122 M 199, 142 NW 129.

The rights of the surviving spouse in the homestead become absolute on the death of the deceased spouse. The provisions for setting it aside are purely procedural. Nordlund v Dahlgren, 130 M 462, 153 NW 876.

A state inheritance tax is not chargeable against allowed support money or on her statutory exemptions, and if she renounces the will and elects to take under the statute, she must pay a tax on the one-third less the exemption specified by law. Pettet v Probate Court, 137 M 238, 163 NW 285; Murphy's Estate, 146 M 418, 178 NW 1003, 179 NW 728; Eckstrum's Estate, 159 M 231, 198 NW 459.

Aid of the probate court in determining homestead boundaries. Rux v Adam, 143 M 38, 172 NW 912; Fischer v Hintz, 145 M 161, 176 NW 177.

A widow residing abroad is within the statute. Barrett v Heim, 152 M 147, 188 NW 207.

A homestead willed to surviving children and set apart to them by order of probate court is not subject to a transfer or inheritance tax. McDougall's Estate, 160 M 393, 200 NW 353.

Absence for business and living conditions, the home being kept intact, did not destroy the widow's homestead rights. Wells v Lindberg, 165 M 492, 206 NW 929.

An order of the probate court consenting to the compounding of a claim due from an insolvent debtor of the decedent is not invalid because the order was made without notice to the persons interested in decedent's estate. Stampka's Estate, 168 M 283, 210 NW 84.

525.391 PROPERTY FRAUDULENTLY CONVEYED.

HISTORY. 1889 c. 46 ss. 99 to 101; G.S. 1894 ss. 4506 to 4508; R.L. 1905 ss. 3720, 3721; G.S. 1913 ss. 7313, 7314; G.S. 1923 ss. 8802, 8803; M.S. 1927 ss. 8802, 8803; 1935 c. 72 s. 95; M. Supp. s. 8992-95.

Goods fraudulently conveyed by the intestate of right are the property of the administrator and he may recover possession of them by an action in claim and delivery, and need not bring an action to set aside. Bennett v Schuster, 24 M 383.

A special administrator is not authorized to sue for and recover goods and chattels that have been fraudulently conveyed by the deceased in his lifetime. Richmond v Campbell, 71 M 453, 73 NW 1099; Donohue v Campbell, 81 M 107, 83 NW 469.

A creditor may bring action under this section. McCord v Knowlton, 79 M 299, 82 NW 589; Bank v Towle, 118 M 514, 137 NW 291.

Upon an action by the widow of a deceased partner against surviving partner on a note made by the firm, there must first be an accounting of the partnership affairs, and the liability of the deceased to the defendant determined before assets in her hands can be reached, or she can be charged as trustee of the estate of the deceased partner, or held liable to account in an action between her and the surviving partner. Little v Simonds, 46 M 380, 49 NW 186.

A widow who renounced her husband's will may obtain the removal of an executor on the ground that certain transfers of property in which he obtained interest were made by the deceased. Corey v Corey, 120 M 304, 139 NW 509.

In the instant case the transfer of deceased's bank passbook to the joint account of himself and defendant six months prior to his death was an executed gift, and the creditor cannot have the transfer set aside. Kemp v Holz, 149 M 237, 183 NW 287.

Solvency when transfer is made affords evidence against a claimed fraudulent purpose, but it is not conclusive and is only an item of evidence to be considered with other facts and circumstances in the case. Lind v Johnson, 204 M 30, 282 NW 661.

Uniform fraudulent conveyance act. 7 MLR 539.

Right of personal representative to avoid conveyance made by decedent in fraud of creditors. 14 MLR 297.

Procedural rules. 20 MLR 5.

525.392 PROPERTY CONVERTED.

HISTORY. 1889 c. 46 s. 93; G.S. 1894 s. 4500; R.L. 1905 s. 3724; G.S. 1913 s. 7317; G.S. 1923 s. 8806; M.S. 1927 s. 8806; 1935 c. 72 s. 96; M. Supp. s. 8992-96.

The trial court properly assessed the penalty provided by section 525.392 because of the conversion of the Crescent Creamery stock. Owens v Owens, 207 M 489, 292 NW 89.

It is improper to allow compensation either to the administrator or his attorney for services not yet performed. The allowance made to administrator and his attorney in this case was materially reduced. Simmon's Estate, 214 M 388, 8 NW(2d) 222, 10 NW(2d) 481.

Procedural rules. 20 MLR 5.

Guardianships. 20 MLR 336.

525.393 DISPOSAL BY CORONER.

HISTORY. 1889 c. 46 ss. 299 to 301; G.S. 1894 ss. 4712 to 4714; R.L. 1905 ss. 3725, 3726; G.S. 1913 ss. 7318, 7319; G.S. 1923 ss. 8807, 8808; M.S. 1927 ss. 8807, 8808; 1935 c. 72 s. 97; M. Supp. s. 8992-97; Ex. 1936 c. 48.

Coroner is required to file an inventory and sell property of nominal value and turn the proceeds over to the county treasurer, even in cases where relatives might be entitled to it. OAG July 3, 1935 (103d).

Even where deceased is fully identified the coroner must file finger-prints with the probate court in all cases where the money is turned over to the treasurer. OAG July 3, 1935 (103d); OAG April 6, 1936 (103d).

525.40 CONTINUATION OF BUSINESS.

HISTORY. 1929 c. 188; 1935 c. 72 s. 98; M. Supp. s. 8992-98.

Where a trustee holds all the stock of a corporation which is obligated by a transfer of property to it to pay out earnings as dividends to a named beneficiary, the court may direct the trustee to exercise his power of stock control when necessary to give the beneficiary a remedy and to effectuate the payment. Koffand's Estate, 218 M 206, 15 NW(2d) 590.

The appointment of a special administrator continues effective until the probate court determines that the administrator has fully executed his trust and the court has discharged him; and where the special administrator, with the approval of the court, entered into a contract with a third person for the completion of the contract, the special administrator not having been succeeded by any general administrator could properly take advantage of the six-year statute of limitations when sued by the third person for an amount claimed to be due under the construction contract. Schueller v Palm, 218 M 469, 16 NW(2d) 773.

525.401 ABANDONMENT OF PROPERTY.

HISTORY. 1935 c. 72 s. 99; M. Supp. s. 8992-99.

CLAIMS

525.41 NOTICE TO CREDITORS.

HISTORY. 1889 c. 46 ss. 91, 103; G.S. 1894 ss. 4498, 4510; 1901 c. 28; R.L. 1905 ss. 3722, 3728; G.S. 1913 ss. 7320, 7321; G.S. 1923 ss. 8809, 8810; M.S. 1927 ss. 8809, 8810; 1935 c. 72 s. 100; M. Supp. s. 8992-100.

Order limiting time for filing claims should be made at the time of granting letters. Johanson v Hoff, 70 M 140, 72 NW 965.

It is not within the power of the administrator to waive compliance with the statute, pay a claim himself, and then long after the same has been barred, present

it as a debit item in his final account. Gilman v Maxwell, 79 M 377, 82 NW 669; Paulson v Swenson, 208 M 231, 293 NW 607.

In a case where an assessment levied on bank stock became absolute before the final distribution of the estate by the probate court, but after the time limited for presenting claims, application should be made to the probate court for leave to present and file against the estate. Hunt v Burns, 90 M 172, 95 NW 1110.

The probate court is without equity jurisdiction. Possibly the legislature might, if it wished, permit the probate court, as an incident to administration, to determine and discharge equitable mortgages and liens. State ex rel v Probate Court, 103 M 325, 115 NW 173.

An action by a creditor of a decedent to recover of defendants, heirs of the deceased, to the extent of the value of the real property inherited, may be maintained though his claim was not presented to the probate court, the sole property in the inheritance being a homestead, and the claim being for labor on the homestead. Ramstadt v Thunem, 136 M 222, 161 NW 413.

Claims when presented must be presented or filed with the probate court. Handing to and leaving with the administrator is not sufficient. State ex rel v Probate Court, 145 M 344, 177 NW 354.

The probate court is without power to permit a claim to be presented for allowance after the expiration of one year and six months from the making of the order limiting time to present claims and the publication of the notice. State ex rel v Probate Court, 145 M 344, 177 NW 354.

The administrator of the estate may appeal in his representative capacity and without an appeal bond from an order of the probate court surcharging and settling his final account. Peterson's Estate, 197 M 344, 267 NW 213.

Sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead and which confer such jurisdiction upon the district court are not in violation of the constitutional provision which gives the probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 198 M 45, 268 NW 707.

The time within which to file a claim required to be filed against the estate of a decedent, not barred during his lifetime, is governed by the limitations of the probate code, section 525.431, and not by the general statute of limitations, section 541.05. Anderson's Estate, 200 M 470, 274 NW 621.

Where claims of creditors are barred because not presented to the probate court within the statutory time, the heirs may dispense with probation of the estate, and may divide the assets by amicable settlement. Holtan v Fischer, 218 M 81, 15 NW(2d) 206.

A foreign creditor may establish his claim in the courts of the United States against the personal representative of the decedent, though the laws of the state in terms limit such right to proceedings in the local probate courts, but in such case the federal court administers the state laws and is bound by the same rules that govern the local tribunals. Schurmeier v Connecticut, 171 F 1; Orth v Mehlhouse, 36 F(2d) 367.

When do legacies become payable. 16 MLR 228.

Summary proceedings. 19 MLR 834.

Procedural rules. 20 MLR 4.

Guardianships. 20 MLR 335, 338.

Creditor's claim against a homestead. 21 MLR 212.

525.411 FILING OF CLAIMS.

HISTORY. 1889 c. 46 ss. 102, 104, 105; 1893 c. 116 s. 9; G.S. 1894 ss. 4509, 4511, 4512; 1895 c. 97; 1899 c. 82; R.L. 1905 ss. 3729 to 3731; G.S. 1913 ss. 7322 to 7324; G.S. 1923 ss. 8811 to 8813; M.S. 1927 ss. 8811 to 8813; 1935 c. 72 s. 101; M. Supp s. 8992-101.

1. Generally

2. Extension of time for cause

3. Contingent claims

4. Provable

5. Not provable against estate but otherwise recoverable

6. Effect of not presenting

7. Offset against claims

1. Generally

It is the duty of the representative to pay taxes on the estate but they are probably not claims which are required to be presented and allowed under this section. Wilson v Procter, 28 M 13, 8 NW 830.

A personal tax is a debt for the purpose of proof against, and payment from, a decedent's estate. Jefferson's Estate, 35 M 215, 28 NW 256.

Becker, as administrator, filed his final account Dec. 21, 1893. Held, he cannot be personally held for nonpayment of taxes for 1893 because he had no notice of the amount until the auditor filed his list with the county treasurer January 2, 1894. Nelson v Becker, 63 M 61, 65 NW 119.

This section is inapplicable to claims ex delicto. Comstock v Matthews, 55 M 111, 56 NW 583; Bank v Strait, 65 M 162, 67 NW 987.

Compliance with the statute cannot be waived by a representative. Gilman v Maxwell, 79 M 377, 82 NW 669.

A special administrator cannot, without authority of the probate court, and a showing of necessity due to circumstances, and an exigency, include in his account moneys paid to redeem land from taxes. McAlpine v Kratka, 92 M 411, 100 NW 233.

A "claim" against the estate of a deceased person, within the meaning of our statutes, is a demand of a pecuniary nature which could have been enforced against decedent in his lifetime. Knutson v Krook, 111 M 352, 127 NW 11.

To overcome the presumption that when a parent becomes a member of the family of son or son-in-law, he is a nonpaying guest, it must clearly appear from the evidence that there was a mutual agreement for payment. Johnson v Kistler, 157 M 217, 197 NW 671; Larson v Larson, 161 M 289, 201 NW 420; Havenmaier v Bengston, 163 M 218, 203 NW 958; Witford v Nickolai, 167 M 417, 209 NW 1; Johnson's Estate, 170 M 451, 212 NW 815.

In an action in district court against an administrator and heirs for specific performance, based on fraud and deceit, the plaintiff cannot waive the tort and recover for money had and received for the probate court has exclusive jurisdiction of all claims against decedents arising on contracts. Klessig v Lea, 158 M 14, 196 NW 655.

A representative cannot pay a secured claim and include it in his final account, nor pay claims against the decedent arising on contract and have them allowed in his final account if they have not been filed with and allowed by the probate court as required by statute. Estate of Boyd v Thomas, 162 M 66, 202 NW 60.

Action for damages for breach of contract to exchange farms made between plaintiff and decedent. The answer pleads and the evidence shows that the action accrued before the time had expired for filing claims, hence the claim in suit could be asserted only in probate court. Moore v Boeck, 166 M 200, 207 NW 326.

By presenting his bill to the probate court for allowance the undertaker does not waive his right to look for payment to the person who employed him. Kelly v Snow, 168 M 298, 210 NW 105.

On the question of the allowance of a claim, where the witness admitted the fact sought to be shown by certain testimony and exhibits, same were not admissible for purposes of impeachment. Jache's Estate, 199 M 177, 271 NW 452.

If plaintiff's claim as holder and payee of a check made and delivered as a gift be considered an implied trust, the statute of limitations began to run from the time when the act was done with which decedent, the maker of the check, became chargeable as trustee. In the instant case the claim is barred. Burton's Estate, 206 M 516, 289 NW 66.

Under section 525.145, an action can now be maintained in the district court to enforce a lien for work done or materials furnished to the improvement of the homestead at the request of the deceased without presenting the claim to the court for allowance, the homestead being the entire estate. Anderson v Johnson, 208 M 152, 293 NW 131.

Inasmuch as an appeal from the probate court, presenting an issue as to the compensation of an administrator, requires a trial de novo, there can be no affirmance where there is absence of evidence upon which to base a finding. Paulson's Estate, 208 M 231, 293 NW 607.

The mere fact that a daughter remained at home after she became of age and continued to work on the farm does not imply an agreement to pay her. Nonnemacher's Estate, 215 M 605, 11 NW(2d) 147.

Where a petition for a decree of descent is filed six years after the death of one who had been a recipient of old age pension, the claim for said old age assistance is barred by the statute of limitations. OAG Oct. 24, 1944 (521g).

The claim of a third person that he is the owner of property in the hands of an administrator is not a claim that is within the jurisdiction of the probate courts of Minnesota. Order of St. Benedict v Steinhauser, 179 F 137.

Liability for assessment against a shareholder of a national bank, a statutory liability, is not barred by section 525.411, where the receiver of bank did not know of shareholder's death until too late to file claim prior to closing of estate. Gilbertson v McCarthy, 32 F(2d) 665.

Gross and net inheritance tax values. 2 MLR 279.

Summary probate proceedings. 19 MLR 833.

Procedural rules. 20 MLR 4.

Guardianships. 20 MLR 338.

Necessity for filing claim where decedent's only property is a homestead. 25 MLR 385.

2. Extension of time for cause

An appeal to the district court may be taken from an order of the probate court allowing or disallowing a claim; on refusal of the court to allow presentation, the aggrieved party may resort to certiorari. Massachusetts v Elliot's Estate, 24 M 134; State ex rel v Probate Court, 28 M 381, 10 NW 209; State ex rel v Probate Court, 72 M 434, 75 NW 700.

Allowance of a claim after time limited is discretionary. Relief should be freely granted when no injury can result to innocent parties and administration will not be delayed, and no laches on the part of the claimant. Massachusetts v Elliot's Estate, 24 M 134; Mill's Estate, 34 M 296, 25 NW 621; State ex rel v Probate Court, 42 M 54, 43 NW 692; Gibson v Brennan, 46 M 92, 48 NW 460; St. Croix v Brown, 47 M 281, 50 NW 197; State ex rel v Probate Court, 67 M 51, 69 NW 609, 908; State ex rel v Probate Court, 79 M 257, 82 NW 580; Hunt v Burns, 90 M 172, 95 NW 1110; Schurmeier v Connecticut, 171 F 1; Turner v Anderson, 174 M 103, 218 NW 456.

An application must be made in accordance with section 525.411 and a proper showing made. Gibson v Brennan, 46 M 92, 48 NW 460.

A contingent claim, that is, a claim against the estate of one who was a surety on a bond, which does not become absolute and capable of liquidation before the time limited for creditors to present claims, is not barred, and if necessary may maintain an action against heirs, next of kin, legatees or devisees. Hantzch v Massolt, 61 M 361, 63 NW 1069; Berryhill v Peabody, 77 M 59, 79 NW 651.

The court has jurisdiction to set aside a final decree of distribution to allow a creditor to file a claim. State ex rel v Bazille, 89 M 440, 95 NW 211.

An application for leave to file a claim after time for filing claims has expired rests largely in the discretion of the probate court. The applicant must present a claim of apparent merit. State ex rel v Williams, 123 M 57, 142 NW 945.

There is no abuse of discretion in refusing the right to file a claim if laches is apparent. State ex rel v Ross, 133 M 172, 157 NW 1075.

The probate court is without power to permit a claim to be presented for allowance after the expiration of one year and six months from the making of the order limiting the time, and the publication of the order. State ex rel v Probate Court, 145 M 344, 177 NW 354.

The district court has jurisdiction of an action on contract against a person under guardianship as an incompetent. Clark v Buck, 152 M 278, 188 NW 326.

A writ of certiorari was properly quashed because not issued within 60 days after applicant therefor had admitted due service of notice of order sought to be reviewed. State ex rel v Himsl, 170 M 101, 212 NW 29.

A claim against a decedent, which becomes absolute after the time limited by the section, but before final settlement of his estate, is barred unless presented to the probate court. Ebert v Whitney, 170 M 102, 212 NW 29.

The court properly refused to extend the time to file claims to lessors on a long time lease to the lessee decedent. Wishnick's Estate, 199 M 153, 271 NW 244.

The time within which to file a claim, required to be filed against the estate of a decedent, not barred during his lifetime, is governed by the probate code, section 525.431, and not by the general statute of limitations, section 541.05. Anderson's Estate, 200 M 470, 274 NW 621.

The probate court does not have power to extend time for filing claims which become absolute during the period limited for filing claims beyond the one year and six month limitation. Borlang's Estate, 201 M 407, 276 NW 732.

The probate code, section 525.411, barring claims against estates of deceased persons unless presented within the time limited by the probate court, but allowing presentation thereafter "for cause shown and upon notice to the representative" is mandatory in its requirements of notice and a showing of cause in case of delayed claims. Daggett's Estate, 204 M 513, 213 NW 750.

3. Contingent claims

A contingent claim against the estate of a deceased person, which does not become absolute within the time limited for creditors to prove their claims, is not barred by not being presented; but the holder of such claim may, after it becomes absolute, maintain an action against the heirs, devisees, next of kin or legatees, to whom the estate has been distributed, to recover such claim, to the extent of the estate so distributed. McKean v Waldron, 25 M 466; Palmer v Pollock, 26 M 433, 4 NW 1113; Hospes v Northwestern, 48 M 174, 50 NW 1117.

A contingent claim is one where the liability depends on some future event, which may or may not happen, and therefore makes it wholly uncertain whether there ever will be a liability. Hantsch v Massolt, 61 M 361, 63 NW 1069; Fitzhugh v Harrison, 75 M 481, 78 NW 95; Jorgenson v Larson, 85 M 134, 88 NW 439.

A contingent claim which does not become absolute and capable of liquidation during administration need not be presented to the probate court and is not allowable therein. Hantsch v Massolt, 61 M 361, 63 NW 1069.

An action may lawfully be brought against an administrator upon a contingent claim which does not become absolute prior to the time of presenting claims, and upon presentation to the probate court of an authenticated copy of a judgment record, it may be allowed and paid as with other claims. Oswald v Pillsbury, 61 M 520, 63 NW 1072; Berryhill v Peabody, 72 M 232, 75 NW 220.

Where upon petition of non-residents, they have been appointed executors or administrators in this state, the probate court has the power to order that they submit to the service of a summons in a civil action brought in this state for the purpose of determining the liability of the estate on a claim not provable in probate in the ordinary course of administration. State ex rel v Probate Court, 66 M 246, 68 NW 1063.

If a contingent claim becomes absolute after the time limited for presenting claims but before final settlement, application must be made for leave to file or the claim will be barred. Fitzhugh v Harrison, 75 M 481, 78 NW 95; Jorgenson v Larson, 85 M 134, 88 NW 439; Hunt v Burns, 90 M 172, 95 NW 1110.

The administrator having failed to account, a representative of a legatee brought suit against him, and a bondsman, and the representative of a deceased bondsman. Held, (1) the action is not barred by the statute of limitations, (2) it is not necessary to present the claim against the estate of the deceased bondsman, and (3) the complaint states a cause of action. Martz v McMahon, 114 M 34, 129 NW 1049.

Rents and taxes to come due in the future according to the terms of a long-time lease, are not properly provable against the estate of a lessee. Wishnick's Estate, 199 M 153, 271 NW 244.

The federal courts have concurrent jurisdiction with the courts of the states to hear and allow claims against the estates of deceased persons which involves controversies, but are governed by the same rules as are the local tribunals. Schurmier v Connecticut, 137 F 42.

4. Provable

A claim against a stockholder for unpaid stock is provable. Nolan v Hazen, 44 M 478, 47 NW 155; State ex rel v Probate Court, 66 M 246, 68 NW 1063.

A claim for reimbursement in connection with a joint land contract. Fitzhugh v Harrison, 75 M 481, 78 NW 95.

A claim for failure to convey land. Jorgenson v Larson, 85 M 134, 88 NW 439; Berryhill v Gasquoine, 88 M 281, 92 NW 1121.

A claim for an assessment levied on a stockholder. Hunt v Burns, 90 M 172, 95 NW 1110.

A claim for breach of warranty in sale of personal property. Clark v Gates, 84 M 381, 87 NW 941.

A claim for deficiency on foreclosure of a mortgage. Hill v Townley, 45 M 167, 47 NW 653.

A judgment creditor who has acquired no lien prior to the death of the debtor must proceed to establish and collect his claim as a general creditor, and in due course of administration. Byrnes v Sexton, 62 M 135, 64 NW 155.

The evidence sustains the verdict of the jury that services rendered by the plaintiff for her mother were under contract whereby she was to be compensated. Nentgens v Rehmann, 170 M 499, 212 NW 943.

A voluntary partial payment by the debtor on an indebtedness which had outlawed the acknowledged receipt and retention by the debtor of a requested written statement of account in which appeared a credit for such payment, and two letters written by the debtor expressly agreeing to pay the debt, created a new and binding agreement on which the statute of limitations had not run at the time of debtor's death. Hartnagel v Alexander, 183 M 31, 235 NW 521.

There was a large deficiency judgment obtained after foreclosure by action. The court did not err in rendering judgment against the mortgagor's estate. Nelson's Estate, 195 M 144, 262 NW 145.

The evidence sustains the finding of the jury that there existed between son and his mother an implied contract to pay son for services rendered at the request of the mother during her lifetime. Hage v Crookston Trust, 199 M 533, 272 NW 777.

The presumption is that services rendered by a child to a parent in the home are gratuitous. In the instant case the evidence did not overcome the presumption. Anderson's Estate, 199 M 588, 273 NW 89.

5. Not provable against estate, but otherwise recoverable

A claim against a surety on an administrator's bond is a contingent claim, and not provable until made absolute. McKean v Waldron, 25 M 466.

A claim for funeral expenses is not provable as a claim against the estate, but is a debt due from the personal representative. Dampier v St. Paul Trust, 46 M 526, 49 NW 286.

A claim against a stockholder on bonus stock, being contingent. Hospes v Northwestern Co. 48 M 174, 50 NW 1117.

A claim for money paid at the request of an executor to relieve an estate from an encumbrance. Winston v Young, 52 M 1, 53 NW 1015.

Laws 1889, Chapter 46, only authorizes the presentation to the probate court of claims against the estates of deceased persons arising on contract. Where the claim arises on tort, the claimant may bring his action against the personal representative in the district court. Comstock v Matthews, 55 M 111, 56 NW 583.

A claim against a stockholder for enforcement of stockholder's liability is not a claim which can be presented to the probate court for allowance. The remedy is by action under the statute. Martin's Estate, 56 M 420, 57 NW 1065; Willoughby v St. P. Ins. Co. 80 M 432, 83 NW 377.

A claim against sureties on a guardian's bond is not provable, being contingent. Hantsch v Massolt, 61 M 361, 63 NW 1069.

Not a claim for taxes and insurance payable by a lessee. Oswald v Pillsbury, 61 M 520, 63 NW 1072.

Not a claim for an assessment on stock. Lake Phalen v Lindeke, 66 M 209, 68 NW 974; Dent v Mattison, 70 M 519, 73 NW 416.

Not a claim against a surety on an assignee's bond. Berryhill v Peabody, 72 M 232, 75 NW 220; 77 M 59, 79 NW 651.

Not a claim against a person under guardianship. Pflaum v Bobb, 86 M 395, 90 NW 1051.

Claims paid by the administrator without first being allowed, may be credited to him in his final account upon proof such claims were just and existing demands against the estate. Nordlund v Dahlgren, 130 M 462, 153 NW 876.

Where the wife pays for necessaries during decedent's lifetime out of her own funds, she may claim reimbursement out of the estate unless the moneys were paid out under an agreement that such was her contribution to the family living expenses. Kosanke v Kosanke, 137 M 115, 162 NW 1060; Bolles v Boyer, 141 M 404, 170 NW 229.

A pecuniary obligation, imposed upon the estate of a licensed person by a contract made in his lifetime, constitutes a "claim" within the meaning of the statute for the presentation and allowance of claims against such estates, even though it could not have been enforced against decedent in his lifetime. Hayford v Daugherty, 144 M 89, 174 NW 442.

Claims against estates of decedents are not presented to the probate court until placed in the custody of the court, or until filed or made a matter of record therein. Handing to and leaving such claims with the administrator is not a compliance with the statute. State ex rel v Probate Court, 145 M 344, 177 NW 354.

If a contract is one which may be specifically enforced, an action to enforce it comes within the jurisdiction of the district court. O'Brien v Lien, 160 M 276, 199 NW 914.

The probate court has no jurisdiction over controversies between living heirs and third persons growing out of contracts between them. Schaefer v Thoeny, 199 M 610, 273 NW 190.

A claim against a deceased director of a national bank for damages for violation of banking laws, knowingly committed is not one required to be presented to the probate court under this section, but an action may be maintained in federal court on such claim without presentation to the probate court. Orth v Mehlhouse, 36 F(2d) 367.

6. Effect of not presenting

A creditor having a claim against the estate of a deceased person is barred of his right to recover against the heir, if he neglects to present his claim for allowance in the course of the probate proceedings. Hill v Nichols, 47 M 382, 50 NW 367; Siebert v Quesnel, 65 M 107, 67 NW 803; Clark v Gates, 84 M 381, 87 NW 941.

After an estate is closed an action will not lie in the federal court on a claim provable under this section. Sec. Trust v Black River, 187 US 211, 23 SC 52.

The claim for the money and credits tax need not be filed in the probate court. The county attorney should follow the procedure used in State v O'Connell, 170 M 76, 211 NW 945. 1936 OAG 381, April 16, 1936 (614f).

7. Offset against claims

On appeal to the district court from an order of the probate court allowing a claim against decedent's estate, the proceedings are virtually the same as though an action had been brought to enforce the claim in the lifetime of the decedent. Horan v Keane, 164 M 59, 204 NW 546.

On a claim for services against his father's estate, evidence was admissible to show that the father transferred to the son's wife property of much larger value than the amount paid. Delva's Estate, 195 M 192, 262 NW 209.

525.412 JOINT DEBTOR.

HISTORY. 1889 c. 46 s. 114; G.S. 1894 s. 4521; R.L. 1905 s. 3738; G.S. 1913 s. 7331; G.S. 1923 s. 8820; M.S. 1927 s. 8820; 1935 c. 72 s. 102; M. Supp. s. 8992-102.

Liability of partnership and of individuals making up the partnership. Hawkins v Mahoney, 71 M 155, 73 NW 720.

This section is applicable to an action brought in the district court against legal representatives of an estate, to recover an amount alleged to be due on a contingent joint obligation for the payment of money. Berryhill v Peabody, 72 M 232, 75 NW 220.

Claim by son for services to father and mother due according to agreement may be filed in the estate of either or both. Hage v Crookston Trust Co. 199 M 533, 722 NW 777.

525.413 CLAIMS BARRED.

HISTORY. 1889 c. 46 s. 106; G.S. 1894 s. 4513; R.L. 1905 s. 3732; G.S. 1913 s. 7325; G.S. 1923 s. 8814; M.S. 1927 s. 8814; 1935 c. 72 s. 103; 1939 c. 270 s. 4; M. Supp. s. 8992-103.

From the distributor's share of money due a legatee from the estate of a decedent the debt of the legatee may be deducted, even though such debt is barred by the statute of limitations. Section 525.413 is not applicable. Lindmeyer Estate, 182 M 607, 235 NW 377.

The statute providing that no claim which is barred by the statute of limitations when filed shall be allowed, the executors cannot waive the bar of the statute; and their petition for the allowance of the claim does not remove the bar. Walker's Estate, 184 M 169, 238 NW 58.

The time within which to file a claim, required to be filed against the estate of the decedent, not barred during his lifetime, is governed by the limitation of the probate code, section 525.431, and not by the general statute of limitations, section 541.05. Anderson's Estate, 200 M 470, 274 NW 621.

Plaintiff's cause of action was not barred by the statute of limitations. After administration had been closed nine years, the district court had jurisdiction to determine liability of distributee and compel him to account to co-distributees for that portion on an asset (note from distributee to intestate not included in inventory) co-distributees were entitled to as legal heirs. Lewis v Lewis, 211 M 588, 2 NW(2d) 134.

Non-claim statutes superseding statutes of limitation. 22 MLR 289.

Probate court amendments. 23 MLR 997.

525.42 ADJUDICATION ON CLAIM.

HISTORY. 1889 c. 46 ss. 108, 110; G.S. 1894 ss. 4515, 4517; R.L. 1905 s. 3734; G.S. 1913 s. 7327; G.S. 1923 s. 8816; M.S. 1927 s. 8816; 1935 c. 72 s. 104; M. Supp. s. 8992-104.

The allowance of a claim has the effect of a judgment against the estate and is conclusive on all persons interested therein. State ex rel v Probate Court, 25 M 22; State ex rel v Probate Court, 40 M 296, 41 NW 1033; Barber v Bowen, 47 M 118, 49 NW 684; Lewis v Welch, 47 M 193, 48 NW 608, 49 NW 605; McCord v Knowlton, 79 M 299, 82 NW 589.

A probate court may vacate its order or judgment procured by fraud, misrepresentation, or through surprise, or excusable inadvertence or neglect. Gragg's Estate, 32 M 142, 19 NW 651.

To vacate an allowance on a claim against an estate, when the objectors only excuse for not appearing in the first instance, was his confidence the administrator would function justly and honestly, is abuse of discretion. Kidder's Estate, 53 M 529, 55 NW 738.

Interest ordered paid. Johanson v Hoff, 70 M 140, 72 NW 965; Hantsch v Massolt, 61 M 361, 63 NW 1069.

An order of the probate court allowing a claim against an estate, if not appealed from, has the effect of a judgment, and the statute of limitations does not apply on the original claim. McCord v Knowlton, 79 M 299, 82 NW 589.

A "claim" against the estate of a deceased person, within the meaning of our statutes, is a demand of a pecuniary nature which could have been enforced against decedent in his lifetime. Knutsen v Krook, 111 M 352, 127 NW 11.

A decree of the United States circuit court allowing plaintiff's claim against the estate and ordering it paid was conclusive that the claim was not barred by statute, and obligated the executors to pay the claim out of the funds of the estate. No order of the probate court was necessary. Connecticut v Schurmeier, 125 M 368, 147 NW 246.

The doctrine of contribution, though of equitable origin, is now enforced in actions at law. It is quite generally held that the cause of action arises the moment one of the co-obligors pays or performs under compulsion, the common obligation. Bolles v Boyer, 141 M 406, 170 NW 229.

Even if the fraudulent representations of the administrator induced the creditor of the decedent to omit to present his claim to the probate court within the time limited, there is no remedy against the estate. State ex rel v Probate Court, 145 M 344, 177 NW 354.

A settlement in the probate court of certain claims having been ratified by the sole heir, the administratrix of the estate may not question the authority of the attorney who acted for the heir in making the settlement. Parcker's Estate, 178 M 409, 227 NW 426.

In determining whether judicial discretion should relieve against a claim allowed as on default, it is proper to consider the statement of claim as filed and the objections or defense proposed thereto. Walker's Estate, 183 M 325, 236 NW 485.

The probate court has powers similar to those of the district court regarding vacation of its orders and judgments. Jordan's Estate, 199 M 53, 271 NW 104.

Section 525.431 withholds from the probate court jurisdiction to receive or allow, against an estate under administration, claims which remain contingent for more than five years after death of the decedent. Borlang's Estate, 201 M 407, 276 NW 732.

The effect of a final decree of distribution made by a probate court having jurisdiction is to transfer the title to personalty and the right of possession of realty from the representative to the heirs, legatees or devisees. Such a decree, unless reversed on appeal or set aside on motion is conclusive on all persons interested in the estate. Marquette Nat'l v Mullin, 205 M 562, 287 NW 233.

Guardianships and commitments. 20 MLR 338.

525.421 EXECUTION ON OFFSET.

HISTORY. 1889 c. 46 s. 109; G.S. 1894 s. 4516; R.L. 1905 s. 3735; G.S. 1913 s. 7328; G.S. 1923 s. 8817; M.S. 1927 s. 8817; 1935 c. 72 s. 105; M. Supp. s. 8992-105.

525.43 ACTIONS PENDING.

HISTORY. 1889 c. 46 ss. 111 to 113; G.S. 1894 ss. 4518 to 4520; R.L. 1905 ss. 3736, 3737; G.S. 1913 ss. 7329, 7330; G.S. 1923 ss. 8818, 8819; M.S. 1927 ss. 8818, 8819; 1935 c. 72 s. 106; M. Supp. s. 8992-106.

This section does not apply to judgments obtained in another state. Commercial Bank v States, 21 M 172.

Where after verdict or decision, and before judgment, the unsuccessful party dies, and judgment is afterwards entered against the decedent without substitution upon a certified copy of such judgment being filed in the probate court, it is entitled to be paid along with other claims allowed. Berkey v Judd, 27 M 475, 8 NW 383.

A judgment against the administrator for costs is a judgment against him personally. Laugh v Flaherty, 29 M 295, 13 NW 131.

A foreign administrator may be admitted to defend an action pending against his intestate at the time of his decease. Brown v Brown, 35 M 191, 28 NW 238.

It is only a claim in actual litigation at the time of decedent's decease that can be paid without being proved in probate court. Fern v Leuthold, 39 M 212, 39 NW 399.

The character of the judgment finally rendered will not preclude inquiry as to the nature and status of an action pending at the time of the debtor's death, in or-

der to determine whether a particular claim was then in litigation. Fern v Leuthold, 39 M 212, 39 M 399.

Actions pending in the federal court against a citizen of the state at the time of his death are within the purview of this section. Kittson's Estate, 45 M 197, 48 NW 419.

The defendant in an action brought against him by the administrator, may set off any claim he has against the deceased, even if the time for filing claims has expired and estate distributed. Gerdtzen v Cockrell, 52 M 501, 55 NW 58; Tolty v Torling, 79 M 386, 82 NW 632.

Right to set-off is not dependent on having presented the claim to the probate court. Martin County v Bird, 92 M 110, 99 NW 780.

Where special administrator brought the action and continued the proceedings after being appointed administrator, he is estopped from taking advantage of the fact that as special administrator he had no legal authority to sue. Lamoreaux v Higgins, 166 M 320, 207 NW 639.

A judgment in an action brought by an administrator, whether upon the claim or a set-off asserted by the defendant, is binding and conclusive upon the representatives, the heirs, and such interested persons, even though the latter are not parties to the action. Beckman v Beckman, 202 M 328, 277 NW 355.

525.431 ACTIONS PRECLUDED.

HISTORY. 1889 c. 46 s. 109; G.S. 1894 s. 4514; R.L. 1905 s. 3733; G.S. 1913 s. 7326; G.S. 1923 s. 8815; M.S. 1927 s. 8815; 1935 c. 72 s. 107; M. Supp. s. 8992-107.

A general creditor of a deceased person, although his claim has been allowed against the estate, has no lien upon the real estate of the deceased which entitles him to redeem from the foreclosure of a mortgage executed by the deceased in his lifetime. Whitney v Bend, 29 M 203, 12 NW 530; Nelson v Rogers, 65 M 246, 68 NW 18.

A judgment debtor having died after the judgment had been docketed, the creditor may enforce the judgment by sale of real estate on which the judgment is a lien, after the lapse of the period fixed by statute, and even if his claim had been presented to the probate court. Fowler v Mickley, 39 M 28, 38 NW 634.

This section is inapplicable to claims not provable in the probate court, such as actions in tort. Comstock v Matthews, 55 M 111, 56 NW 583.

An action may lawfully be brought on a contingent claim, see proviso. Oswald v Pillsbury, 61 M 520, 63 NW 1072; Hantsch v Massolt, 61 M 361, 63 NW 1069.

When a claim against the estate of a deceased person is filed with the probate court, the admissions of the administratrix of the estate that she would pay such claim, and that she did make a part payment is inadmissible to show validity of the claim. Johanson v Hoff, 63 M 296, 65 NW 464.

The allowance by the probate court of a claim not presented within five years of the death of the decedent was erroneous, but not subject to collateral attack. O'Brien v Larson, 71 M 371, 74 NW 148.

A contingent claim, arising on contract, against the estate of the decedent, which does not become capable of liquidation before the time limited for creditors to present their claims is not barred by this section. Berryhill v Peabody, 72 M 232, 75 NW 220.

In this case it clearly appears that the claim asserted is barred by the statute of limitations, or by the rules of common law, or by laches. In either case it is nonenforceable. Mowry v McQueen, 80 M 385, 83 NW 348.

Laws 1897, Chapter 157, authorizes a decree of heirship upon the petition of an heir to an estate where the same has not been administered for five years after the death of an intestate, and provides for a final judgment that is conclusive upon all parties interested. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Where there has been no petition to probate the estate and no claims filed within the time limited by this section, the heirs may make amicable distribution, and one to whom a note is assigned may bring suit to enforce collecton. Granger v Harriman, 89 M 303, 94 NW 869.

Heirs are not liable to creditors of the decedent upon a contingent claim which became absolute before the administration of the estate was closed and final de-

cree made, unless presented to the probate court for allowance. Hunt v Burns, 90 M 172, 95 NW 1110.

Whether the legislature has the 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. State ex rel v Probate Court, 103 M 325, 115 NW 173.

Liability of the estate of a surety on an administrator's bond is not affected by this section. Martz v McMahon, 114 M 34, 129 NW 1049.

Plaintiff having sued in tort cannot waive the tort, and claim for money had and received for such claim would be in the exclusive jurisdiction of the probate court. Klessig v Lea, 158 M 14, 196 NW 655.

Rights under an antenuptial contract are not "claims" under the statute, and in equity may be specifically enforced even though relating to personal property, and where there is no dispute the probate court may direct the executions to comply with the demands of the contract as an incident to distribution. O'Brien v Lien, 160 M 276, 199 NW 914.

Evidence showing only an intention to make a gift without proof of delivery of the subject matter, actual or constructive, fails to show a gift. Gagne v Hayes, 168 M 413, 210 NW 147.

Evidence sustains the verdict for the full amount of plaintiff's claim for services rendered to decedent under an express contract. Doepke v Joslyn, 170 M 221, 212 NW 167.

A proceeding to vacate a voidable final decree is a new proceeding by direct attack. Title to the real estate sought to be reached has then passed to other persons and the property is no longer a part of the estate of the decedent. Neither the probate court, nor the district court on appeal, has authority to vacate the decree without notice to the persons who then hold title to such real property. Koffel's Estate, 175 M 524, 222 NW 68.

Time within which to file a claim, required to be filed against the estate of decedent, not barred during his lifetime, is governed by the limitation in this section and not by the general statute of limitations, section 541.05. Anderson's Estate, 200 M 470, 274 NW 621.

This section withholds from the probate court jurisdiction to receive or allow against an estate under administration, claims which remain contingent for more than five years after the death of the decedent. Borlang's Estate, 201 M 407, 276 NW 732.

The district court has jurisdiction in controversies between a representative of the estate and strangers claiming adversely. Marquette Bank v Mullin, 205 M 562, 287 NW 233.

Under the provisions of section 525.145 an action may be maintained in the district court against representives and heirs of a deceased person to enforce a lien against decedent's homestead for work done under contract with decedent. Anderson v Johnson, 208 M 152, 293 NW 131.

There can be no affirmance on an appeal from the probate court, where the controversy relates to compensation of administrator, where there is absence of evidence. Paulson's Estate, 208 M 231, 293 NW 607.

Claims of non-residents as well as resident creditors are barred under the provisions of this section unless presented within five years after decedent's death. Hencke's Estate, 212 M 407, 4 NW(2d) 353.

The claim of a third person that he is the owner of property in hands of the administrator is not controlled by this section. Order of St. Benedict v Steinhauser, 179 F 137.

Summary probate proceedings. 19 MLR 833.

Procedural rules. 20 MLR 4.

Summary proceedings; homestead. 20 MLR 105.

Nonclaim statutes as superseding statutes of limitation. 22 MLR 289.

Necessity of filing claim in probate court where decedent's only property is a homestead. 25 MLR 385.

525.44 PRIORITY OF DEBTS.

HISTORY. 1889 c. 46 s. 122; G.S. 1894 s. 4529; R.L. 1905 s. 3745; G.S. 1913 s. 7338; G.S. 1923 s. 8827; M.S. 1927 s. 8827; 1935 c. 72 s. 108; M. Supp. s. 8992-108.

Preferences allowed. In the instant case the widow is a creditor for $200.00 advanced to preempt land and $205.50 funeral expenses, plus interest thereon. McNally v Weld, 30 M 209, 14 NW 895.

A personal tax is a debt for the purpose of proof against, and payment from, a decedent's estate; and a tax list or tax duplicate, duly certified by the county auditor, is prima facie evidence of the due levy of the taxes in it. Jefferson's Estate, 35 M 215, 28 NW 256.

An administrator who, having assets in his hands, refuses or neglects to pay the funeral expenses of his intestate, being requested so to do, is individually liable at the suit of the undertaker. Allowance by probate court is unnecessary. Dampier v St. P. Trust, 46 M 527, 49 NW 286.

Where by action a contingent claim becomes absolute, upon presentation to the probate court, it may be allowed and paid in the same manner as other claims of the same class. Oswald v Pillsbury, 61 M 520, 63 NW 1072.

After preferred claims are paid, all other creditors are to be paid pro rata. Byrnes v Sexton, 62 M 135, 64 NW 155.

It being supposed that the estate was insolvent, a judgment creditor accepted less than the amount of his claim in satisfaction thereof. There was sufficient consideration for such account, even though it later transpires that the estate is solvent. Rice v London & N.W. 70 M 77, 72 NW 826.

A foreign consul who resides in Minnesota and who has filed a copy of his appointment with the secretary of state, is, next after the surviving spouse or next of kin, entitled to be appointed or to nominate the administrator of the estate of one of its nationals, and provided he petitions within 30 days after receiving notice as required by statute, otherwise the statute gives him no preference. Austrian-Hungarian v Westphal, 120 M 122, 139 NW 300.

In the absence of a showing that the estate is insolvent, section 525.44 has no application. Mpls. Trust v Birkholz, 172 M 231, 215 NW 223.

Under the Wisconsin statute there is, in actions ex delicto, a survival of a liability upon the death of the wrongdoer; but in Minnesota the common law rule that all actions ex delicto abate on the death of either party, applies. A right of action accruing to a party under a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of the estate. Chibbuck v Halloway, 182 M 225, 234 NW 314, 868.

The payment of interest by the decedent is an indication that the money advanced to him was a loan and not a trust. Jache's Estate, 199 M 177, 271 NW 452.

A valid, collectible claim against third parties is an asset of an estate from which funeral expenses can be paid after payment of the expenses of administration. Brockmeyer v Draege, 215 M 262, 9 NW(2d) 753.

Expenses of administering the estate prior to establishment of the trust are chargeable to the corpus of the estate which is ultimately to form the trust and not to income accruing therefrom during administration. Koffend's Will, 218 M 206, 15 NW(2d) 591.

Old age assistance priorities. OAG July 5, 1944 (521g); OAG July 19, 1944 (521g).

Summary probate proceedings. 19 MLR 841.

Conveyances under the probate code. 20 MLR 111.

Ancillary administration. 21 MLR 333.

525.441 SECURED DEBTS.

HISTORY. 1889 c. 46 s. 122; G.S. 1894 s. 4529; R.L. 1905 s. 3745; G.S. 1913 s. 7338; G.S. 1923 s. 8827; M.S. 1927 s. 8827; 1935 c. 72 s. 109; M. Supp. s. 8992-109.

See annotations under section 525.44.

Right of a pledgee to dividends on pledged stock. McGhie v First National, 217 M 325, 14 NW(2d) 436.

525.442 ENCUMBERED ASSETS.

HISTORY. 1889 c. 46 s. 126; 1893 c. 116 s. 11; G.S. 1894 s. 4533; R.L. 1905 s. 3749; G.S. 1913 s. 7342; G.S. 1923 s. 8831; M.S. 1927 s. 8831; 1935 c. 72 s. 110; M. Supp. s. 8992-110.

Whether the legislature has the constitutional power to provide that our probate court may, as an incident to administration, 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. State ex rel v Probate Court, 103 M 325, 115 NW 173.

A representative cannot pay a secured claim and include it in his final account in disregard of the provisions of section 525.442. Boyd v Thomas, 162 M 63, 202 NW 60.

525.45 PREFERENCES PROHIBITED.

HISTORY. 1889 c. 46 s. 123; G.S. 1894 s. 4530; R.L. 1905 s. 3746; G.S. 1913 s. 7339; G.S. 1923 s. 8828; M.S. 1927 s. 8828; 1935 c. 72 s. 111; M. Supp. s. 8992-111.

When a contingent claim has become absolute, upon presentation of an authenticated copy of the judgment record, it may be allowed and paid as are other claims. Oswald v Pillsbury, 61 M 520, 63 NW 1072.

The priority given for funeral expenses and for expenses of last sickness is in the distribution of the assets of the decedent's estate, of which insurance money payable to the wife is not a part. Rose v Marchessault, 146 M 6, 177 NW 658.

Ancillary administrations. 21 MLR 333.

525.46 PAYMENT UNDER WILL.

HISTORY. 1889 c. 46 ss. 143, 144; 1893 c. 116 s. 13; G.S. 1894 ss. 4450, 4451; R.L. 1905 s. 3750; G.S. 1913 s. 7343; G.S. 1923 s. 8832; M.S. 1927 s. 8832; 1935 c. 72 s. 112; M. Supp. s. 8992-112.

ACCOUNTING AND DISTRIBUTION

525.47 DURATION OF ADMINISTRATION.

HISTORY. 1889 c. 46 ss. 116 to 119; 1893 c. 116 s. 10; G.S. 1894 ss. 4523 to 4526; R.L. 1905 ss. 3740 to 3742; G.S. 1913 ss. 7333 to 7335; G.S. 1923 ss. 8822 to 8824; M.S. 1927 s. 8822 to 8824; 1935 c. 72 s. 113; M. Supp. s. 8992-113.

An application for license to sell real estate for the payment of debts must be made within a reasonable time after the allowance of claims. State ex rel v Probate Court, 40 M 296, 41 NW 1033.

It is the duty of the representative to pay when he has funds to pay allowed claims. He need not wait the time limited for settlement. Johansen v Hoff, 70 M 140, 72 NW 965.

The legacy to the widow, plus her statutory selection, and the expenses of last sickness, funeral expenses, and similar are paid out of the corpus; but taxes and interest should be charged to the life tenant and paid from income, if sufficient, if not, the balance may be paid from the corpus. Snow v Jones, 166 M 315, 207 NW 629.

Where the income derived from the residue of the estate, after the $40,000 trust fund had been segregated, was insufficient to pay debts and expenses during the period of administration, resort may be had to the current accrued interest derived from the trust fund. Bergman's Estate, 182 M 128, 233 NW 806.

Where executrix did not include in final account a claim for costs of administration, the right to reimbursement for such costs was barred by order allowing final account and final decree of distribution. Koffend's Will, 218 M 206, 15 NW(2d) 591.

Because of World War II probate court may adjourn a hearing on final decree from year to year. OAG Sept. 19, 1944 (349e).

Where the court finds the sole heir to be an alien enemy residing in enemy country, the property may be seized by the alien property custodian. OAG Oct. 24, 1944 (349e).

When does interest begin to run on legacies. 16 MLR 227, 228.

Procedural rules. 20 MLR 5.

525.48 FILING OF ACCOUNT.

HISTORY. 1889 c. 46 ss. 225, 226, 230; G.S. 1894 ss. 4638, 4639, 4643; R.L. 1905 ss. 3784, 3788; G.S. 1913 ss. 7383, 7388; G.S. 1923 s. 8873, 8877; M.S. 1927 s. 8873, 8877; 1935 c. 72 s. 114; M. Supp. s. 8992-114.

A final order discharging the administrator of the estate, and discharging the lien of the creditors on real estate, on the petition of one of two administrators is irregular, but valid until set aside in the same proceeding on application of the other administrator. State ex rel v Probate Court, 40 M 296, 41 NW 1033.

Where the estate of a deceased person has been fully administered, and a decree of distribution has been made, the jurisdiction of the probate court is ended. The fact that some of the distributees are minors is not ground for keeping the estate open. Schmidt v Stark, 61 M 91, 63 NW 255.

An intermediate accounting in the probate court by an executor or administrator is conclusive on all of those contesting it who were under no disability, and on all of those under disability who were properly represented by guardians. Kittson v St. P. Trust, 78 M 325, 81 NW 7.

Distinguishing Peterson v Vanderburgh, jurisdiction of the probate court to compel an accounting is exclusive. It is not lost by the discharge of executors leaving the estate unadministered. Betcher v Betcher, 83 M 215, 86 NW 1.

An administrator who as such has received money as belonging to the estate of his intestate must account for it, regardless of whether he could have collected it in a suit at law, there being no other adverse claim asserted. Beaulieu v Ain-E-Waush, 126 M 321, 148 NW 282.

The probate court having exclusive jurisdiction of the settlement of the account of an administrator, its judgment in the accounting proceedings is not subject to collateral attack. First Trust v U. S. F. & G. 156 M 231, 194 NW 376.

The finding of the court that all the heirs of a decedent who died in 1911, of whose estate the plaintiff was appointed administratrix in 1919, consented to the possession and use of the estate, consisting of 200 acres of land, by the defendant, one of the heirs, and to the payment of rent to the widow of the decedent, is sustained. The administratrix cannot charge the defendant as executor de son tort. McHugo v Norton, 159 M 90, 198 NW 141.

The order of the probate court allowing the account rendered by an executor or administrator, upon an application for a partial distribution, may be reviewed on appeal to the district court. If no appeal is taken, the account cannot be impeached when the final account of the executor or administrator comes before the probate court for settlement and allowance, or before the district court on appeal. Melstrom v Terry, 170 M 338, 212 NW 902.

While the income from a $40,000 trust fund ordinarily goes to the trustees, yet if the debt and expenses exceeded the income from other sources, the income from the trust fund may be resorted to in order to make up the deficiency. Bergman's Estate, 182 M 128, 233 NW 806.

Probate court has power to vacate a previous order procured without a hearing due to inadvertence on the part of the court. Such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. Henry v Ringey, 207 M 609, 292 NW 249.

The probate court has exclusive original jurisdiction over estates of decedents including absolute control over administrators and executors and including necessary power to call them to proper accounting. The probate court's constitutional jurisdiction may not be interfered with by the district court, by injunction or otherwise, except by virtue of its appellate and remedial jurisdiction. Olson v Witherow, 219 M 192, 17 NW(2d) 305.

The adjustment of accounts between the estate and the administrator lies exclusively in the power of the probate court. Nat'l Bank v Nat'l Surety, 25 F. Supp. 392.

Bequest of money to trustees to pay income therefrom to beneficiary for life. Subjection to debts and expenses of administration. 15 MLR 486.

When do legacies become payable. When does interest begin to run on legacies. 16 MLR 230.

525.481 HEARING AND DECREE.

HISTORY. 1889 c. 46 ss. 54, 55, 57, 229; G.S. 1894 ss. 4461, 4462, 4464, 4642; 1901 c. 284; R.L. 1905 ss. 3700, 3791; 1907 c. 434 s. 1; G.S. 1913 ss. 7390, 7391; G.S. 1923 ss. 8879, 8880; M.S. 1927 ss. 8879, 8880; 1935 c. 72 s. 115; 1937 c. 435 s. 13; 1939 c. 270 s. 5; M. Supp. s. 8992-115.

1. Generally
2. Exclusive jurisdiction
3. Necessity for
4. Proceedings on hearing
5. Powers of the court
6. Decree
7. Enforcement

1. Generally

An assignment of real property, in a decree of distribution, to a party named "to have and to hold the same unto her, her heirs and assigns, forever" is an assignment of an estate in fee. Tidd v Rines, 26 M 201, 2 NW 497.

An action being pending against the administrator of an estate, he cannot by obtaining a final decree in the probate proceedings, free himself of liability on the judgment rendered in the action. Whitney v Pinney, 51 M 146, 53 NW 198.

Sufficiency of the recording of a decree. Funk v Lamb, 87 M 349, 92 NW 8.

A clause in a final decree "and of all the real property of which the said testator died seised, whether the same is described in the inventory herein or not" construed as not including a homestead. Frazer v Farmers' & Mechanics', 89 M 482, 95 NW 307.

The expressions in the will of the testators desire and wish, following the bequest and devise of the property in fee to the widow, do not limit her estate to one for life, nor create a precatory trust in favor of testator's children. Long v Willsey, 132 M 316, 156 NW 349.

Payment of a legacy cannot be legally demanded until the probate court has ordered it paid; and a legacy does not begin to bear interest until payment may be legally demanded, unless the will makes a different provision for interest. Wiley v Lockwood, 151 M 372, 186 NW 699.

Decedent died in 1911, and plaintiff appointed administratrix in 1919. When all the heirs consented that defendant have possession of the 200-acre farm, paying rent to the widow, administratrix is not entitled to demand an accounting of the rents. McHugo v Norton, 159 M 90, 198 NW 141.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the decree of distribution. Burns v New Amsterdam, 205 M 391, 285 NW 885.

Executor was not negligent in failing to collect from children of decedent certain sums withdrawn from the corporation by decedent and her husband during their respective lifetimes and carried on the books of the corporation as charges against the children, as the money so drawn might have been drawn by the parents as their salaries. Lund's Estate, 217 M 618, 15 NW(2d) 426.

Where, as here, the beneficiary is entitled to income from date of death of testator, income accruing after his death and paid to the executor and by him paid over to the trustee remains income, and the trustee must pay it to the beneficiary. Koffends Will, 218 M 206, 15 NW(2d) 590.

Relating to liability on bond of administrator. Nat'l Surety v Erickson, 88 F(2d) 399; First Nat'l v Nat'l Surety, 25 F. Supp. 392.

When may a legacy be legally demanded. When does interest begin to run. 16 MLR 230.

Guardianships. 20 MLR 340.

Probate practice. 20 MLR 712.

Inheritance taxes. 23 MLR 134.

2. Exclusive jurisdiction

The accounting of the representative and the distribution of the estate must be had in the probate court. The district court is without original jurisdiction in such matters. Starkey v Sweeney, 71 M 241, 73 NW 859.

3. Necessity for

It is not necessary to transfer the title to realty. The real estate goes to decedent's devisees, subject to administration and payment of debts. State ex rel v Probate Court. 25 M 22.

A decree of distribution is necessary to charge the representative with nonpayment of legacies. Huntsman v Hooper, 32 M 163, 20 NW 127.

A decree is necessary to close the estate and relieve the representative. Scheffer's Estate, 58 M 29, 59 NW 956.

A representative may pay over funds to the party entitled thereto as heir without an order of court, the order being merely to protect him and his sureties from subsequent claims. Kraus v Kraus, 81 M 484, 84 NW 332.

A decree may be necessary to transfer title or possession of personalty. Granger v Harriman, 89 M 303, 94 NW 869.

To carry out the intentions of the testator. Wheaton v Pope, 91 M 299, 97 NW 1046.

4. Proceedings on hearing

Guardians ad litem need not be appointed for minor heirs or legatees interested in the estate. Balch v Hooper, 32 M 158, 20 NW 124.

The expenses of administration, including funeral expenses, are to be allowed under this section. Dampier v St. P. Trust, 46 M 526, 49 NW 286.

Expenses of hunting for heirs or next of kin or for looking after one's own interest in the estate are not allowable as expenses of administration. Glynn's Estate, 57 M 21, 58 NW 684.

The last accounting is conclusive and as it involves prior accountings, it is also conclusive as to them. Kittson v St. P. Trust, 78 M 325, 81 NW 7.

In settling the accounts of representatives, the court should be governed by broad principles of equity. The representative should be permitted to show the real nature of his transactions and their fairness unimpeded by technical rules. Wheaton v Pope, 91 M 299, 97 NW 1046.

In the instant case an item subject to objection was held to be sufficiently described. Wheaton v Pope, 91 M 299, 97 NW 1046.

An administrator is chargeable with the profits of his attorney in purchasing and selling a life estate in the real estate for which the administrator is trustee. Turner v Fryberger, 94 M 433, 103 NW 217.

Regarding surety on the bond of the personal representative. Pierce v Maetzold, 126 M 445, 148 NW 302; House v O'Leary, 136 M 126, 161 NW 392.

No appeal being taken, the final decree is conclusive as to the parties. Friend v Friend, 158 M 31, 196 NW 814.

Plaintiff and one McGregor owned a tract of land as tenants in common. They gave a mortgage to defendant bank. Afterwards McGregor gave a second mortgage to the bank on his undivided one-half. Plaintiff paid one-half of the first mortgage debt. After foreclosure, plaintiff redeemed as part owner. By his redemption he obtained an equitable mortgage on the undivided half interest of McGregor for the amount he paid in redemption and such mortgage is prior to the mortgage by McGregor on his undivided one-half. Kirsch v Scandia-American, 160 M 269, 199 NW 881.

Probate code amendments. 23 MLR 997.

5. Powers of the court

The jurisdiction of the probate court includes the power to construe a will, whenever such construction is involved in the settlement or distribution of an estate; and such jurisdiction is exclusive. State v Ueland, 30 M 277, 15 NW 245; Appleby v Watkins, 95 M 455, 104 NW 301.

In making distribution the probate court has power to determine the succession of the property of the deceased subject to administration and the rights of creditors. It determines who are the heirs or devisees, and what part of the estate is, after administration, to be assigned to the share of each. Farnham v Thompson, 34 M 330, 26 NW 9; Kleeberg v Schrader, 69 M 136, 72 NW 59; Hershey v Meeker Co. Bank, 71 M 255, 73 NW 967.

The court has no power to determine the rights of one claiming through the acts of an heir or devisee the real estate to which such heir or devisee succeeds. Farnham v Thompson, 34 M 330, 26 NW 9; Doberstein v Murphy, 44 M 526, 47 NW 171; Kleeberg v Schrader, 69 M 136, 72 NW 59; Starkey v Sweeney, 71 M 241, 73 NW 859.

But such third party may appear in the probate court, demand an accounting, and oppose proceedings to divest the heir or devisee of his share, and to vest the same in others as distributees. Langevin's Estate, 45 M 429, 47 NW 1133; Starkey v Sweeney, 71 M 241, 72 NW 59.

The court has power to determine a claim to the estate under a contract with the decedent to make a will in favor of the claimant. Kleeberg v Schrader, 69 M 136, 72 NW 59.

The construction of the will by the court on final distribution is only for the purpose in hand. It is a conclusive adjudication that the persons to whom the distribution is made are the only persons entitled to the property distributed as devisees or legatees under the will, and of that fact only. Hershey v Meeker Co. Bank, 71 M 268, 73 NW 967.

In making distribution the court necessarily determines the legal effect of the will. Duxbury v Shanahan, 84 M 353, 97 NW 944.

The probate court has power to vacate a previous order allowing a final account where it is made to appear that the order was procured without a hearing due to inadvertence on the part of the court. Such power does not terminate upon the expiration of the time to appeal from the order sought to be vacated. Henry's Estate, 207 M 609, 292 NW 249.

6. Decree

The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with full right of control and possession and with the right of action for it against the personal representative if he does not deliver it to them. State ex rel v Probate Court, 25 M 22; Schmidt v Stark, 61 M 91, 63 NW 255; State ex rel v Probate Court, 84 M 289, 87 NW 783.

If the court has jurisdiction, the decree of distribution is conclusive on all persons interested in the estate whether under disability or not. Administrative proceedings are in rem, acting directly on the res, which is the estate of the deceased. The decree is a judgment in rem binding on all the world and not subject to collateral attack. Greenwood v Murray, 26 M 259, 2 NW 945; Ladd v Weiskopf, 62 M 29, 64 NW 99; Eddy v Kelly, 72 M 32, 74 NW 1020; Bengtson v Johnson, 75 M 321, 78 NW 3; Fitzpatrick v Simonson, 86 M 140, 90 NW 378; Chadbourne v Hartz, 93 M 233, 101 NW 68.

The effect of a decree of distribution is to divest the probate court of jurisdiction of the property distributed and prior to Laws 1903, Chapter 195, it was held that it divested the probate court of jurisdiction of the estate. Hurley v Hamilton, 37 M 160, 33 NW 912; State ex rel v Probate Court, 40 M 296, 41 NW 1033; Schmidt v Stark, 61 M 91, 63 NW 255; State ex rel v Probate Court, 84 M 289, 87 NW 783; Security Trust v Black River Nat'l, 187 US 211, 23 SC 52.

The decree is not evidence of heirship as against strangers. Backdahl v Grand Lodge, 46 M 61, 48 NW 454.

Where a testator provides a fund to furnish a certain income to his widow or legatee, designating the amount of the income, and providing that it shall be paid each year, and that securities shall be selected sufficient to secure that result, the selection of such securities in the first instance is demonstrative, and not a specific and changeless fund or legacy, the income of which must necessarily be diminished upon diminution of the producing capacity of the fund. Merriam v Merriam, 80 M 254, 83 NW 162; Eggleston v Merriam, 83 M 98, 85 NW 937, 86 NW 444.

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 M 444, 117 NW 830.

The petition for license to mortgage was defective, but the court granted the license and the mortgage was made. In the final account the money received from the mortgagee was accounted for. By final decree, the representative assigned the property, subject to the mortgage. No appeal or other review was sought until more than five years after the date of the petition when an application was made to set aside the final decree, the order authorizing the mortgage, and all other proceedings in respect to the final account. The proceedings were properly dismissed. Mahoney's Estate, 195 M 431, 263 NW 465.

The probate court has no jurisdiction of and need not determine the effect of conditions imposed upon legatees after the receipt by them of their legacy. A mere reference to the value of the will might not be inappropriate. Wyman v Trustees, 197 M 62, 266 NW 165.

The probate court having no jurisdiction to enforce a contract between beneficiaries, as to distribution of property, can only determine the distribution according to the terms of the will, and leave interpretation of any contract between the beneficiaries to courts of general jurisdiction. Schaefer v Thoeny, 199 M 610, 273 NW 190.

A final decree is not subject to collateral attack and void for uncertainty of description where it assigns all the property of the deceased to the heir entitled thereto without having described the property with particularity. Bauman v Katzenmeier, 204 M 240, 283 NW 242.

A decree of distribution is not the source of title. All it does is to adjudicate upon the devolution of decedent's property as of the date of his death. It simply administratively declares what the law has ordained. Butler's Estate, 205 M 60, 284 NW 889.

A decree of distribution including the interpretation of the will is conclusive on heirs, devisees, legatees, personal representatives, and creditors of the decedent. Marquette Bank v Mullin, 205 M 562, 287 NW 233.

When a person who has made advancements to her children subsequently executes a will, such will precludes all consideration of such advancements unless expressly saved by the terms of the will. Staples' Estate, 214 M 337, 8 NW(2d) 45.

7. Enforcement

The probate court has no jurisdiction to enforce its decree of distribution. The remedy of distributees from whom their shares are withheld by representatives is an action in the district court. Schmidt v Stark, 61 M 91, 63 NW 255; State ex rel v Probate Court, 84 M 289, 87 NW 780.

Distributees were not barred by the statute of limitations from asserting their right, in the district court, to recover from co-distributee their share of assets. Lewis v Lewis, 211 M 587, 2 NW(2d) 134.

525.482 PARTIAL DISTRIBUTION.

HISTORY. 1889 c. 46 s. 57; G.S. 1894 s. 4664; 1897 c. 231 s. 2; 1901 c. 10; R.L. 1905 s. 3785, 3786; 1905 c. 21; G.S. 1913 ss. 7384, 7385; G.S. 1923 ss. 8874, 8875; M.S. 1927 ss. 8874, 8875; 1935 c. 72 s. 116; M. Supp. s. 8992-116.

The probate court made a decree of distribution on the faith of the bond, and the sureties are estopped from denying the execution or validity of the bond as to creditors. Olson v Fish, 75 M 228, 77 NW 818.

The widow waived her right to the household goods by permitting the probate court to dispose of the property in the administration. The decree is conclusive against collateral attack. Rickert v Wardell, 142 M 96, 170 NW 915.

A legatee cannot demand his legacy until the court has ordered it paid. It bears interest from the date when it may be demanded. Wiley v Lockwood, 151 M 372, 186 NW 699.

At a hearing on a final account, an order allowing a previous partial accounting cannot be impeached, nor can it be on appeal. Melstrom v Terry, 170 M 338, 212 NW 902.

A decree of partial distribution becomes final in absence of appeal. The court may inquire into the construction and scope of the decree. Wyman v Trustees, 197 M 62, 266 NW 165.

A widow who permits payment in full to legatees, and has full knowledge of conditions, is estopped several years later from objecting to the partial distribution. Clover v Peterson, 203 M 337, 281 NW 275.

When may a legacy be legally demanded and when does it begin to pay interest. 16 MLR 231.

525.483 RECORDING DECREE.

HISTORY. 1889 c. 46 s. 229; G.S. 1894 s. 4642; 1901 c. 284; R.L. 1905 s. 3791; G.S. 1913 s. 7391; G.S. 1923 s. 8880; M.S. 1927 s. 8880; 1935 c. 72 s. 117; M. Supp. s. 8992-117.

See annotations under section 525.481.

525.484 TRANSFER OF PROPERTY OF DECEASED FOREIGNERS.

HISTORY. 1943 c. 477 ss. 1, 2.

525.49 ALLOWANCE TO REPRESENTATIVE.

HISTORY. 1889 c. 46 ss. 211, 223, 231; G.S. 1894 ss. 4624, 4636, 4644; R.L. 1905 s. 3707; G.S. 1913 s. 7298; 1921 c. 210 s. 1; G.S. 1923 s. 8788; M.S. 1927 s. 8788; 1935 c. 72 s. 118; 1939 c. 270 s. 6; M. Supp. s. 8992-118.

No execution for costs in an action by or against an executor or administrator shall issue against the estate. An execution may issue against the property of the personal representative. Lough v Flaherty, 29 M 295, 13 NW 131.

The administrator had no interest in the real estate, and there can be no legitimate charges by the administrator, there being no estate for him to administer. Thompson's Estate, 57 M 109, 58 NW 682.

A representative not guilty of wilful default, misconduct, or gross negligence in the management of his trust is entitled to compensation. St. P. Trust v Kittson, 62 M 408, 65 NW 74.

The order allowing compensation and attorney's fees is not appealable, and must be reviewed by certiorari. Banholzer, administrator of the estate of Foos, died without making an accounting. Hauser was appointed administrator of the estate of Banholzer. He made no accounting until forced to do so by the court. Neither the estate of Banholzer nor Hauser was entitled to fees out of the estate of Foos. State ex rel v Probate Court, 76 M 132, 78 NW 1039.

The probate court may determine the amount due each executor for services, and where the amount is allowed as a lump sum the district court has power to apportion the fund allowed between the executors according to services respectively rendered. Slingerland v Norton, 136 M 204, 161 NW 497.

Where after the legacies had been decreed to the legatees it is found that the income from the residue of the estate is insufficient to pay debts and expenses, the income from the legacy trust fund may be resorted to. Bergman's Estate, 182 M 128, 233 NW 806.

The act of the executor in borrowing money with which to pay the amount the court had ordered paid to certain contestants of the will is approved. Kaufenberg Estate, 182 M 624, 235 NW 379.

The allowance of attorney's fees is not to the attorney direct, but to the personal representative for money paid or to be paid to the attorney. State ex rel v Probate Court, 199 M 297, 273 NW 636.

An attorney at law does not have a right by reason of appearance in litigation for a client, to have a review of a judgment or decision rendered in such litigation. State ex rel v Probate Court, 200 M 167, 273 NW 636.

An estate is not liable to an attorney for his services at the instance of an executor or administrator, but the latter is himself liable in a suit by the attorney. State ex rel v Probate Court, 204 M 5, 283 NW 545.

The amount allowed a representative for services rendered by his attorney is not so inadequate as to warrant the setting aside of the findings of the trial court. Fitzgerald's Estate, 205 M 57, 285 NW 285.

An executor or administrator cannot bind the estate he represents by any new contract. In this case Gustave Will, as special administrator of the estate of Bachman, purchased coal. This may be recovered from Will as an individual, or as an expense item from the estate. Pittsburgh v Will, 209 M 340, 296 NW 178.

A sole legatee, who is substituted for the executor of a will, in the prosecution of an unsuccessful appeal to the supreme court wherein it was attempted to sustain the will, is not entitled to recover attorney's fees, expenses, and compensation from the estate under the provisions of section 525.49. Estate of Boese, 217 M 583, 15 NW(2d) 16.

Where executrix did not include in final account a claim for costs of administration, the right to reimbursement for such costs was barred by order allowing the final account and final degree of distribution. Koffend's Will, 218 M 206, 15 NW(2d) 591.

An executor claiming deduction for "administrative expenses" in estate tax returns has the burden of establishing amounts claimed as well as allowable character of deductions as being administrative expenses. Adams v Commissioner, 110 F(2d) 578.

The executor, though a practicing lawyer, may employ an attorney. 6 MLR 325.

Right to extra compensation for extraordinary services. 14 MLR 568.

Bequest of money to trustees to pay income to beneficiary for life may be subject to decedent's debts, and to the expenses of administration. 15 MLR 486.

Guardianships and commitments. 20 MLR 336.

Probate code amendments. 23 MLR 997.

525.491 ATTORNEY'S LIEN.

HISTORY. 1901 c. 10; 1905 c. 21; R.L. 1905 s. 3787; G.S. 1913 s. 7386; 1919 c. 61 s. 1; G.S. 1923 s. 8876; M.S. 1927 s. 8876; 1935 c. 72 s. 119; 1939 c. 270 s. 7; M. Supp. s. 8992-119.

The alien property custodian having made a demand upon the administrators for the share of an alien enemy legatee, the court properly declined to entertain an application of the attorney who represented the legatee to establish a lien on the legatee's share. The remedy of the attorney is under section 9 of the trading with the enemy act. Ecke's Estate, 162 M 226, 202 NW 492.

When there is a conflict between the representative and his attorney in respect to services rendered and the fees to be paid therefore, the issues presented thereby should be determined by a court of general jurisdiction. The probate court has no jurisdiction in such cases. State ex rel v Probate Court, 204 M 5, 283 NW 545.

Summary proceedings. 19 MLR 834.

Controversy between attorney and representative of estate over fee. 23 MLR 677.

Probate code amendments. 23 MLR 997.

525.50 RESIGNATION OF REPRESENTATIVE.

HISTORY. 1889 c. 46 s. 294; G.S. 1894 s. 4707; R.L. 1905 s. 3708; G.S. 1913 s. 7299; G.S. 1923 s. 8789; M.S. 1927 s. 8789; 1935 c. 72 s. 120; M. Supp. s. 8992-120.

While prior to the passage of the statute, Laws 1889, Chapter 46, an administrator could not resign, the acceptance of his resignation by the court made and entered of record in the form of an order had the effect of a revocation of his letters. Simpson v Cook, 24 M 180; Rumril v Bank, 28 M 202, 9 NW 731; Balch v Hooper, 32 M 158, 20 NW 124.

525.501 REMOVAL OF REPRESENTATIVE.

HISTORY. 1889 c. 46 s. 295; G.S. 1894 s. 4708; R.L. 1905 s. 3709; G.S. 1913 s. 7300; G.S. 1923 s. 8790; M.S. 1927 s. 8790; 1935 c. 72 s. 121; 1937 c. 435 s. 14; M. Supp. s. 8992-121.

See annotations under section 525.50.

A foreclosure was commenced by an administrator and the day before the sale he was removed and a special administrator appointed. The sale pursuant to the notice was valid. Baldwin v Allison, 4 M 25 (11).

Removal after trial because of recognition of false claim and consideration of final account. Marvin v Dutcher, 26 M 391, 4 NW 685.

The statute does not contemplate the appointment of an administrator when there is already one whose authority has not been extinguished. Culver v Hardenbergh, 37 M 225, 33 NW 792.

If the guardian's residence is known, the probate court cannot legally remove a guardian without notice to him of the time and place of hearing. McCloskey v Plantz, 76 M 323, 79 NW 176.

Where the appointment of the testamentary guardian is objected to, the determination of the probate is reviewable, and the trial is de novo in district court. Chadwick v Dunham, 83 M 366, 86 NW 351.

Evidence on the trial of an appeal from the probate court to the district court in the matter of a petition for the removal of an administrator is such as to require the removal of the administrator. Bank v Towle, 118 M 514, 137 NW 291.

Petition, by widow who renounced her husband's will, to have executor removed on the ground that he was interested in certain transfers made by testator in his lifetime, is granted, and it is not necessary to prove that the transfers were invalid. Corey v Corey, 120 M 304, 139 NW 509.

A co-administrator may be removed when he refuses to obey a valid order of the probate court or becomes unsuitable to discharge his trust. Drew's Estate, 183 M 374, 236 NW 701.

The expedient adopted to shorten litigation by refusing to appoint the executor named in the will, by assuming what the courts below would do if the widow persists in demanding an impartial representative, is not proper practice. Bett's Estate, 185 M 627, 243 NW 58.

The executor named in the will is not entitled to appointment unless he be both suitable and competent. In the instant case he is competent but being a nonresident, is unsuitable. Barck's Estate, 215 M 625, 11 NW(2d) 149.

525.502 DISCHARGE UPON RESIGNATION OR REMOVAL.

HISTORY. 1935 c. 72 s. 122; M. Supp. s. 8992-122.

525.503 ACCOUNT OF DECEASED OR INSANE REPRESENTATIVE.

HISTORY. 1889 c. 46 s. 298; G.S. 1894 s. 4711; 1897 c. 231 s. 1; R.L. 1905 s. 3710; G.S. 1913 s. 7301; G.S. 1923 s. 8791; M.S. 1927 s. 8791; 1935 c. 72 s. 123; M. Supp. s. 8992-123.

Banholzer, the executor of Foos' estate, died, and Hauser was appointed administrator of the estate of Banholzer. Neither Banholzer nor Hauser made a report in the Foos' estate until Hauser was required to do so by the court. Hauser is entitled to no fees out of the Foos' estate, neither for himself nor for the Banholzer estate. State ex rel v Probate Court, 76 M 132, 78 NW 1039.

Adrian Beckman, the executor of the estate of Gust Beckman, died. This is an action by the administrator de bonis non of the estate of Gust Beckman v Harold Beckman, one time administrator of the estate of Adrian, and the surety on the

bond of Adrian. Plaintiff's motion for judgment on the pleadings was granted. There was a reversal. The surety is entitled to be heard on the merits. Beckman v Beckman, 202 M 328, 277 NW 355.

525.504 DISCHARGE OF REPRESENTATIVE.

HISTORY. 1903 c. 195 ss. 1, 2; 1905 c. 332 s. 1; R.L. 1905 s. 3794; G.S. 1913 ss. 7399, 7400; G.S. 1923 ss. 8886, 8887; M.S. 1927 ss. 8886, 8887; 1935 c. 72 s. 124; 1937 c. 435 s. 15; M. Supp. s. 8992-124.

A discharge of one of two representatives on his sole petition, while irregular, is valid unless set aside by an application of the other administrator. State ex rel v Probate Court, 40 M 296, 41 NW 1033.

Prior to Laws 1903, Chapter 195, there was no provision for an order discharging a representative and it was held that the decree of distribution ipso facto discharged him. State ex rel v Probate Court, 84 M 289, 87 NW 783.

The surety on an administrator's bond is liable thereon where the principal converts the proceeds of a settlement of a cause of action based upon the wrongful death of the intestate, and an administrator de bonis non may bring the action. Vukminovich v Nickolich, 123 M 165, 143 NW 255.

A complaint in an action by heirs against the administrator of their intestate's estate, to recover the value of lands alleged to have been lost through defendant's failure to pay taxes or to redeem from tax sale, is demurrable where it contains no allegations of negligence and shows an unassailable discharge of defendant by a probate court. Winters v Ellefson, 128 M 3, 150 NW 170.

A cause of action against one in his representative capacity cannot be joined in the same complaint with one against him in his individual capacity. Fischer v Hintz, 145 M 161, 176 NW 177.

Evidence sustains the verdict for the full amount of plaintiff's claim against decedent's estate for services rendered her under express contract. Speiss' Estate, 170 M 221, 212 NW 167.

The statute of limitations commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v New Amsterdam, 205 M 391, 285 NW 885.

The appointment of a special administrator continues effective until the probate court determines that the administrator has fully executed his trust and the court has entered an order finally discharging him as such. Schueller v Palm, 218 M 469, 16 NW(2d) 773.

Complying with decree, the representative filed receipts from all except those heirs whose share was applied on notes due the estate and who refused to file. The representative is not entitled to a discharge. OAG Jan. 10, 1939 (349a-11).

525.51 SUMMARY PROCEEDINGS.

HISTORY. 1935 c. 72 s. 125; 1937 c. 435 s. 16; M. Supp. s. 8992-125.

Sections of the probate code which deprive the probate court of jurisdiction over claims against the homestead and which confer such jurisdiction upon the district court are not in violation of the constitutional provision which gives the probate court exclusive jurisdiction of estates of deceased persons. Peterson's Estate, 198 M 45, 268 NW 707.

By reason of section 525.145 an action may now be maintained in the district court to enforce a lien for work done and material furnished to the homestead under contract with the decedent, and without presenting the claim to probate. Anderson v Johnson, 208 M 152, 293 NW 131.

Approval of the final account and discharge of a personal representative is not conclusive that the estate has been fully administered so as to preclude further administration upon unadministered assets. A petition for administration may be granted whenever an estate is left unadministered in whole or in part. Damels' Estate, 208 M 434, 294 NW 465.

Summary probate proceedings. 19 MLR 834.

Procedural rules. 20 MLR 5.

Summary proceedings; homestead. 20 MLR 105.

Probate practice. 20 MLR 718.

Creditor's claim against homestead. 21 MLR 212.

Necessity of filing claim in probate court where decedent's only property is a homestead. 25 MLR 385.

525.52 UNCLAIMED MONEY.

HISTORY. 1903 c. 195 ss. 3 to 5; R.L. 1905 ss. 3795, 3796; 1909 c. 57 s. 1; G.S. 1913 ss. 7401, 7402; G.S. 1923 ss. 8888, 8889; M.S. 1927 ss. 8888, 8889; 1935 c. 72 s. 126; M. Supp. s. 8992-126.

Where a decree of distribution of the probate court has awarded a sum of money to an heir who fails to claim it, his whereabouts being unknown and the administrator deposits it with the county treasurer, a creditor of such heir may impound the same by garnishment. O'Day v O'Day, 171 M 280, 214 NW 26.

Where a deposit for a lost heir has been in the county treasury for more than seven years, a person entitled may petition for administration of the missing person's estate, as in Borneman v Ofsthun, 175 M 493, 221 NW 876; 1940 OAG 28, July 22, 1940 (346b).

Rights of persons disappearing. 9 MLR 97.

ADVANCEMENTS

525.53 ADVANCEMENT.

HISTORY. 1889 c. 46 ss. 232, 233, 235, 237; G.S. 1894 ss. 4645, 4646, 4648, 4650; R.L. 1905 s. 3797, 3799; G.S. 1913 ss. 7404, 7406; G.S. 1923 ss. 8895, 8897; M.S. 1927 ss. 8895, 8897; 1935 c. 72 s. 127; M. Supp. s. 8992-127.

Findings of fact regarding certain money and property "advanced" by the deceased in his lifetime to one of his daughters supports the finding of an advancement. Gilman v Maxwell, 79 M 377, 82 NW 669.

The doctrine of advancements applies to intestate estates only; and has no application when the property of the decedent is fully disposed of by his last will and testament. Krognes v Krognes, 125 M 115, 145 NW 785; Staples' Estate, 214 M 337, 8 NW(2d) 45.

In its legal sense, an advancement is an irrevocable gift in praesenti made by a parent to a child or other lineal descendent, to enable the donee to anticipate his inheritance to the extent of the gift. Whether there was an advancement or not depends on the intention of the donor. Leach v Leach, 162 M 159, 202 NW 448; Beier's Estate, 205 M 43, 284 NW 833.

A family agreement whereby all nine children transferred all of their interest in the family estate to the mother on condition that she leave her estate to the heirs in equal shares, is a legal contract, and enforceable in equity in district court. Anderson v Anderson, 197 M 252, 266 NW 841.

In an advancement there is a transfer of property without consideration, hence no obligation of repayment; in a loan the consideration for the loan is the obligation of repayment. An advancement differs from an ordinary gift in that, while repayment is not contemplated, it must be accounted for by the donee upon distribution of the estate of the donor. Beier's Estate, 205 M 43, 284 NW 833.

Section 525.481 relating to cases where a debt, while barred by the statute of limitations, has not otherwise been canceled or forgiven, has no application here, where the debts were specifically canceled and forgiven. Staple's Estate, 214 M 337, 8 NW(2d) 45.

525.531 VALUATION.

HISTORY. 1889 c. 46 ss. 234, 236, 238, 239; G.S. 1894 ss. 4647, 4649, 4651, 4652; R.L. 1905 ss. 3798, 3800; G.S. 1913 ss. 7405, 7407; G.S. 1923 ss. 8896, 8898; M.S. 1927 ss. 8896, 8898; 1935 c. 72 s. 128; M. Supp. s. 8992-128.

See annotations under Leach v Leach, 162 M 161, 202 NW 448, and Beier's Estate, 205 M 43, 284 NW 833.

Relief from a decree of the probate court obtained by fraud or mistake of fact, may be had in an action in equity in the district court. In the instant case, the decree was not so found. Bruski v Bruski, 148 M 461, 182 NW 620.

Intestacy of donor as a prerequisite to application of doctrine of advancement. 8 MLR 543.

GUARDIANSHIPS.

525.54 PERSONS SUBJECT TO GUARDIANSHIP.

HISTORY. 1889 c. 46 ss. 128, 133, 134, 141, 142, 152 to 154; 1893 c. 116 s. 12; G.S. 1894 ss. 4535, 4540, 4541, 4548, 4549, 4559 to 4561; R.L. 1905 ss. 3818, 3822, 3825, 3826, 3832, 3834; G.S. 1913 ss. 7425, 7429, 7432, 7433, 7440, 7442; 1917 c. 236 s. 1; G.S. 1923 ss. 8916, 8920, 8923, 8924, 8931, 8933; M.S. 1927 ss. 8916, 8920, 8923, 8924, 8931, 8933; 1935 c. 72 s. 129; M. Supp. s. 8992-129.

Guardian may sell personal property of ward without license or order of court. Humphrey v Buisson, 19 M 221 (182); Pardoe v Merritt, 75 M 12, 77 NW 552.

Letters of guardianship issued by a court having jurisdiction are not subject to collateral attack. Davis v Hudson, 29 M 27, 11 NW 136; Manage v Jones, 40 M 254, 41 NW 972; Schmidt v Zengner, 90 M 366, 96 NW 1134.

Laws 1883, Chapter 107, granting power to trust companies to qualify as guardians, is valid. Minn. L. & T. Co. v Beebe, 40 M 7, 41 NW 232.

The probate court of this state may appoint a guardian for a non-resident minor, as respects any estate the minor may have in the county where such probate court is established. Davis v Hudson, 29 M 27, 11 NW 36; W. Duluth Land v Kurtz, 45 M 380, 47 NW 1134; Kurtz v St. P. & Dul. 48 M 339, 51 NW 221.

While the statute provides that the father, if a suitable person, shall have custody of the person and the care of the education of his minor child, it is not a legal right beyond the control of the court. The primary object is the welfare of the child. State ex rel v Flint, 63 M 187, 65 NW 272; Greenwood v Greenwood, 84 M 203, 87 NW 489.

An order of appointment is conclusive on habeas corpus. State ex rel v Lawrence, 86 M 310, 90 NW 769.

A guardian of an incompetent person has the right to remove his ward from one state to another, temporarily or permanently, subject to the power of a court of chancery to restrain an improper removal. State ex rel v Lawrence, 86 M 310, 90 NW 769.

The father, if competent to transact his own business, and not otherwise unsuitable, is entitled to the care and custody of his minor children, but this right is not absolute, and may be denied if the interest of the children require it. State ex rel v Anderson, 89 M 198, 94 NW 681; State ex rel v Halverson, 127 M 387, 149 NW 664.

Indictment valid which charged the defendant with feloniously taking a 15-year old girl from her natural guardians. State ex rel v Sager, 99 M 54, 108 NW 812.

Evidence sustains findings that person was, by infirmities of age, incompetent to manage his property. Swick v Sheridan, 107 M 130, 119 NW 791; Wilkowske v Lynch, 124 M 492, 145 NW 373.

The proceeding for the appointment of a guardian of an alleged incompetent person is not adversary in nature, but one by the state in its character of parens patriae, and the manner and method of determining the facts rests in the sound discretion of the trial court, controlled, in a general way, by the rules of ordinary judicial procedure. The alleged incompetent is not required to submit to examination as an adverse party. Prokosch v Brust, 128 M 324, 151 NW 130: Wood v Wood, 137 M 252, 163 NW 297; Abrahamson v Strom, 205 M 399, 286 NW 245.

A father who is supporting the family may maintain an action for loss of the services of a minor child without joining the mother as a party plaintiff. Acheret v Minneapolis, 129 M 190, 151 NW 976.

The duty of the father to provide for his children continues whether they remain in his custody or not, unless the court has made express provision for

their support of such nature as to relieve him from further liability. His liability for their support is not limited by the regulations governing the allowance of alimony to his wife. Jacobs v Jacobs, 136 M 190, 161 NW 525.

The fact that the probate court had appointed a guardian of the person and estate of the defendant, is not conclusive evidence of his inability to entertain malicious intent, and the court properly submitted the question of punitive damages to the jury. Dohlsie v Hallenberg, 143 M 234, 173 NW 433.

Found to be of sound mind, and entirely capable. Guardianship of Hallenberg, 144 M 39, 174 NW 443.

In an action for divorce, an allowance to plaintiff to cover expenses of caring for her children while temporarily residing with her may be made. Rulings on the admission of evidence in such proceedings are not subject to the tests applied in reviewing a trial of an ordinary action. Spratt v Spratt, 151 M 458, 185 NW 509, 187 NW 227.

A person, claiming to be incompetent, may petition the probate court for the appointment of a guardian for himself. An order on such petition is subject to attack, but the question of incompetency cannot be raised after the time to appeal has expired. Scott v Whitely, 168 M 74, 209 NW 640.

An order of the probate court consenting to the compounding of a claim due from an insolvent debtor of the decedent is not invalid because the order was made without notice to the persons interested in the decedent's estate. Stampka's Estate, 168 M 283, 210 NW 85.

When a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court under section 259.01. Adoption of Janet Mair, 184 M 29, 237 NW 596.

A parent has a natural right to the custody of his child; but this right yields to the best interests of the child. State ex rel v Flint, 63 M 187, 65 NW 272; Arne v Holland, 85 M 401, 89 NW 3; State ex rel v Anderson, 89 M 198, 94 NW 681; State ex rel v Martin, 95 M 121, 103 NW 888; State ex rel v Ott, 98 M 533, 107 NW 1134; Gauthier v Walter, 110 M 103, 124 NW 634; Larson v Halverson, 127 M 387, 149 NW 664; State ex rel v Armstrong, 141 M 47, 169 NW 249; State ex rel v Pelowski, 145 M 383, 177 NW 627; State ex rel v Beardsley, 149 M 435, 183 NW 956; State ex rel v Bienek, 155 M 313, 193 NW 452; State ex rel v Peterson, 156 M 178, 194 NW 326; State ex rel v Hitman, 164 M 373, 205 NW 267; State ex rel v Gunvaldson, 169 M 335, 221 NW 310; State ex rel v Williams, 176 M 193, 229 NW 582; State ex rel v Miller, 187 M 152, 244 NW 685; State ex rel v Markson, 187 M 176, 244 NW 687.

Mere ill health or physical ailments do not warrant placing a person under guardianship. Scott v Whitely, 168 M 74, 209 NW 640; In re Carpenter, 203 M 481, 281 NW 867.

In an action for rescission of contract and to have the amount paid made a lien on the minor's land; the plaintiff failed to prove that any defect existed in the minor's title, or that he tendered the balance of the purchase price, or that the probate court had approved the sale, all necessary facts in order to maintain the action. Harmer v Holt, 157 M 102, 195 NW 637.

The evidence warrants the conclusion that relator and his wife, the parents of a child placed temporarily in the custody of respondents, are morally and financially fit and able to properly rear and educate the child and should be awarded custody of same. The evidence does not sustain the claim that relator gave the child to respondents and even if it had, the right to reclaim the child would not be barred. Fossen v Hitman, 164 M 373, 205 NW 267.

While the statute gives to the parent of a minor child, if a suitable person, the custody of the person and care and education of such child, yet this is not an absolute right beyond the control of the courts. In this instance, custody granted to grandparents. State ex rel v Phelps, 166 M 423, 208 NW 131; State ex rel v Gunvaldson, 169 M 335, 211 NW 310; Campbell v Baker, 216 M 113, 11 NW(2d) 786.

The obligation of a father to provide for the care, support and education of his child is a continuing one, and is not barred in any way by section 541.05, or section 546.88. State v Johnson, 216 M 427, 13 NW(2d) 26.

The father and mother of children are equally entitled to their custody and the care of their education. But when there is a contest between parents and the courts are required to determine the matter of a child's custody, whether in a divorce or a separation case, or a habeas corpus proceeding, the best interest of the child is the paramount consideration. State ex rel v Price, 211 M 568, 12 NW(2d) 39; Christianson v Christianson, 217 M 561, 15 NW(2d) 24.

Alimony is governed by statute, but the father's duty to support his children is not suspended by a divorce of the parents. There is a clear distinction in law between a divorced husband's obligation to his former wife and his obligation to the children. Warner v Warner, 219 M 59, 17 NW(2d) 59.

The Minnesota guardian having been appointed for a resident child and a Minnesota judgment for adoption having been rendered, the child's domicile formerly in Tennessee was thereby changed to Minnesota, and a Tennessee court had no jurisdiction to render subsequently an adoption decree and therefore the Tennessee decree was no basis for vacating the Minnesota judgment. Gale v Lee, 219 M 414, 18 NW(2d) 147.

One who has been adjudged an incompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. Johnson v Johnson, 214 M 462, 8 NW(2d) 620.

Conflict of laws as to domicile. 15 MLR 679.

Summary probate proceedings. 19 MLR 836.

Conveyances under the probate code. 20 MLR 106.

Guardianships and commitments. 20 MLR 333.

525.541 PETITIONERS.

HISTORY. 1889 c. 46 ss. 128 to 131, 142, 152 to 154; 1893 c. 116 s. 12; G.S. 1894 ss. 4535 to 4538, 4549, 4559 to 4561; 1905 c. 256 s. 1; R.L. 1905 ss. 3818 to 3820, 3826, 3832; G.S. 1913 ss. 7425 to 7428, 7433, 7440; 1917 c. 236 s. 1; G.S. 1923 ss. 8916 to 8919, 8924, 8931; M.S. 1927 ss. 8916 to 8919, 8924, 8931; 1935 c. 72 s. 130; M. Supp. s. 8992-130.

See annotations under section 525.54.

An infant at 14 years has sufficient discretion to select a guardian, and is capable of malice which would subject him to penal consequences of crime when above the age of 12. It would follow that the fact that the person was under 21 would not presumptively absolve him from the consequences of contributory negligence. Hanson v Swenson, 77 M 70, 79 NW 598; Benedict v Mpls. & St. L. Ry. 86 M 224, 90 NW 360, 1133.

The wards at 34 years of age brought an action of accounting against their guardian 18 years after he had made an accounting and turned the money over to their mother. Petition was denied because of laches. Hanson v Swenson, 77 M 70, 79 NW 598.

The probate court may appoint a guardian for a minor child under 14 years without notice. State ex rel v Bazille, 81 M 370, 84 NW 120.

Where in proceedings instituted by a testamentary guardian, the next of kin approved the appointment, setting forth that the testamentary guardian was not a proper person, the determination by the court that the guardian was competent and suitable is reviewable, and, upon appeal being taken, is entitled to be heard upon its merits in district court. Chadwick v Dunham, 83 M 366, 86 NW 351.

An order appointing a guardian is subject to attack by motion to vacate for want of jurisdiction or for fraud; but the question of competency cannot be raised after the expiration of time to appeal. Scott v Whitely, 168 M 74, 209 NW 640.

The probate court may consent to compounding a debt due from insolvent debtor to decedent without notice to persons interested in the estate. Stampka's Estate, 168 M 283, 210 NW 85.

The courts are inclined to appoint the spouse as guardian of insane veteran. OAG Aug. 28, 1935 (346d).

525.542 CONTENTS OF PETITION.

HISTORY. 1935 c. 72 s. 131; M. Supp. s. 8992-131.

Where the incompetent petitions, no notice of hearing is required; but the petition on its face must show proper grounds and necessity for the granting of the petition. Carpenter's Guardianship, 203 M 477, 281 NW 867.

Guardianships and commitments under the probate code. 20 MLR 335.

525.543 LIS PENDENS.

HISTORY. 1889 c. 46 s. 142; 1893 c. 116 s. 12; G.S. 1894 s. 4549; R.L. 1905 s. 3829; G.S. 1913 s. 7436; G.S. 1923 s. 8927; M.S 1927 s. 8927; 1935 c. 72 s. 132; M. Supp. s. 8992-132.

Commitment to the hospital for the insane is not sufficient evidence of mental incapacity to make contracts. Knox v Haug, 48 M 58, 50 NW 934.

The deed of an insane person not under guardianship is voidable only; but while he is under actual and subsisting guardianship he is conclusively presumed incompetent to make a valid deed, though at the time he was, in fact, sane. Thorpe v Hanscom, 64 M 201, 66 NW 1.

An action on contract will lie against an insane person under guardianship. The law aims to protect the incompetent; but his incapacity cannot be changed from a shield of protection into a weapon of defense. Schultz v Oldenburg, 203 M 237, 277 NW 918.

525.55 NOTICE OF HEARING.

HISTORY. 1889 c. 46 ss. 143 to 145; 1893 c. 116 ss. 13, 14; G.S. 1894 ss. 4550 to 4552; R.L. 1905 ss. 3827, 3828; 1913 c. 350 s. 1; G.S. 1913 s. 7434, 7435; G.S. 1923 ss. 8925, 8926; M.S. 1927 ss. 8925, 8926; 1935 c. 72 s. 133; M. Supp. s. 8992-133.

See annotations under section 525.543.

That the application was not to have the testatrix declared insane, but only to have a guardian appointed because of impairment of mental faculties by reason of old age, and inability to handle her affairs, did not render the adjudication inadmissible. McAllister v Rowland, 124 M 27, 144 NW 412.

The statutes providing for the cross-examination of an adverse party have no application to the proceedings, yet the court may require the alleged incompetent to submit to examination for the purpose of testing his or her mental condition. Prokosch v Brust, 128 M 324, 151 NW 130.

The proper method of service under this section is to serve the notice personally on the inmate at least 14 days prior to the date of the hearing and to serve a notice of hearing by mail upon the superintendent of the hospital or asylum wherein the ward is an inmate. 1936 OAG 163, Aug. 8, 1935 (88a-14).

Proposals for amendment. Recommended by probate judges. 9 MLR 306.

525.551 HEARING; APPOINTMENT.

HISTORY. 1889 c. 46 ss. 144, 145; 1893 c. 116 ss. 13, 14; G.S. 1894 ss. 4551, 4552; R.L. 1905 s. 3828; G.S. 1913 s. 7435; G.S. 1923 s. 8926; M.S. 1927 s. 8926; 1935 c. 72 s. 134; M. Supp. s. 8992-134.

See annotations under section 525.55.

A judgment or order in proceedings for the appointment of a guardian of an incompetent person is admissible in evidence, but not conclusive, to prove that person's mental condition at the time the order or judgment is made, or at any time during which the judgment finds the person incompetent. A person may not be quite sane on certain subjects and still be able to manage the ordinary business affairs of life. Champ v Brown, 197 M 49, 266 NW 94; Schultz v Oldenburg, 202 M 237, 277 NW 918.

Except in case of a minor, in order to appoint a guardian there must be a finding of incompetency, otherwise the court lacks jurisdicition. Guardianship of Carpenter, 203 M 477, 281 NW 867.

An action to set aside a deed on ground of incompetency of grantor should have been brought in name of incompetent by his legal guardian rather than in the name of the guardian as such for the incompetent. Rebne v Rebne, 216 M 379, 13 NW(2d) 18.

525.56 GUARDIAN'S DUTIES.

HISTORY. 1889 c. 46 ss. 133, 134, 140, 147 to 150, 156, 159, 162 to 164; 1893 c. 116 s. 16; G.S. 1894 ss. 4540, 4541, 4547, 4554 to 4557, 4563, 4566, 4569 to 4571; R.L. 1905 ss. 3822, 3834, 3836, 3838 to 3841, 3844, 3845; 1913 c. 340 ss. 1 to 3; G.S. 1913 s. 7429, 7442, 7444, 7446 to 7452, 7457, 7458; 1915 c. 110 s. 1; 1915 c. 245 s. 1; 1917 c. 425 s. 1; 1919 c. 312 s. 1; G.S. 1923 ss. 8920, 8933, 8935, 8937 to 8943, 8946, 8947; M.S. 1927 ss. 8920, 8933, 8935, 8937 to 8943, 8946, 8947; 1935 c. 72 s. 135; M. Supp. s. 8992-135; 1941 c. 395.

See annotations under section 525.55 and 525.551.

Every guardian, if he have assets, is required to pay all just debts of his ward. If he refuse, an action will lie upon his guardianship bond. Guardianship of House, 32 M 155, 19 NW 973.

Guardian without previous order of court may claim allowance for necessary expenses incurred in the support of the ward without previous order of court. Guardianship of Besondy, 32 M 385, 20 NW 366.

The guardian was so interested in the transaction investing the ward's money that it was in law a fraud on the ward, unless his interest was at the time fully disclosed to the probate court. In re Grandstrand, 49 M 438, 52 NW 41.

A statutory guardian is subject to the direction and control of the court, and any disposition of the ward's property in violation of the order of the court is unauthorized. Cox v Manvel, 56 M 358, 57 NW 1062.

An action to recover damages for personal injuries to a minor may be brought in his name as plaintiff by his general guardian. Patterson v Melchior, 102 M 363, 113 NW 902.

In an action brought by plaintiff against the devisees of his former guardian, and the heirs and devisees of the guardian's bondsmen, to charge them with liability because of the failure of the guardian to redeem certain property of his ward from a mortgage foreclosure sale, the action being brought 35 years after the foreclosure and 20 years after the ward became of age, the complaint affirmatively shows laches, and a demurrer was properly sustained. Sweet v Lowry, 123 M 13, 142 NW 882.

The holder of the life estate was an incompetent person and was represented by a guardian who as such joined in the contract, subject to the approval of the probate court. The court rightfully refused to confirm the sale because the contract being the joint obligation of the vendors, and not enforceable as to the incompetent party, was properly set aside as to both. Richardson v Kotek, 123 M 360, 143 NW 973.

A guardian of an insane person is authorized, without first obtaining the approval of the probate court, to employ an attendant to care for and render assistance to the invalid wife of the ward. Matthews v Mires, 135 M 94, 160 NW 187.

The district court has jurisdiction of an action on contract against a person under guardianship as an incompetent. Clark v Buck, 152 M 278, 188 NW 326.

An allowance in a divorce action of a stated amount for the support of a minor son, aged 18, and capable of earning $80.00 per month, is not justified. Cardoff v Cardoff, 152 M 399, 189 NW 124.

The application upon which the order was entered was based on an affidavit referring to a contingent fee contract the attorneys had with the father and stating that the amount to be paid under the contract was the reasonable value of their services. Although there were no counter affidavits, in determining the reasonable value of the attorney's services, the court was at liberty to consider facts disclosed by the record in the trial of the case, as well as the facts stated in the affidavit. Jensen v C. M. & St. P. Ry. 160 M 122, 199 NW 579.

The district court rightfully reduced the amount allowed the guardian for services, and rightfully charged the account of the guardian with the amount of the ward's funds invested by him in second mortgage securities of doubtful value. Frederick v Koetter, 197 M 524, 267 NW 473.

While under our statute it is the duty of the general guardian of an incompetent person to represent his ward in all legal proceedings, nevertheless the power of the district court to exercise authority with regard to the appointment of a

guardian ad litem in an action in that court is not taken away by the statutes authorizing the probate court to appoint general guardians for incompetent persons. Schultz v Oldenburg, 202 M 237, 277 NW 918.

Statutes which determine the responsibility for care and support apply to the insane and feeble-minded as well as to other persons, and if the relatives responsible for such support neglect or refuse to provide the same, the county, town, city, or village of the person's settlement is responsible for such support. A guardian, other than a parent or natural guardian, is under no obligation to support his ward. Co. of Stearns v Town, 203 M 11, 279 NW 707.

Jurisdiction of our probate courts is founded upon constitutional grant. The powers so granted are plenary, and the jurisdiction of that court is to be liberally construed. Its jurisdiction over persons under guardianship is in its origin exclusive. In this case, the person alleged to be incompetent is found to be competent. Guardianship of Strom, 205 M 399, 286 NW 245.

Mandamus does not lie to interfere with the discretion of public officers but will be granted to compel the performance of a public duty which the law clearly imposes upon them. It sets in motion the exercise of discretion but does not attempt to control the particular manner in which a duty is to be performed. There is no universal rule by which the directory provisions in a statute may, under all circumstances, be distinguished from those which are mandatory. State ex rel v Pohl, 214 M 221, 8 NW(2d) 277.

A general guardian of the person of a minor virtually occupies the position of a parent. Campbell's Guardianship, 216 M 113, 11 NW(2d) 786.

Where one tenant in common had misappropriated property belonging to cotenants, he was liable for the property so taken, and settlement by the respective guardians of the two incompetents involved was proper, and the guardian of the tenant liable to the other was not liable to incompetent ward for payment of such legal obligation. Hoverson v Hoverson, 216 M 228, 243, 12 NW(2d) 498, 501.

Statutes giving an insane person three years after removal of his disability in which to bring suit on claim on war risk policy, permits an insane veteran to bring such action by his guardian without waiting until his disability should be removed. In Minnesota, the guardian of an incompetent takes no legal estate in the property of his ward. Johnson v United States, 87 F(2d) 940.

The judge of probate has authority to authorize a general guardian to compromise and settle a claim for injuries sustained by a minor ward as a result of a motor accident, a claim for damages not pending in district court. 1938 OAG 179, March 3, 1938 (346d).

Under the law as of this date, guardianship funds may not be invested in paid-up stock of a building and loan association. OAG March 1, 1939 (346d).

Where the director of social welfare has the care of a minor and the minor receives an injury, a private attorney should be retained to protect the rights of the minor. OAG Jan. 16, 1945 (844g).

Recommended changes by probate judges association. 9 MLR 176.

525.57 TRANSFER OF VENUE.

HISTORY. 1893 c. 116 s. 12; 1925 c. 315 ss. 1, 2; M.S. 1927 ss. 8927-1, 8927-2; 1935 c. 72 s. 136; M. Supp. s. 8992-136.

Upon a guardian tendering his resignation, the probate court may enter an order removing him. An order appointing a time and place for examining an account filed by a guardian is sufficiently served on him by publication. Brown v Huntsman, 32 M 466, 21 NW 555.

A guardian of an infant having died without having rendered an account of his guardianship to the probate court which had appointed him, that court had jurisdiction to require the personal representative of the deceased to appear and render an account in respect to moneys of the ward which had been received by the guardian. Peel v McCarthy, 38 M 451, 38 NW 205.

The statute providing for an appeal from an order of the probate court allowing or refusing to allow, an account of a guardian, was intended to apply to the annual or final accounts rendered and filed in compliance with section 525.57. It was not designed to cover or allow an appeal from an order based upon a finding

that an alleged accounting between a guardian and his ward, made after the latter became of age, had never been had or made. Watson v Watson, 65 M 335, 68 NW 44.

Where a person committed to the guardianship of a state department is feeble-minded from a certain county and is paroled and establishes a residence in another county, any interested person may petition the probate court of the committing county to change the venue to the county where the ward resides for the purpose of making a petition to restore the ward to capacity. 1936 OAG 164, July 18, 1935 (679b).

In cases where the feeble-minded person has been committed to the guardianship of a state official or state department, a change of venue may be obtained as in other cases. 1938 OAG 253, Aug. 11, 1938 (679a).

Guardianships and commitments. 20 MLR 339.

525.58 FILING OF ACCOUNTS.

HISTORY. 1889 c. 46 ss. 165, 166; 1893 c. 116 s. 17; G.S. 1894 ss. 4572, 4573; R.L. 1905 ss. 3846, 3847; 1913 c. 38 s. 1; G.S. 1913 ss. 7459, 7460; G.S. 1923 ss. 8948, 8949; M.S. 1927 ss. 8948, 8949; 1935 c. 72 s. 137; M. Supp. s. 8992-137.

The probate court has jurisdiction to settle the account of a guardian upon the coming of age of the ward. Should the guardian not respond to the court's order, an action to enforce it lies against him and his bondsmen. Jacobs v Fouse, 23 M 51.

Where a ward, 22 years after she obtained her majority, brought an action on her guardian's bond, her laches was a bar to recovery. Brandes v Carpenter, 68 M 388, 71 NW 402.

A guardian cannot release himself and sureties from liability by turning over the assets to the probate judge. Jacobson v Anderson, 72 M 426, 75 NW 607.

Where a ward dies, property in the hands of his guardian in which he had only a life estate does not pass to a representative of his estate but to the remainderman. Lyngen v Tessum, 169 M 304, 211 NW 314.

Recommendations by the probate judges association. 9 MLR 306.

525.581 NOTICE OF HEARING ON ACCOUNT.

HISTORY. 1889 c. 46 ss. 165, 166; 1893 c. 116 s. 17; G.S. 1894 ss. 4572, 4573; R.L. 1905 ss. 3846, 3847; 1913 c. 38 s. 1; G.S. 1913 ss. 7459, 7460; G.S. 1923 ss. 8948, 8949; M.S. 1927 ss. 8948, 8949; 1935 c. 72 s. 138; M. Supp. s. 8992-138.

See annotations under section 525.58.

525.582 ADJUDICATION ON ACCOUNT.

HISTORY. 1889 c. 46 ss. 165 to 167; 1893 c. 116 s. 17; G.S. 1894 ss. 4572 to 4574; R.L. 1905 ss. 3846 to 3848; 1913 c. 38 s. 1; G.S. 1913 ss. 7459 to 7461; G.S. 1923 ss. 8948 to 8950; M.S. 1927 ss. 8948 to 8950; 1935 c. 72 s. 139; M. Supp. s. 8992-139.

See annotations under section 525.58.

The order of the probate court finding the amount of money in the hands of the guardian upon the settlement of his account, and what was lawfully due to persons entitled thereto was binding on the sureties. Jacobson v Anderson, 72 M 426, 75 NW 607; Cross v White, 80 M 413, 83 NW 393.

A probate court has authority to set aside and annul an order allowing a guardian's final account obtained through fraud, and to re-examine the same, as if no such order had been made. Levi v Longini, 82 M 324, 84 NW 1017, 86 NW 333.

An application of the guardian to vacate the judgment of the probate court settling his final account was properly denied, the judgment having distributed the property to those entitled to it. Guardianship of Tessum, 169 M 310, 211 NW 316.

After the guardian's account had been allowed, she removed from the state. On application to vacate the order, the court found that a mistake had been made and ordered its records corrected, but service having been by publication the court

found that it was an action in rem, and the res having disappeared, it had no jurisdiction to require an accounting. Sellars v Sellars, 196 M 143, 264 NW 425.

There was no error in the admission of evidence as to a statement made by the guardian, before his appointment, as to what fees he would charge if appointed. Frederick v Koetler, 197 M 524, 267 NW 473.

The matter of determining a guardian's compensation is primarily with the probate court. The district court has jurisdiction only on appeal. Guardianship of Strom, 205 M 399, 286 NW 245.

An order of the probate court settling and allowing an intermediate account of a guardian is final and conclusive as to matters adjudicated. There is no right to retain a note owing by the guardian to his ward, which was outlawed prior to his appointment as against the guardian's claim for expenses and allowance. Rickel v Peck, 211 M 576, 2 NW(2d) 140.

It is the guardian's duty to pay the lawful debts of the ward and acting in that duty does not create liability on the guardian in the final accounting. In passing on a final account the probate judge applies the principals of equity rather than strictly legal principles. Hoverson v Hoverson, 216 M 228, 12 NW(2d) 497.

575.59 SUCCEEDING GUARDIAN.

HISTORY. 1935 c. 72 s. 140; M. Supp. s. 8992-140.

575.591 SPECIAL GUARDIAN.

HISTORY. 1899 c. 44; 1903 c. 58; R.L. 1905 ss. 3830, 3849, 3850; G.S. 1913 ss. 7437, 7462, 7463; G.S. 1923 ss. 8928, 8951, 8952; M.S. 1927 ss. 8928, 8951, 8952; 1935 c. 72 s. 141; M. Supp. s. 8992-141.

There was no provision for the appointment of a special guardian, applicable to a case of this kind, at the date of the hearing and decision of this case. Such provision was inserted in the code. Laws 1935, Chapter 72, Section 141. In the instant case the daughters of the ward properly instituted these proceedings. Frederick v Koetler, 197 M 524, 267 NW 473.

A person adjudged incompetent, and for whom a guardian has been appointed in a state where an incompetent may be sued, may be adjudicated a bankrupt for acts of bankruptcy committed before the guardianship. In re Holmes, 13 F(2d) 653.

Summary probate proceedings. 19 MLR 836.

Guardianships and commitments. 20 MLR 338.

525.60 TERMINATION.

HISTORY. 1889 c. 46 s. 136; G.S. 1894 s. 4543; R.L. 1905 s. 3824; G.S. 1913 s. 7431; 1917 c. 235 s. 1; G.S. 1923 s. 8922; M.S. 1927 s. 8922; 1935 c. 72 s. 142; M. Supp. s. 8992-142.

A guardian must be appointed for a female under 21 years to collect her monthly allowance as child of deceased world war veteran; and any interest she may have in real estate can be conveyed only through her guardian. 1938 OAG 25, Nov. 4, 1937 (498c).

The guardian for a female child appointed prior to the passage of Laws 1937, Chapter 435, continues until the ward reaches the age of 21 years. OAG Dec. 9, 1937 (346d).

Summary proceedings. 20 MLR 106.

Guardianships and commitments. 20 MLR 341.

525.61 RESTORATION TO CAPACITY.

HISTORY. 1889 c. 46 s. 146; 1893 c. 116 s. 15; G.S. 1894 s. 4553; R.L. 1905 s. 3831; G.S. 1913 s. 7438; G.S. 1923 s. 8929; M.S. 1927 s. 8929; 1935 c. 72 s. 143; 1939 c. 270 s. 8; M. Supp. s. 8992-143.

The probate court may allow to be paid out of the estate of an insane person witness and attorney's fees incurred upon a hearing had upon the petition of such insane person to be restored to capacity. Kelly v Kelly, 72 M 19, 74 NW 899; Guardianship of Kaplan, 187 M 514, 246 NW 5.

An order of the probate court made upon the petition of a person to be restored to competency is, for all purposes a judgment, and as it is not an order removing a guardian, no appeal from such order being provided by statute, it is reviewable only by certiorari. State ex rel v Probate Court, 83 M 58, 85 NW 917.

Laws 1907, Chapter 358, is not retroactive, and under the provisions of General Statutes 1894, Section 7344, when an insane patient in a state hospital recovers his sanity in fact, and in the opinion of the superintendent, he is entitled to be discharged, and should the superintendent refuse, the remedy is by habeas corpus. Northfoss v Welch, 116 M 62, 133 NW 82.

The jurisdiction of the probate court includes the power to hear and determine applications for restoration to capacity by patients in insane hospitals. State ex rel v District Court, 186 M 432, 243 NW 434.

Where the parties stipulate that if there is any liability at all a specific sum may be allowed to the claimant, and the court finds there is liability, the other party cannot complain of an allowance made by the court in the exact sum so stipulated. Guardianship of Kaplan, 187 M 514, 246 NW 5.

Where the right of the attorney appearing for the incompetent is questioned, the district court on appeal may appoint a guardian ad litem for the incompetent, and the right of the attorney claiming to have the right to appear for the incompetent on appeal may be questioned. Guardianship of Foust, 195 M 289, 262 NW 875.

Where a witness is in fact competent at the time he is offered as such, his testimony should not be excluded because he has been adjudged to be insane at a prior time and had not been restored to capacity. State v Kohner, 217 M 574, 15 NW(2d) 105.

The federal supreme court accepts the construction placed upon the Minnesota "psychopathic personality" statute which includes in proceedings similar to lunacy proceedings, persons who by habitual misconduct in sexual matters, evidence a condition dangerous to others. Minnesota v Probate Court, 309 US 276, 60 SC 524.

The probate court of a county where patient has no legal settlement, and from which he has not been committed, has no jurisdiction to discharge a patient. OAG Jan. 4, 1938 (6L).

In order that a patient be legally restored to capacity there must be a proceeding under section 525.61. The mere release by the superintendent does not restore him. OAG July 20, 1939 (248B-8).

In restoration proceedings, notices formerly served on the state board of control must now be served on the director of public institutions. 1940 OAG 29, May 9, 1940 (246b-8).

Proceedings for the release or parole of persons of psychopathic personality are similar to those relating to proceedings in case of the dangerously insane. 1940 OAG 32, March 19, 1940 (248b-11).

Persons of psychopathic personality are treated as to release on bond, parole or restoration to capacity, as are the dangerously insane. 1942 OAG 27, Dec. 26, 1941 (248b-11).

A person adjudged insane is not precluded by an order of the probate court from establishing his sanitay by competent proof in any court in which the question of his sanity is pertinent. OAG Jan. 22, 1945 (183r).

525.611 DISCHARGE OF GUARDIAN OF FEEBLE-MINDED OR EPILEPTIC PERSONS.

HISTORY. 1937 c. 255 s. 1; M. Supp. s. 8992-143a.

525.612 PETITION; HEARING.

HISTORY. 1937 c. 255 s. 2; M. Supp. s. 8992-143b.

SALES, LEASES, AND MORTGAGES OF REALTY

525.62 MORTGAGE AND LEASE.

HISTORY. 1935 c. 72 s. 144; M. Supp. s. 8992-144.

Summary proceedings. 20 MLR 111.

525.621 LEASE FOR THREE YEARS OR LESS.

HISTORY. 1935 c. 72 s. 145; M. Supp. s. 8992-145.

525.63 REASONS FOR SALE, MORTGAGE, LEASE.

HISTORY. 1889 c. 40 ss. 1 to 5; 1889 c. 46 ss. 120, 121, 160, 161, 169, 186, 187, 189; 1893 c. 116 ss. 18, 20, 21, 23; G.S. 1894 ss. 4527, 4528, 4567, 4568, 4576, 4593, 4594, 4596, 4617 to 4621; 1901 c. 89; R.L. 1905 ss. 3743, 3751, 3752; G.S. 1913 ss. 7336, 7344, 7345; 1921 c. 268 s. 1; 1923 c. 295 s. 1; G.S. 1923 ss. 8825, 8834, 8835; M.S. 1927 ss. 8825, 8834, 8835; 1935 c. 72 s. 146; M. Supp. s. 8992-146.

Personal property is the primary fund for the payment of debts, legacies and similar, while real estate is only a secondary fund for that purpose. State ex rel v Probate Court, 25 M 22; Greenwood v Murray, 26 M 259, 2 NW 945; Blakeman v Blakeman, 64 M 315, 67 NW 69.

Allowance to the widow pending administration may be made by the probate court out of the rents and profits of real estate when there is not sufficient personal estate to pay same. Blakeman v Blakeman, 64 M 315, 67 NW 69.

Whatever may be the law since the enactment of Laws 1901, Chapter 89, a probate court prior to that time was authorized to license an executor or administrator to sell the real estate of the decedent for the payment of the expenses of administration, or when it was for the best interests of the estate to do so, although there were no debts against the estate. Deppe v Ford, 89 M 253, 94 NW 679.

When an estate cannot be equitably divided, the entire estate including the one-third of a surviving spouse, may be sold. Kelly v Slack, 93 M 489, 101 NW 797.

The probate court has jurisdiction over the equitable interests of the estate of a deceased homestead entryman who has commuted to a cash purchase and has made final proof and payment, and may rightfully order it sold to pay certain demands. Doran v Kennedy, 122 M 1, 141 NW 851.

Where land is sold in proceedings in the probate court for the payment of debts and expenses, the surplus proceeds go to the heir who would have taken the land. If there be a judgment docketed against the heir after the death of the ancestor and before the sale, such judgment attaches the surplus coming to the heir. Kolars v Brown, 108 M 60, 121 NW 229.

Where the heir gives a mortgage on his interest in the real estate, and such interest is divested by probate sale, the lien of the mortgage is transferred to the proceeds. The sale is necessary to obtain money to pay debts. Kietzer v Nelson, 157 M 463, 196 NW 641.

Under this section, the probate court may authorize a sale of real estate of a deceased person, where the court deems it for the best interest of the estate, although there be no necessity for such sale in order to pay debts or expenses. Morrison v Parry, 161 M 252, 201 NW 422.

A guardian who accepted a note and a third mortgage in payment of property sold for the ward's estate was properly charged with the amount. Masche v Haas, 169 M 294, 211 NW 308.

By statute, the husband or wife of an insane spouse may convey real estate, including the homestead, and conveyance includes the right to mortgage. Hayes v Johnson, 172 M 504, 215 NW 857.

The duties of a guardian in respect of investment of his ward's funds are similar to the duties of a trustee. The law requires more than good faith and honest judgment. His judgment must be enlightened and guided by approved rules applicable to investment of trust funds. Champ v Brown, 197 M 49, 266 NW 94.

Where no spouse or child survives testator, and homestead is devised, or where the testator imposes a legacy as a charge against certain real estate, part of which is the homestead, it is neither necessary nor advisable to sell the property; but better practice is for the court to decree the homestead subject to the title of the legacy, leaving it to a court of equity to enforce the terms of the order. Anderson's Estate, 202 M 513, 279 NW 266, 203 M 565, 282 NW 471.

The widow having renounced the will, she takes her devise as a purchaser, so that where non-homestead property is sold to pay debts and expenses, the value

of the remainder should first be resorted to preferring the devise to the widow. Paulson's Estate, 208 M 231, 293 NW 607.

A state has power to regulate the transmission, administration, and distribution of real and personal property having a situs within its borders regardless of the domicile of the owner, a statute providing for the distribution of a non-resident's property makes ancillary administration independent of domicillary administration. To the extent that distribution of a non-resident's estate is governed by local law, ancillary administration as such is abolished. Hencke's Estate, 212 M 416, 4 NW(2d) 353.

A mortgage placed upon land by an executor is binding on the heirs and devisees. Beliveau v Beliveau, 217 M 241, 15 NW(2d) 360.

Relating to old age pensioner. OAG Oct. 18, 1944, (521p-4).

Summary probate proceedings. 19 MLR 840.

Summary proceedings; homestead. 20 MLR 105.

525.64 PETITION, NOTICE, HEARING.

HISTORY. 1889 c. 46 ss. 168, 169, 194; 1893 c. 116 s. 18; G.S. 1894 ss. 4575, 4576, 4601; 1901 c. 89; R.L. 1905 ss. 3753, 3754, 3762; G.S. 1913 ss. 7348, 7349, 7357; 1921 c. 268 s. 2; 1923 c. 295 s. 2; G.S. 1923 ss. 8836, 8837, 8845; M.S. 1927 ss. 8836, 8837, 8845; 1935 c. 72 s. 147; 1937 c. 435 s. 17; M. Supp. s. 8992-147.

"The debts outstanding against deceased, as far as they can be ascertained" may be stated in gross. State ex rel v Prendergast, 19 M 117 (85).

The term "condition" of the various tracts does not require that it should appear affirmatively therefrom that there are no mortgages thereon, nor any cultivation, nor improvements, nor that it has water power or natural advantages. Spencer v Sheehan, 19 M 338 (292).

An application for a license to sell real estate for the payment of debts in the course of administration must be made within a reasonable time after the allowance of the claims of creditors. State ex rel v Probate Court, 40 M 296, 41 NW 1033.

In an equitable action by a judgment creditor of an estate to subject real property to the satisfaction of his judgment denied on the ground of laches. Berkey v Bank, 54 M 448, 56 NW 53.

The one-third of the real estate which goes to the widow is, for the purpose of paying debts, a part of the estate to be administered, so that a license to sell "the interest of said estate," covers the widow's one-third. Scott v Wells, 55 M 274, 56 NW 828.

Under Wisconsin laws, the creditors acquire a lien on real property of which deceased was seised at the time of his death, subordinate to the rights of the widow, but prior to the interests of the heirs-at-law, which lien continues until barred by the statute of limitations or by laches. In the absence of an allegation to the contrary in the pleading, it is presumed that the Wisconsin statute is the same as our own. Mowry v McQueen, 80 M 385, 83 NW 348.

Where the administrator is licensed to sell the land of his intestate by a probate court having jurisdiction of the settlement of the estate, it is immaterial in an action to set the sale aside, whether there was or was not a proper petition for a license. Smith v Barr, 83 M 354, 86 NW 342.

There is no presumption that the circumstances surrounding the ward and his estate, were the same six years after the granting of a license to sell his real estate, as they were at the time of granting the license, and such license will not support a sale. Guardianship of Kuschel, 161 M 219, 201 NW 319.

Under the statute permitting the husband or wife of an insane spouse, under certain conditions, to convey real estate, the term "conveyance" includes the right to mortgage. Hayes v Lucas, 172 M 506, 215 NW 857.

The probate court granted the license to mortgage property, and the mortgage was made in conformity. The representative filed her final account, which was approved, and the property assigned to beneficiaries subject to the mortgage. A petition to set aside made five years after the conveyance on the ground that the proceedings relating to the order to mortgage were defective, was properly dismissed. Mahoney's Estate, 195 M 431, 263 NW 465.

It is not an abuse of discretion to order the revocation of a tentative trust (a savings bank deposit) in order to use the money subject thereto for the ward's comfort and support and the expenses of the guardianship. Rickel v Peck, 211 M 576, 2 NW(2d) 140.

Administration of Minnesota probate court determining administratrix' liability to estate is conclusive in action against corporation which had assumed liability as surety. In surcharging the account of the administratrix, the probate court properly found a delay of ten years in the sale of real estate unreasonable. Nat'l Surety v Ellison, 88 F(2d) 399.

Summary proceedings; homestead. 20 MLR 108.

Title, points and lines in lakes and streams. 24 MLR 340.

525.641 ORDER FOR SALE, MORTGAGE, LEASE.

HISTORY. 1889 c. 40 ss. 1, 5; 1889 c. 46 ss. 170, 171, 173, 175, 186 to 188; 1893 c. 116 ss. 20 to 22; G.S. 1894 ss. 4577, 4578, 4580, 4582, 4593 to 4595, 4617, 4621; 1901 c. 89; R.L. 1905 ss. 3755, 3756, 3758; G.S. 1913 ss. 7350, 7351, 7353; G.S. 1923 ss. 8838, 8839, 8841; M.S. 1927 ss. 8838, 8839, 8841; 1935 c. 72 s. 148; 1937 c. 435 s. 18; M. Supp. s. 9992-148.

Where a deed of conveyance contains a general description, definite and certain in itself, is followed by a particular description, such particular description will not limit or restrict the grant which is clear and unambiguous in the general description. Middleton v Wharton, 41 M 266, 43 NW 4.

Where the property was described in the administrator's deed as being in section 13, township 101, range 5, when the fact the land was in range 6, the sale was void, and an order made 27 years later attempting to correct the error was ineffective. Hanson v Ingwaldson, 77 M 533, 80 NW 702.

The husband having renounced the will, and it being difficult to divide the real estate equitably, the probate court had jurisdiction to cause the entire estate to be sold to pay specific legacies, if for the best interests of all concerned. Kelly v Slack, 93 M 489, 101 NW 797.

Conveyances under the probate code. 20 MLR 109.

525.642 TERMS OF SALE.

HISTORY. 1889 c. 46 ss. 175, 186 to 188, 191; 1893 c. 116 ss. 20 to 22; G.S. 1894 ss. 4582, 4593 to 4595, 4598; R.L. 1905 s. 3758; G.S. 1913 s. 7353; G.S. 1923 s. 8841; M.S. 1927 s. 8841; 1935 c. 72 s. 149; 1937 c. 425 s. 19; M. Supp. s. 8992-149.

See annotations under section 525.641.

525.65 PUBLIC SALE.

HISTORY. 1889 c. 46 ss. 192, 200, 201; G.S. 1894 ss. 4599, 4607, 4608; R.L. 1905 ss. 3760, 3765; G.S. 1913 ss. 7355, 7360; G.S. 1923 ss. 8843, 8848; M.S. 1927 ss. 8843, 8848; 1935 c. 72 s. 150; M. Supp. s. 8992-150.

Sufficiency of the publication under early statutes. Montour v Purdy, 11 M 384 (278); Dayton v Mintzer, 22 M 393; Wilson v Thompson, 26 M 299, 3 NW 699; Greenwood v Murray, 28 M 120, 9 NW 629; Hartley v Croze, 38 M 325, 37 NW 449; Hugo v Miller, 50 M 105, 52 NW 381.

The statement in the report that the sale was "legally made" embraces the fact of proper adjournments. Dayton v Mintzer, 22 M 393.

The notice must state the particular place in the city where the sale will be held. Hartley v Croze, 38 M 325, 37 NW 449.

A notice of sale, which correctly described by government subdivisions land being sold, and published in the county where the land so described is situated, is not void for uncertainty, although such description fails to name the county and state, or omitted the number of the section in which the government lot was situated. Richardson v Farwell, 49 M 210, 51 NW 915; Hamilton v Winona Bridge, 51 M 97, 52 NW 1079.

Conveyances made under the probate code. 20 MLR 110.

Guardianships. 20 MLR 340.

525.651 PRIVATE SALE.

HISTORY. 1889 c. 46 s. 193; G.S. 1894 s. 4600; R.L. 1905 s. 3761; G.S. 1913 s. 7356; G.S. 1923 s. 8844; M.S. 1927 s. 8844; 1935 c. 72 s. 151; M. Supp. s. 8992-151.

Irregularity in appraisement was immaterial in the instant case, there being no sale but merely a mortgage. Mahoney's Estate, 195 M 431, 263 NW 465.

525.652 ADDITIONAL BOND.

HISTORY. 1889 c. 46 ss. 190, 197, 287; 1893 c. 115 s. 1; 1893 c. 116 s. 26; G.S. 1894 ss. 4597, 4604, 4700; R.L. 1905 ss. 3759, 3812, 3815; G.S. 1913 ss. 7354, 7419, 7422; G.S. 1923 ss. 8842, 8910, 8913; M.S. 1927 ss. 8842, 8910, 8913; 1935 c. 72 s. 152; M. Supp. s. 8992-152.

Sufficiency of publication under the early statutes. Montour v Purdy, 11 M 384 (278); Hugo v Miller, 50 M 105, 52 NW 381.

Whether any bond was filed was a question of fact for the trial court, and in the absence of a finding the supreme court will not consider the evidence on the subject. Jordan v Secombe, 33 M 222, 22 NW 383.

The fact that a guardian, licensed to sell real estate, filed the oath required by statute, is sufficiently proved by such an oath, dated before the sale, found among the regular files of the probate court, although the fact or date of filing was not endorsed upon it by the probate judge. West Duluth v Kurtz, 45 M 380, 47 NW 1134.

A provision in an order of license to sell real estate to pay debts required them to execute a sale bond in a specific sum after the appraisal, and before the sale, the probate court approved a satisfactory bond in a less amount. Such variance was not fatal to the validity of the sale. Hamilton v Winona Bridge, 51 M 97, 52 NW 1079.

A statute which provides that no sale of real estate by a guardian, executor or administrator shall be avoided on account of any defect in the proceedings if it appears that the five essentials of a valid sale therein are complied with, was intended to be a curative statute; and it and the probate records relating to the sale of land must be liberally construed, and land titles depending on such records sustained. Buntin v Root, 66 M 454, 69 NW 330.

Consent of the probate court is a necessary prerequisite to maintain an action against sureties upon a guardian's bond. Eaton v Gale, 96 M 161, 104 NW 833.

The special or sale bond is additional or cumulative security and not a substitute for the general bond; and where the proceeds of the sale of the ward's property are not accounted for, action lies against the sureties on the general bond. Frederickson v Amer. Surety, 135 M 347, 160 NW 859.

This section requires same conditions as the original bond, but for an additional amount. OAG Jan. 27, 1944 (349a-4).

The conditions of a bond for sale of land, and of the original bond, should be equally broad. OAG Feb. 3, 1944 (349a-27).

Conveyances under the probate code. 20 MLR 110.

Guardianships. 20 MLR 340.

525.66 SALE OF CONTRACT INTEREST.

HISTORY. 1889 c. 46 ss. 176 to 180; G.S. 1894 ss. 4583 to 4587; R.L. 1905 ss. 3766, 3767; G.S. 1913 ss. 7361, 7362; G.S. 1923 ss. 8849, 8850; M.S. 1927 ss. 8849, 8850; 1935 c. 72 s. 153; M. Supp. s. 8992-153.

525.661 SALE SUBJECT TO CHARGE.

HISTORY. 1889 c. 46 s. 181; G.S. 1894 s. 4588; R.L. 1905 s. 3768; G.S. 1913 s. 7363; G.S. 1923 s. 8851; M.S. 1927 s. 8851; 1935 c. 72 s. 154; M. Supp. s. 8992-154.

Real estate which the administrator was by the order for sale authorized to sell at private sale, for cash, at not less than the appraised value, subject to all liens, taxes, and encumbrances, was subject to a mortgage, the debt secured by it being a claim proved against the estate. He sold the real estate, at not less than

the appraised value, the price to be paid and applied in part-payment of said claim against the estate; the real estate sold to be discharged from the mortgage by the mortgagee. The sale was regular under Laws 1881, Chapter 43. Culver v Hardenbergh, 37 M 325, 33 NW 792.

Where the homestead is mortgaged, the life estate of the survivor is subject to and must bear its proportion of the encumbrance, if a valid lien, in case of a deficiency of personal assets. In an order of sale of the remainder in fee in the homestead property, it is error to charge the same with the entire encumbrance of a subsisting mortgage for which the entire estate is liable. McGowan v Baldwin, 46 M 477, 49 NW 251.

When the land of an estate is charged with a mortgage the representative may sell subject to the mortgage, but the sale shall not be confirmed until the purchaser gives a bond to the representative approved by the court conditioned to save the estate harmless. Brietman v Thorpe Bros. 182 M 987, 233 NW 830.

525.662 CONFIRMATION.

HISTORY. 1889 c. 46 ss. 202, 203; G.S. 1894 ss. 4609, 4610; R.L. 1905 s. 3773; G.S. 1913 s. 7368; G.S. 1923 s. 8856; M.S. 1927 s. 8856; 1935 c. 72 s. 155; M. Supp. s. 8992-155.

Regularly the confirmation should precede the execution of the deed, but a subsequent confirmation will suffice. Dawson v Helmes, 30 M 107, 14 NW 462.

An order of confirmation adjudicates only that the sale was legally made and fairly conducted and that the sum was not disproportionate to the value of the property, or that a greater sum cannot be obtained. The order is proof of no other facts, or of any proceeding prior thereto. Dawson v Helmes, 30 M 107, 14 NW 462; Culver v Hardenburgh, 37 M 225, 33 NW 792.

Confirmation of a sale not made pursuant to a prior license does not make a marketable title in an action for specific performance. Williams v Schembri, 44 M 250, 46 NW 403.

Where the report of sale and order of confirmation recited a sale for cash, the guardian cannot amend to show it was understood the payments were to be deferred. The guardian's account is charged with the amount of the mortgage accepted by him in lieu of cash. Masche v Haas, 169 M 294, 211 NW 308.

Irregularity in appraisement was immaterial in the instant case, there being no sale but merely a mortgage. In probate proceedings substantial compliance is all that is required. Mahoney's Estate, 195 M 431, 263 NW 465.

525.67 EMINENT DOMAIN PROCEEDINGS.

HISTORY. 1889 c. 46 ss. 183 to 185; 1893 c. 116 s. 19; G.S. 1894 ss. 4590 to 4592; 1899 c. 196; R.L. 1905 ss. 3770 to 3772; G.S. 1913 ss. 7365 to 7367; G.S. 1923 ss. 8853 to 8855; M.S. 1927 ss. 8853 to 8855; 1935 c. 72 s. 156; M. Supp. s. 8992-156.

The approval and confirmation of the probate court, endorsed upon or annexed to a conveyance by a purported guardian to a railway company, pursuant to General Statutes 1878, Chapter 57, Section 36, is no proof that the person who executed the conveyance was such guardian; following Dawson v Helmes, 30 M 107, 14 NW 462. Burrell v C. M. & St. P. Ry. 43 M 363, 45 NW 849.

525.68 PLATTING.

HISTORY. 1889 c. 46 ss. 158, 174; G.S. 1894 ss. 4565, 4581; R.L. 1905 s. 3783; G.S. 1913 s. 7382; G.S. 1923 s. 8872; M.S. 1927 s. 8872; 1935 c. 72 s. 157; M. Supp. s. 8992-157.

525.69 CONVEYANCE OF VENDOR'S TITLE.

HISTORY. 1889 c. 46 ss. 116 to 124; 1893 c. 116 s. 10; G.S. 1894 ss. 4623 to 4631; R.L. 1905 ss. 3777 to 3782; G.S. 1913 ss. 7376 to 7381; 1915 c. 223 s. 1; 1921 c. 453 ss. 1 to 5; G.S. 1923 ss. 8861 to 8871; M.S. 1927 ss. 8861 to 8871; 1935 c. 72 s. 158; 1937 c. 435 s. 20; M. Supp. s. 8992-158.

The probate court has no jurisdiction over actions for specific performance. Mousseau v Mousseau, 40 M 236, 41 NW 977; Svanburg v Fosseen, 75 M 350, 78 NW 4.

Where an heir gives a mortgage upon his interest in the real estate, and such interest is divested by a probate sale, the lien of the mortgage is transferred from the land to the proceeds thereof, and such lien may be enforced through a court of equity. Kitzer v Nelson, 157 M 463, 196 NW 641.

525.691 MORTGAGE EXTENSION.

HISTORY. 1935 c. 72 s. 159; M. Supp. s. 8992-159.

525.692 LIABILITY ON MORTGAGE NOTE.

HISTORY. 1935 c. 72 s. 160; M. Supp. s. 8992-160.

525.693 TITLE FREE FROM TAX LIEN.

HISTORY. 1935 c. 72 s. 161; M. Supp. s. 8992-161.

525.70 VALIDITY OF PROCEEDINGS.

HISTORY. 1889 c. 46 ss. 205, 206; G.S. 1894 ss. 4612, 4613; R.L. 1905 ss. 3774, 3775; G.S. 1913 ss. 7369, 7370; G.S. 1923 ss. 8857, 8858; M.S. 1927 ss. 8857, 8858; 1935 c. 72 s. 162; M. Supp. s. 8992-162.

Under the statute prior to the enactment of Laws 1935, Chapter 72, the sale could not be avoided on account of any irregularity in the proceedings if it appears:

(1) That the representative was licensed to make the sale by the probate court having jurisdiction; Montour v Purdy, 11 M 384 (278); Rumril v Bank, 28 M 202, 9 NW 731; Davis v Hudson, 29 M 27, 11 NW 136; Curran v Kuby, 37 M 330, 33 NW 907; W. Duluth v Kurtz, 45 M 380, 47 NW 1134; Smith v Barr, 83 M 354, 86 NW 342; Deppe v Ford, 89 M 253, 94 NW 679; and

(2) That he gave a bond, which was approved by the probate court. Babcock v Cobb, 11 M 347 (247); Hamilton v Win. Bridge, 51 M 97, 52 NW 1079; Buntin v Root, 66 M 454, 69 NW 330; Brown v Pinkerton, 95 M 153, 103 NW 897, 900; and,

(3) That he took the oath prescribed. W. Duluth v Kurtz, 45 M 380, 47 NW 1134; and,

(4) That he gave notice of the time and place of sale as by law prescribed, if such notice was required by the order of license. Hartley v Croze, 38 M 325, 37 NW 449; Richardson v Farwell, 49 M 210, 51 NW 915; Hamilton v Win. Bridge, 51 M 97, 52 NW 1079; Brown v Pinkerton, 95 M 153, 103 NW 897, 900; Cater v Steeves, 95 M 225, 103 NW 885; and

(5) That the premises were sold in the manner required by the order of license, and the sale confirmed by the court, and that they are held by one who purchased them in good faith. White v Iselin, 26 M 487, 5 NW 359, Brown v Pinkerton, 95 M 153, 103 NW 897, 900.

The fact that the guardian sold to Hoffman and six months later Hoffman conveyed back to the guardian personally, both deeds being recorded the same day, does not make the transaction void, but only voidable by parties interested. White v Iselin, 26 M 487, 5 NW 359.

If the record shows affirmatively compliance with the five above quoted requirements, the sale cannot be attacked collaterally. Kurtz v St. P. & Duluth, 61 M 18, 63 NW 1.

Substantial compliance with the statute relating to sales is sufficient. The probate records relating to sales must be liberally construed and titles depending on such records sustained notwithstanding any mere irregularities or technical omissions therein as to the five essentials. Buntin v Root, 66 M 454, 59 NW 330; Smith v Barr, 83 M 354, 86 NW 342.

If a representative is licensed to sell by a court having jurisdiction, the sale cannot be impeached collaterally for errors in the proceedings which culminated in the license. Deppe v Ford, 89 M 253, 94 NW 679.

Whenever the records of a probate court are silent or wanting in material particulars, as to the five essentials of a valid sale, the sale may be attacked collaterally within the time prescribed by law. Cater v Steeves, 95 M 225, 103 NW 885.

A sale of land under order of the probate court cannot be attacked in a collateral action to quiet title, on the ground that the probate court improperly ordered it sold. Doran v Kennedy, 122 M 7, 141 NW 851; Morrison v Parry, 161 M 252, 201 NW 422.

The probate records import verity and cannot be impeached in a collateral proceeding. Amundson v Hanson, 150 M 290, 185 NW 252.

Where sale proceedings in probate court have culminated in an order confirming a sale, directing a conveyance, such proceedings cannot be attacked by moving to vacate the order of confirmation in the probate court or by appealing from the order, but must be attacked in an appropriate action to which purchasers, subsequent purchasers, and encumbrancers are duly made parties. Greiger v Meinke, 199 M 511, 272 NW 779.

Presumptions on sales of land in probate court. 8 MLR 514.

Recommendations by probate judges. 9 MLR 306.

525.701 CERTAIN DEEDS VALIDATED.

HISTORY. Ex. 1936 c. 58 s. 1; M. Supp. s. 8992-162a.

525.702 LIMITATION OF ACTION.

HISTORY. 1889 c. 46 s. 204; G.S. 1894 s. 4611; R.L. 1905 s. 3776; G.S. 1913 s. 7371; G.S. 1923 s. 8859; M.S. 1927 s. 8859; 1935 c. 72 s. 163; M. Supp. s. 8992-163.

This section is applicable to void and irregular sales. It is sufficient if there is a sale in fact by a representative licensed by the proper court. Spencer v Sheehan, 19 M 338 (292); Smith v Swenson, 37 M 1, 32 NW 784; Brown v Pinkerton, 95 M 153, 103 NW 897, 900.

A constitutional, valid, and binding exercise of legislative power. Streeter v Wilkinson, 24 M 288; Rice v Dickerman, 47 M 527, 50 NW 698.

When Hoffman purchased the real estate at guardian's sale and six months later deeded it back to the guardian, both deeds being recorded the same day, the sale is not void but only voidable by parties interested and cannot be avoided by them as against a bona fide purchaser. White v Iselin, 26 M 487, 5 NW 359.

This statute cannot be used to protect one who is in possession and relies on a deed from the ward against one who affirmatively attacks relying on a deed through guardian's sale. Dawson v Helmes, 30 M 107, 14 NW 462.

Formerly, this section included a clause excepting nonresidents. Jordan v Secombe, 33 M 220, 22 NW 383; Brown v Pinkerton, 95 M 153, 103 NW 897, 900.

The fact that the guardian filed his oath as required is sufficiently proved by the fact that it was found in the files of the probate court, although the fact or date of filing was not noted. W. Duluth v Kurtz, 45 M 380, 47 NW 1134.

The provisions of this section are not confined to actions in ejectment. Brown v Fischer, 77 M 1, 79 NW 494.

The statute is retroactive, and is a statute of repose. Brown v Pinkerton, 95 M 153, 103 NW 897, 900.

This statute is strictly one of limitation and effects the remedy only and is set running by the conveyance. Brown v Pinkerton, 95 M 153, 103 NW 897, 900.

Administrator's sale defined. Hanson v Nygaard, 105 M 30, 117 NW 235.

APPEALS

525.71 APPEALABLE ORDERS.

HISTORY. 1889 c. 46 s. 252; G.S. 1894 s. 4665; 1899 c. 27; 1901 c. 147; R.L. 1905 s. 3872; G.S. 1913 s. 7490; G.S. 1923 s. 8983; M.S. 1927 s. 8983; 1935 c. 72 s. 164; 1939 c. 270 s. 9; M. Supp. s. 8992-164; 1941 c. 411.

An appeal to the district court may be taken from any of the following orders, judgments, and decrees of the probate court.

1. An order admitting, or refusing to admit, a will to probate.

Brown's estate. 32 M 443, 21 NW 474; Graham v Burch, 47 M 171, 49 NW 697; Foster v Gordon, 96 M 142, 104 NW 765; Burmeister v Gust, 117 M 247, 135 NW 980; Showell's Estate, 209 M 539, 297 NW 111; Minnesota Probate Practice, 20 MLR 712.

2. An order appointing, or refusing to appoint, or removing or refusing to remove, a representative other than a special administrator or special guardian.

Mumford v Hall, 25 M 347; Brown v Huntsman, 32 M 466, 21 NW 555; State ex rel v Probate Court, 83 M 58, 85 NW 917; Chadwick v Dunham, 83 M 366, 86 NW 351; Oken v Johnson, 160 M 217, 199 NW 910; Bett's Estate, 185 M 679, 240 NW 904, 243 NW 58.

3. An order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate.

State ex rel v Prendergast, 19 M 117 (85); Dee v Wilson, 91 M 115, 97 NW 647.

4. An order directing, or refusing to direct, a conveynace or lease of real estate.

Amundson v Hanson, 150 M 287, 185 NW 252; Nelson's Estate, 195 M 144, 262 NW 145.

5. An order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counter-claim, in whole or in part, when the amount in controversy exceeds $100.00.

Allowing: Capehart v Logan, 20 M 442 (395); State ex rel v Probate Court, 28 M 381, 10 NW 209; State ex rel v Probate Court, 72 M 434, 75 NW 700; Knutsen v Krook, 111 M 352, 127 NW 11.

Disallowing: State ex rel v Probate Court, 51 M 241, 53 NW 463; Smith v Pence, 62 M 321, 64 NW 822; State ex rel v Probate Court, 76 M 132, 78 NW 1039; O'Brien v Murphy, 136 M 327, 162 NW 356; State ex rel v Probate Court, 142 M 283, 171 NW 928; Dean's Estate, 180 M 195, 230 NW 584.

6. An order setting apart, or refusing to set apart, property; or making, or refusing to make, an allowance for the spouse or children.

Mintzer v St. P. Trust, 45 M 323, 47 NW 973; Tracy v Tracy, 79 M 267, 82 NW 635.

7. An order determining, or refusing to determine, venue, and order transferring or refusing to transfer venue.

8. An order directing, or refusing to direct, the payment or bequest or distributive share when the amount in controversy exceeds $100.00.

Mintzer v St. P. Trust, 45 M 323, 47 NW 973; State ex rel v Willrich, 72 M 165, 75 NW 123; Patterson v Hall, 155 M 46, 192 NW 342.

9. An order allowing, or refusing to allow, an account of a representative or any part thereof when the amount in controversy exceeds $100.00.

Watson v Watson, 65 M 335, 68 NW 44; St. P. Trust v Kittson, 84 M 493, 87 NW 1012; Bradley v Bradley, 97 M 130, 106 NW 338; St. P. Gas Light v Kenny, 97 M 150, 106 NW 344; Melstrom v Terry, 170 M 338, 212 NW 902; Guardianship of Hoffman, 197 M 524, 267 NW 473; Guardianship of Overpeck, 211 M 584, 2 NW(2d) 140.

10. An order adjudging a person in contempt.

11. An order vacating a previous appealable order, judgment or decree; an order refusing to vacate a previous appealable order, judgment or decree alleged to have been procured by fraud or misrepresentation or through surprise or excusable inadvertence or neglect.

Mousseau's Will, 30 M 202, 14 NW 887; Grogg's Estate, 32 M 142, 19 NW 651; Guardianship of House, 32 M 155, 19 NW 973; State ex rel v Probate Court, 33 M 94, 22 NW 10; Larson v How, 71 M 250, 73 NW 966; Levy v Longini, 82 M 324, 84 NW 1017, 86 NW 333; Tomlinson v Phelps, 93 M 350, 101 NW 496; Savela v Erickson, 138 M 99, 163 NW 1029; Henry's Estate, 207 M 613, 292 NW 249; Stampka's Estate,

168 M 283, 210 NW 85; Eklund's Estate, 174 M 34, 218 NW 235; Kaffel's Estate, 175 M 527, 222 NW 68; Holum's Estate, 179 M 318, 229 NW 133; Butler's Estate, 183 M 595, 237 NW 592; Simon's Estate, 187 M 406, 246 NW 31; Henry's Estate, 207 M 613, 292 NW 249.

12. A judgment or decree of partial or final distribution.

State ex rel v Willrich, 72 M 165, 75 NW 123; Penstock v Wentworth (superseded or overruled by Laws 1899, Chapter 27), 75 M 2, 77 NW 420; Minnesota probate practice, 20 MLR 712.

13. An interlocutory decree entered pursuant to section 525.481.

Patterson v Hall, 155 M 46, 192 NW 342; Melstrom v Terry, 170 M 338, 212 NW 902; Probate practice, 20 MLR 712.

14. An order granting or denying restoration to capacity.

State ex rel v Probate Court. (Modified or overruled by Laws 1901, Chapter 147); 83 M 58, 85 NW 917; Vinstad v State Board, 169 M 264, 211 NW 12; Commitments, 20 MLR 346.

15. An order made pursuant to section 525.49 directing, or refusing to direct, the payment of representatives' fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed as an aggrieved party and entitled to take such appeal.

Carson v Carson, 181 M 432, 232 NW 788; Probate code amendments, 23 MLR 997.

16. An order determining, or refusing to determine, inheritance taxes upon a hearing on a prayer for reassessment and redetermination; but nothing herein contained shall abridge the right of direct review by the supreme court.

17. An order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative.

Bank v Castner, 196 M 354, 265 NW 21.

18. Generally.

The jurisdiction of the probate court over the estates of deceased persons and persons under guardianship is entire, plenary, and, where the jurisdiction has attached, the court has full equity powers necessary to the settlement and distribution of the estate. It may apply the law to the facts whether the law be statutory, common law, or the principles of equity. State ex rel v Probate Court, 133 M 124, 155 NW 906, 158 NW 234.

The order dismissing Lipman's appeal made by the district court on motion of proponents, unless within a stated time he procured the dismissal of the Iowa injunction so that witnesses whose testimony was sought would be available, was appropriate relief; and such dismissal was not a denial of due process to the appellant. Lipman v Bechhoeffer, 141 M 131, 169 NW 536.

After the period allowed for an appeal from an order or judgment of the probate court, there can be no review on the merits by certiorari. First Trust v U. S. F. & G. 161 M 88, 200 NW 848.

Under Laws 1929, Chapter 271, a decision of a referee of a probate court of Hennepin county is the decision of the court and appealable as such. Parcker's Estate, 183 M 191, 236 NW 206.

There is no right of appeal except as allowed by statute and the statute must be strictly complied with. (Modified by Laws 1937, Chapter 435). Van Sloun v DuToit, 199 M 434, 272 NW 261; Peterson's Estate, 202 M 31, 277 NW 529.

The probate court has no jurisdiction to grant specific performance of a contract by which Umbreit claims she was to be compensated for services to decedent by the devise of his property to her. Roberts' Estate, 202 M 217, 277 NW 549.

Appellant from an order of the district court dismissing an appeal from the probate court cannot successfully assign error for failure to exercise the discretion given by Laws 1937, Chapter 435, Section 21, to allow amendment, where the record shows no effort to invoke such discretion. Zebolt's Estate, 203 M 193, 280 NW 653.

525.711 VENUE.

HISTORY. 1935 c. 72 s. 165; M. Supp. s. 8992-165.

525.712 REQUISITES.

HISTORY. 1889 c. 46 ss. 253 to 255; G.S. 1894 ss. 4666 to 4668; 1903 c. 27; R.L. 1905 ss. 3873, 3874; G.S. 1913 ss. 7491, 7492; G.S. 1923 ss. 8984, 8985; M.S. 1927 ss. 8984, 8985; 1935 c. 72 s. 166; 1937 c. 435 s. 21; M. Supp. s. 8992-166.

1. Who may appeal from allowance or disallowance of claims
2. Who may appeal in other cases
3. How and when is an appeal taken

1. Who may appeal from allowance or disallowance of claims

One with whom or in whose name a contract is made for the benefit of another may prosecute an action thereon in his own name. Lake v Albert, 37 M 453, 35 NW 177.

Where, upon refusal of executor or representative to appeal, a creditor, devisee, or heir appeals from the allowance of a claim against the estate, the notice of appeal should be to the effect that such creditor, devisee or heir appeals. Schultz v Brown, 47 M 255, 49 NW 982.

Where the record in the district discloses no objection in the district court on the ground that he was not a creditor, after hearing and finding that right was waived. McAlpine v Kratka, 92 M 411, 100 NW 233.

The appellant has no interest in the estate, and therefore no right to contest the allowance of claims against it. Semper v Coates, 93 M 80, 100 NW 663.

A pretermitted grandchild who by contrast with the children of testator acquired an interest in the residue of his estate, is a party aggrieved by an order of the probate court allowing a claim against the estate, and entitled to appeal to the district court. Burton's Estate, 203 M 275, 281 NW 1.

Consent by the administratrix of an estate to the allowance of a claim filed by her against another estate in a definite amount does not prevent the heir in the former estate, who contends that the claim should have been allowed in a larger sum, from appealing to the district court from the order of allowance. Owens v Owens, 207 M 489, 292 NW 89.

Satisfaction of debt by legacy to creditor where parties "agreed" payment was to be made by testamentary disposition. 25 MLR 122.

2. Who may appeal in other cases

An aggrieved party is one who, as heir, devisee, legatee or creditor, has what may be called a legal interest in the assets of the estate and their due administration. A debtor of the estate is not such a party. Hardy's Estate, 35 M 193, 28 NW 219.

Relatives of a child under 14 have no right of appeal from the appointment of a guardian because of lack of notice. State ex rel v Bazille, 81 M 370, 84 NW 120.

The executrix of an estate has no right of appeal from the appointment of a guardian for a non-resident incompetent heir to the estate. Edgerly v Alexander, 82 M 96, 84 NW 653.

An heir may appeal although he did not appear or take part in the proceedings. Upon the death of such heir, a special administrator may effect the appeal. Sheeran v Sheeran, 96 M 484, 105 NW 677.

An executor, propounding will by which he is nominated, may appeal from an order denying probate. Burmeister v Gust, 117 M 247, 135 NW 980.

Whether a surety on an administrator's bond has the right to appeal from an order of the probate court settling the account of the administrator, is not determined. Pierce v Maetzold, 126 M 445, 148 NW 302.

A party entitled to appear in probate court and object to the probate of the will, but does not appear, may appeal to the district court and there contest the will. Schleiderer v Gergen, 129 M 249, 152 NW 541.

The right of appeal by creditors, devisees, legatees or heirs, is subordinated to the general right of appeal given the representative of the estate. It is only where the representative declines to appeal that the right extends to the creditors and heirs. O'Brien v Murphy, 136 M 327, 162 NW 356; Osbon's Estate, 179 M 133, 228 NW 551.

An appeal to the district court by a claimant whose claim against the estate was disallowed by the probate court, is not effectual for any purpose unless written notice is served upon the adverse party or his agent who appeared in probate court. Service on the administrator is not sufficient. Dean's Estate, 180 M 195, 230 NW 584.

A person financially interested in the allowance of a will in the probate court is a person aggrieved by an order of that court allowing the will, and may take an appeal although he was present in probate court at the hearing, but filed no written objections and entered no appearance. Langer's Estate, 213 M 482, 7 NW(2d) 359.

An interested party who was induced through fraud to refrain from contesting a decedent's will has a right as an aggrieved person to appeal from the probate court to the district court from an order allowing the will and admitting it to probate. McGonigle v House, 214 M 14, 7 NW(2d) 679.

The federal court has no jurisdiction to adjust the account of an administrator, or interfere with order of probate court requiring administrator and surety to account. McDonald's Estate, 42 F(2d) 266.

3. How and when is an appeal taken

Notice may be served upon the attorney for the proponent of the will. Brown's Estate, 32 M 443, 21 NW 474.

A defect in the bond is not jurisdictional. Riley v Mitchell, 38 M 9, 35 NW 472.

"Bond" includes recognizances as well as common bonds. In an appeal from the probate to the district court an undertaking may be filed. Brown's estate, 35 M 307, 29 NW 131.

An amendment of a faulty notice is here held to be unauthorized. McCloskey v Plantz, 76 M 323, 79 NW 176.

The notice must specify the order, judgment or decree appealed from. Foster v Gordon, 96 M 142, 104 NW 765; McKelson's Estate, 178 M 601, 228 NW 174.

Notices should be construed liberally. In the instant case, the notice is construed as appealing from the whole of the order. First Unitarian v Houliston, 96 M 342, 105 NW 66.

Notice of appeal from decree assigning residue to devisee properly served on executor alone. Rong v Haller, 106 M 454, 119 NW 405.

The 30 days within which an appeal may be taken from an order, judgment, or decree of a probate court, commences to run from the time of notice of the order or judgment appealed from. When no notice is given or shown to have come to one entitled to appeal, an appeal may be taken at any time within six months from the entry of the order or decree. Knutsen v Krook, 111 M 352, 127 NW 11.

A probate court has no power to amend its decree after the time to appeal has expired, unless for fraud, mistake or surprise. Leighton v Bruce, 132 M 176, 156 NW 285.

The notice mentioned in section 525.712 is the one limiting the time to appeal, and this section should be so construed that the party aggrieved by the order, judgment, or decree, has six months from the date of the filing of the order within which to appeal, unless the adverse party has served him with written notice of the decision of the probate court, in which case the right of appeal expires 30 days after the service of such notice. Timm v Branch, 133 M 20, 157 NW 709.

Appeal from an order or judgment of the probate court must be taken within 30 days from the notice thereof, and within six months from the entry thereof. Herrman's Estate, 159 M 274, 198 NW 1001.

After the period allowed for an appeal from an order or judgment of the probate court, there can be no review on the merits by certiorari. First Trust v U. S. F. & G. 161 M 88, 200 NW 848.

If the successful parties desire to limit the time of appeal, they must see that all having the right to appeal be notified by and in behalf of all their opponents. Jefferson's Estate, 107 M 448, 209 NW 267.

Jurisdiction was not conferred on the district court by consent. An appeal from probate court to district court to be effective must comply with the provisions of section 525.712. Samels v Samels, 174 M 133, 218 NW 546.

An order of the probate court vacating the assent of the widow to the will of the testator, is not appealable; nor are parts of an order which do not finally determine or affect interests or rights in the estate. Bett's Estate, 185 M 629, 240 NW 904, 243 NW 58.

On appeal to the district court from an order of the probate court disallowing a claim filed against the estate, notice of appeal need be served only upon the parties who appeared and contested the allowance of such claim in the probate court. Nelson's Estate, 195 M 144, 262 NW 145.

The district court has the discretionary power to determine whether an appellant should be relieved of a default for failure to file within the time designated by section 525.72. Slingerland Estate, 196 M 354, 265 NW 21.

The administrator of an estate may appeal in his representative capacity and without an appeal bond from an order surcharging and settling his final account. Peterson's Estate, 197 M 344, 267 NW 213.

A final order is one that ends the proceeding so far as the court making it is concerned; an order of the district court dismissing an appeal from the probate court is a final order in a special proceeding and appealable; and an order denying a motion to vacate a prior appealable order is not appealable. Guardianship of Jaus, 198 M 243, 269 NW 457.

Motion to dismiss appeal because of failure to comply with section 525.72 did not constitute a general appearance, and appellant may still object to the appeal because of failure to serve a bond as required by section 525.712. Van Sloun's Estate, 199 M 434, 272 NW 261.

Where the appeal bond was filed but not served, the court may relieve against the default and grant an amendment. Dahn's Estate, 203 M 19, 279 NW 715; Zebott's Estate, 203 M 193, 280 NW 652.

The representative is required to file and serve a bond where the appeal is not for the interest of the estate, but to prevent payment of a claim due from the representative to the estate. Kees' Estate, 205 M 349, 285 NW 836.

From a finding that a patient is a "psychopathic personality" he may appeal to the district court upon compliance with sections 525.712, 525.713, 525.72 and 525.73. State ex rel v Probate Court, 205 M 547, 287 NW 297.

A bond on appeal from probate to district court which does not fulfil the requirements of section 525.712 because it is not conditioned to prosecute the appeal with due diligence to a final determination, is ineffective to perfect an appeal where no move is made to supply a proper bond. Rustad v Sword, 208 M 347, 294 NW 221.

The state as appellant in an inheritance case need not pay the probate court the sum of $10.00 to be "transmitted to the clerk of the supreme court, as provided by law in civil actions." 1936 OAG 155, Aug. 3, 1936 (346c).

Procedural rules. 20 MLR 5.

Probate practice. 20 MLR 712.

525.713 RETURN.

HISTORY. 1889 c. 46 s. 256; G.S. 1894 s. 4669; R. L. 1905 s. 3875; G.S. 1913 s. 7493; G.S. 1923 s. 8986; M.S. 1927 s. 8986; 1935 c 72 s. 167; 1937 c. 435 s. 22; M. Supp. s. 8992-167.

District court acquires jurisdiction of the subject matter when the return is filed. Subsequent proceedings are not jurisdictional. Hintermeister v Brady, 70 M 437, 73 NW 145.

The statute imposed no duty on appellant to cause return of probate court to be filed within a certain time. Speiss' Estate, 170 M 221, 212 NW 167.

The district court has discretionary power to determine whether an appellant should be relieved of a default for failure to file within the time designated in section 525.72. Slingerland's Estate, 196 M 354, 265 NW 21.

The lower court properly dismissed an appeal from an order of the probate court in which there was no service of the bond. Van Sloun's Estate, 199 M 434, 272 NW 261.

A person found to be a "psychopathic personality" may appeal to the district court upon compliance with the provisions of sections 525.712, 525.713, 525.72, 525.73. State ex rel v Probate Court, 205 M 547, 287 NW 297.

525.714 SUSPENSION BY APPEAL.

HISTORY. 1889 c. 46 s. 257; G.S. 1894 s. 4670; 1903 c. 54; R.L. 1905 s. 3876; G.S. 1913 s. 7494; G.S. 1923 s. 8987; M.S. 1927 s. 8987; 1935 c. 72 s. 168; M. Supp. s. 8992-168.

An appeal pending from an order admitting a will to probate does not affect an order appointing an executor, unless an appeal is also taken from such order. Foster v Gordon, 96 M 142, 104 NW 765.

Action in ejectment. The grantor in the deed is now deceased. She left a will giving to the grantee the land covered by the deed. Probate of the will was contested by defendant who is a son of testator. The will was disallowed by the probate court and an appeal is now pending. These facts do not preclude defendant from maintaining his defense based on possession. Crane v Veleg, 149 M 84, 182 NW 915.

While an appeal is pending on a commitment, the child may remain in the custody of the director of public institutions. OAG Dec. 28, 1936 (840a-6).

525.72 TRIAL.

HISTORY. 1889 c. 46 ss. 258 to 261; G.S. 1894 ss. 4671 to 4674; R.L. 1905 ss. 3877, 3878; G.S. 1913 ss. 7495, 7496; G.S. 1923 ss. 8988, 8989; M.S. 1927 ss. 8988, 8989; 1935 c. 72 s. 169; M. Supp. s. 8992-169.

A verdict upon an issue in probate proceedings, on appeal to the district court, is as binding as in any other action, and is subject to the same rules as to setting it aside for insufficiency of evidence. Marvin v Dutber, 26 M 407, 4 NW 685; Finney's Will, 27 M 280, 6 NW 791, 7 NW 144.

Notice of appeal served and filed is effectual as an "application" for appeal. the trial of such an appeal in the district court without pleadings is an irregularity merely, and not jurisdictional. Lake v Albert, 37 M 453, 35 NW 177.

In an appeal to the district court from an order of the probate court admitting or refusing to admit the will to probate, a party has not a constitutional right to trial by jury of the issue of the validity of the will. Any right to a jury trial must be statutory. Schmidt v Schmidt, 47 M 451, 50 NW 598; Lewis v Murray, 131 M 439, 155 NW 392.

Answering and proceeding to trial without objection held to give the district court jurisdiction. Bank v Strait, 65 M 167, 67 NW 987.

Motions and amendments are allowable so as to formulate trial issues. Stuart v Stuart, 70 M 46, 72 NW 819; Chadwick v Dunham, 83 M 366, 86 NW 351.

The court may relieve the appellant from his default in not complying with the statute in not placing the case on the calender. Hintermeister v Brady, 70 M 437, 73 NW 145.

The trial in district court is de novo. Strauch v Uhler, 95 M 304, 104 NW 535.

Review on appeal from an order vacating an administrator's account ordinarily presents for review only the propriety of the order appealed from; but where, on such appeal, the parties voluntarily litigate the merits of the administrator's account, and the court hears, adjusts and determines the same, the parties are bound by the decision to the same extent as though properly before the court. Bradley v Bradley, 97 M 130, 106 NW 338.

Where the appeal involves issues of fact, trial court should make findings of fact and conclusions of law. Swick v Sheridan, 107 M 130, 119 NW 791.

The function of the trial court in determining whether a verdict is not justified by the evidence differs from its function in determining whether it is contrary to law, in that, in the former case, there is the element of discretion, while in the latter case there is not. Buck v Buck, 122 M 463, 142 NW 729.

Where the issue is as to the testamentary capacity or undue influence, the submission of the matter of fact to the jury is in the discretion of the trial court; and after issues are framed and after their submission to the jury and before the return of findings the court may, in exercise of sound discretion, withdraw them and itself make findings. Lewis v Murray, 131 M 439, 155 NW 392.

The complaint was a departure from the claim as filed, and was properly stricken. Mason v Savage, 141 M 346, 170 NW 585.

On appeal to the district court from an order of the probate court allowing a claim against decedent's estate, the proceedings are virtually the same as though an action had been brought to enforce the claim in the lifetime of the decedent. Horan v Keane, 164 M 57, 204 NW 546.

Respondent advanced money to his brother to enable him to purchase certain property. It was agreed that in lieu of interest, respondent should receive a share of the net annual earnings of the property. The fact that his share proved to be more than interest at legal rates did not taint the transaction with usury. Andrews v Andrews, 170 M 175, 212 NW 408, 213 NW 899.

Delay in framing issues upon appeal from probate court a mere irregularity. No error in refusing to require claimant to elect between cause of action on express contract and quantum meruit. Doepke v Joslyn, 170 M 223, 212 NW 167.

On appeal from an order admitting a will to probate, the question is tried de novo, and the burden in the district court is on the proponent to prove that the testator possessed testamentary capacity. It is the duty of the district court to make findings of fact, but failure to do so may be deemed waived where the decision necessarily decided the disputed fact. Estate of Waggner, 172 M 217, 214 NW 892.

A decree allowing a prior will was on the face of the record void for there were on file instruments showing the existence of a later will of deceased filed in the probate court of another county, which court had taken possession of the estate. In that situation the probate court could not enter a decree until it had determined which of the two wills was entitled to allowance. Davidson's Estate, 179 M 538, 229 NW 875.

On appeal, a party has no constitutional right to trial by jury on the issue of the validity of the will. Granting a jury trial on one or more issues is in the absolute discretion of the trial court. Even if a jury is impaneled, the court may discharge it, and decide the issues itself. Engart's Estate, 180 M 256, 230 NW 781.

The provision in this section related to dismissal of the appeal if not filed in the district court within the prescribed time, is not mandatory and its exercise is in the sound discretion of the court. The burden of proof is on the contestant to establish undue influence and the burden does not shift as the evidence proceeds. Mollan's Estate, 181 M 217, 232 NW 1.

Trial in the district court on appeal is de novo, and there being no pleadings the court must determine the right of amendment upon the petition filed in probate court and the proof in support thereof. Turner's Estate, 181 M 528, 233 NW 305.

The petition and affidavit presented by appellant to the probate court, asking for the vacation of an order admitting a will to probate, liberally construed, prima facie showed sufficient grounds for her objections to the will, if she was otherwise entitled to be heard. The district court did not abuse its discretion in denying the application on the ground of laches and long acquiescence in the order after having actual notice. Butler's Estate, 183 M 591, 237 NW 592.

An order of the district court dismissing an appeal from the probate court is not appealable. Ploetz Estate, 186 M 395, 243 NW 383.

In an application for restoration to competency the court may appoint a guardian ad litem where the authority of the attorney appearing for the incompetent is questioned. Guardianship of Faust, 195 M 289, 262 NW 875.

Where the guardian had moved out of the state, and service was by publication, no jurisdiction was obtained, the proceeding being one in rem, and the res having disappeared. Sellars v Sellars, 196 M 143, 264 NW 425.

The district court has discretionary power to determine whether an appellant should be relieved of a default for failure to file within the time designated by this section. Slingerland's Estate, 196 M 354, 265 NW 21.

Where a husband held his wife's property in trust for her, and she as administratrix of his estate listed it as property of the estate, the facts do not estop her from claiming her property. Reifsteck's Estate, 197 M 315, 267 NW 259.

Respondent in seeking dismissal of an appeal for a nonjurisdictional reason did not make a general appearance such as would prevent his objecting to the appeal on the ground that no bond had been filed or served as required by statute. Van Sloun's Estate, 199 M 437, 272 NW 261.

No concise and clear statement of propositions of law and fact having been filed, the district court properly dismissed an appeal from an order of the probate court removing a co-guardian of an incompetent. Guardian of Pollock, 201 M 238, 277 NW 11.

Jurisdiction of district court is limited to appeals seasonably taken in accordance with statutory directions. It is appellate, not original; hence parties cannot by consent give jurisdiction to appellate court to try a matter not submitted to and determined by the probate court. Peterson's Estate, 202 M 31, 277 NW 529.

The district court does not exercise its general equity powers on appeals from the probate court, but confines itself to review of probate proceedings only. New questions should be determined only after examination and presentation by opposing counsel. Anderson's Estate, 202 M 518, 279 NW 266; Halweg's Estate, 207 M 263, 290 NW 577.

In the instant case, the court granted an amendment, relieving the appellant from his default in filing, but not serving the bond and statement required by the statute. Dahm's Estate, 203 M 21, 279 NW 715.

Jurisdiction of our probate courts is founded upon constitutional grant. Powers so granted are plenary, and the jurisdiction is to be liberally construed. Its jurisdiction over persons under guardianship is in its origin exclusive. In this case the probate court found the person competent, and the district court found him incompetent. The proper practice is that the district court remand the matter to the probate court which has jurisdiction to appoint a guardian. Abrahamson v Strom, 205 M 399, 286 NW 245.

While due process of law requires notice and opportunity to be heard, the constitutional right to a jury trial does not apply to proceedings for the care and commitment of sexually irresponsible persons dangerous to others. State ex rel v Pearson, 205 M 545, 287 NW 297.

Inasmuch as an appeal from the probate court, presenting an issue as to the compensation of an administrator, requires a trial de novo, there can be no affirmance where there is absence of evidence upon which to base a finding. Paulson's Estate, 208 M 231, 293 NW 607.

Where the evidence as to the existence of a psychopathic personality is in conflict, the question is one of fact to be determined by the trial court upon all the evidence. In re Dittrich, 215 M 234, 9 NW(2d) 510.

On appeal, the district court was vested with the power, and charged with the duty, of determining the issues arising in a guardian's final account. Hoverson v Hoverson, 216 M 238, 12 NW(2d) 497.

Matters of purely probate character are not within jurisdiction of federal courts. Federal court has no jurisdiction to adjust account of administrator, or to interfere with order of probate court requiring administrator and surety to account. McDonald's Estate, 42 F(2d) 266.

Jury trial in will cases. 22 MLR 513.

525.73 AFFIRMANCE; REVERSAL.

HISTORY. 1889 c. 46 ss. 262, 263; G.S. 1894 ss. 4675, 4676; 1901 c. 135; R.L. 1905 s. 3879; G.S. 1913 s. 7497; G.S. 1923 s. 8990; M.S. 1927 s. 8990; 1935 c. 72 s. 170; M. Supp. s. 8992-170.

Judgment of affirmance. Tracy v Tracy, 79 M 267, 82 NW 635.

Remand to probate court. Strauch v Uhler, 95 M 304, 104 NW 535.

Although on appeal there is a trial de novo, the court exercises appellate jurisdiction only; and on an appeal from an order allowing final account determine the administrator's right to compensation for service and disbursement subsequent to the filing of the account. Turner v Fryberger, 99 M 236, 107 NW 1133, 109 NW 229.

Where the appellant does not appear and prosecute his appeal, the district court is not required to hear evidence and determine the case on its merits. An application to be relieved of default in the prosecution of an appeal is addressed to the sound discretion of the court. Blandin v Brennin, 106 M 253, 119 NW 57.

Where an appeal from the probate court 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, 107 M 130, 119 NW 791.

The probate court has no jurisdiction to determine a controversy between a devisee and one who claims to have succeeded to his rights in the estate, and an appeal from the probate court to the district court does not confer jurisdiction upon the latter court to determine such controversy. House v O'Leary, 136 M 132, 161 NW 392.

New facts developing after the hearing in probate court, if pertinent to the issue, may be received in evidence. Benz v Rogers, 141 M 95, 169 NW 477.

An order of the district court, sustaining an order of the probate court from which an appeal has been taken, is not appealable. The appeal must be taken from the judgment entered pursuant to such order. Ebeling v Boyerl, 162 M 379, 202 NW 817.

On appeal of will case from probate court, the district court has duty to try the case de novo, and, where evidence was properly excluded, decree of probate court should, under this section have been affirmed instead of dismissing appeal. Preston v Batcheller, 162 M 433, 203 NW 225.

Improper directions to the probate court in the conclusions of law may be remedied by application to the court below before entry of judgment. Anderson v Anderson, 197 M 253, 266 NW 841.

From a finding that a "patient" is a "psychopathic personality," he may appeal to the district court upon compliance with provisions of sections 525.712, 525.713, 525.72, 525.73. State ex rel v Probate Court, 205 M 547, 287 NW 297.

Commitments. 20 MLR 346.

525.731 JUDGMENT; EXECUTION.

HISTORY. 1889 c. 46 ss. 264, 265; G.S. 1894 ss. 4677, 4678; R.L. 1905 ss. 3880, 3881; G.S. 1913 ss. 7498, 7499; G.S. 1923 ss. 8991, 8992; M.S. 1927 ss. 8991, 8992; 1935 c. 72 s. 171; M. Supp. s. 8992-171.

Using different language, the district court did nothing more than to sustain the order appealed from on its merits; and, under the provisions of section 525.73, judgment is to be entered affirming the decision of the probate court, with costs. Tracy v Tracy, 79 M 272, 82 NW 35.

The court erred in ordering judgment against the administration for respondent's costs and disbursements. Gilman v Maxwell, 79 M 380, 82 NW 669.

Upon affirmance by the district court, respondent is entitled to costs. Casey v Brabec, 111 M 43, 126 NW 401.

Where the probate court held Strom incompetent and the district court reversed the decision, the district court should have remanded the case to the probate court so that the probate court could appoint the guardian. Guardianship of Strom, 205 M 399, 286 NW 245.

525.74 DIRECT APPEAL TO SUPREME COURT.

HISTORY. 1935 c. 72 s. 172; M. Supp. s. 8992-172.

Where the state appeals direct to the supreme court from an order determining inheritance taxes, the $10.00 need not be deposited with the clerk of supreme court. 1936 OAG 155, Aug. 3, 1936 (346c).

The state must pay, the same as an individual, the fees provided for in section 525.031. 1936 OAG 156, Aug. 12, 1936 (346c).

Procedural rules. 20 MLR 5.

COMMITMENTS

525.749 DEFINITIONS.

HISTORY. 1945 c. 490 s. 1.

525.75 VOLUNTARY HOSPITALIZATION.

HISTORY. 1917 c. 344 ss. 2, 3; G.S. 1923 ss. 8954, 8955; M.S. 1927 ss. 8954, 8955; 1935 c. 72 s. 173; M. Supp. s. 8992-173; 1943 c. 612 s. 6.

A person, claiming to be incompetent, may petition the probate court for the appointment of a guardian for himself. Notice is unnecessary. He may voluntarily apply for admission to the state hospital for the insane. Scott v Whitely, 168 M 74, 209 NW 640.

Municipal court has no power to commit or release inebriate from state hospital at Willmar. 1938 OAG 282, July 7, 1937 (306b-12).

A person may voluntarily apply, and upon conditions be admitted to a hospital and kept there until discharged, or if a non-resident, fails to pay the required amount. OAG Sept. 1, 1944 (678).

525.751 INSTITUTION OF PROCEEDINGS.

HISTORY. 1917 c. 344 ss. 4, 5, 11; G.S. 1923 ss. 8956, 8957, 8963; M.S. 1927 ss. 8956, 8957, 8963; 1935 c. 72 s. 174; 1939 c. 270 s. 10; M. Supp. s. 8992-174; 1943 c. 612 s. 7.

The probate court, though limited in the scope of its jurisdiction, is within the sphere of action committed to it a superior court whose judgments carry the usual presumptions and are not subject to collateral attack. The jurisdiction of the probate court in committing to an insane hospital is not negatived by the fact that the person who presented the petition was not a relative or guardian, and there was no showing that he lived in the county. State ex rel v Freeman, 168 M 374, 210 NW 14.

It is no part of the county attorney's duty to prepare the petition for commitment of an insane person. OAG Dec. 29, 1944 (248b-3).

Commitments. 20 MLR 344.

Probate code amendments. 23 MLR 998.

525.752 EXAMINATION.

HISTORY. 1917 c. 294 s. 3; 1917 c. 344 ss. 6, 7, 18; G.S. 1923 ss. 8958, 8959, 8970, 8975; M.S. 1927 ss. 8958, 8959, 8970, 8975; 1935 c. 72 s. 175; M. Supp. s. 8992-175; 1943 c. 612 s. 8.

"Due process of law" requires notice and an opportunity to be heard in proceedings for the adjudication of a person as feeble-minded. In re Masters, 216 M 553, 13 NW(2d) 487.

It is within the discretion of the appointing judge to determine whether a particular person is a skilled examiner, and if he deems a local physician skilled, his decision is final. 1936 OAG 157, Aug. 14, 1935 (679b).

A coroner, not a salaried officer, may act on the examining board and receive a fee. OAG Aug. 1, 1938 (248b-5).

The examination may be held outside the regular courtroom, provided the alleged incompetent has a fair hearing. OAG March 9, 1939 (679e).

In examination and commitment of persons of unsound mind, the report and opinion of physicians need not be unanimous. OAG March 6, 1944, (248b-2).

525.753 COMMITMENT.

HISTORY. 1917 c. 344 ss. 8 to 10; 1919 c. 77 s. 1; 1923 c. 260 s. 1; G.S. 1923 ss. 8960 to 8962; M.S. 1927 ss. 8960 to 8962; 1935 c. 72 s. 176; 1937 c. 435 s. 23; M. Supp. s. 8992-176; 1943 c. 612 s. 9; 1945 c. 567 s. 1.

A person placed under guardianship of the director of public institutions may petition the probate court to be restored to capacity; and may appeal to the district court from an adverse decision of the probate court. On the appeal, the district court may submit an issue of fact to a jury for a special verdict. Vinstad v Board, 169 M 264, 211 NW 12.

The order of the probate court committing a feeble-minded person to guardianship is the effective order, and an appeal raises all questions involved in the findings of the examiners. State ex rel v Board, 183 M 345, 236 NW 481.

A child adjudged to be feeble-minded and committed to the custody of a state agency but not admitted to a state institution, is not a charge of the state. County v Town of Fairhaven, 203 M 111, 279 NW 707.

"Feeble-mindedness is a condition of incomplete development of mind of such degree or kind as to render the individual incapable of adjusting himself to his social environment in a reasonably efficient and harmonious manner and to necessitate external care, supervision or control." In re Masters, 216 M 553, 13 NW(2d) 487.

Relating to persons of "psychopathic personality" the legislature is free to recognize degrees of harm and may confine its restrictions to those classes of cases where the need is deemed to be clearest. The act is constitutional, and in its procedural aspects, is valid. Minnesota v Probate Court, 309 US 276, 60 SC 524.

Inebriates are committed to the hospital at Willmar and to no other. Section 525.753 modifies the provisions of section 254.04. When a patient is received by veterans' hospital, his commitment to the state hospital is discharged. 1938 OAG 283, Nov. 26, 1927 (248b-6); 1938 OAG 284, March 30, 1938 (248b-10).

Neither the court, nor the state agency is required to name the sheriff to transport a feeble-minded person, but may select a welfare worker or other citizen. OAG March 9, 1939 (679e); OAG April 10, 1939 (248a-4).

Guardianship and commitments under the probate code. 20 MLR 345.

525.754 PAYMENT OF FEES AND MILEAGE.

HISTORY. 1917 c. 344 ss. 14 to 16; G.S. 1923 ss. 8966 to 8968; M.S. 1927 ss. 8966 to 8968; 1935 c. 72 s. 177; M. Supp. s. 8992-177; 1943 c. 612 s. 10.

The county in which an illegitimate child is born is responsible for its care, if it be feeble-minded. OAG Aug. 24, 1935 (840a-6).

The county of the legal settlement of an insane or feeble-minded person must pay the expenses of commitment. OAG Junè 5, 1936 (679e).

The fact that the feeble-minded ward loses his pauper settlement, does not relieve the state agency from its guardianship. OAG Oct. 4, 1937 (88a-14).

In psychopathic personality cases the fees of the witnesses are payable by the county on order of the probate court. 1940 OAG 34, April 12, 1940 (248b-11).

The county of settlement, not the county from which the child is committed, must pay for its support. OAG Jan. 4, 1944 (670K).

525.76 RELEASE BEFORE COMMITMENT.

HISTORY. 1917 c. 344 s. 12; G.S. 1923 s. 8964; M.S. 1927 s. 8964; 1935 c. 72 s. 178; M. Supp. s. 8992-178; 1945 c. 425 s. 1.

In a suit by a guardian of an insane ward against her husband for support, maintenance and attorney's fees, the pleadings justified the trial court in refusing the relief. Rutledge v Hayek, 186 M 377, 243 NW 385.

In psychopathic personality cases the legislature is free to recognize degrees of harm and may confine its restrictions to those classes of cases where the need is deemed clearest. In its procedural aspect, the statute is not invalid on its face. Minnesota v Probate Court, 309 US 270, 60 SC 524.

The probate court has no authority to release a psychopathic personality patient on bond or otherwise, before commitment, 1942 OAG 27, Dec. 26, 1941 (248b-11).

525.761 RELEASE AFTER COMMITMENT.

HISTORY. 1917 c. 344 s. 8; 1919 c. 77 s. 1; 1923 c. 260 s. 1; G.S. 1923 s. 8960; M.S. 1927 s. 8960; 1935 c. 72 s. 179; M. Supp. s. 8992-179; 1943 c. 612 s. 11; 1945 c. 425 s. 2.

A person under the guardianship of a state agency may petition the proper probate court to be restored to capacity; and may appeal from an adverse decision to the district court. The district court may submit an issue of fact to a jury for a special verdict. Vinstad v Board, 169 M 264, 211 NW 12.

An appeal from an order of commitment by the probate court raises all questions involved in the findings of the examiners. State ex rel v Board, 183 M 345, 236 NW 481.

Under this section release is discretionary in the director of public institutions, and not mandatory. State ex rel v Carlgren, 209 M 362, 296 NW 573.

In "psychopathic personality" cases the probate court may issue dual warrants of commitment to state, and to veterans' hospital. A warrant previously issued may be changed to a dual warrant. Parole may be granted under the provisions of section 525.761. 1940 OAG 31, Nov. 21, 1939 (248b-3).

Parole or discharge of psychopathic personality patients is governed by same provisions as dangerously insane. 1940 OAG 32, March 19, 1940 (248b-11).

A psychopathic personality patient, like an insane patient, may be restored to capacity by the court which committed him under section 525.61, but only upon petition, notice and hearing. 1942 OAG 27, Dec. 26, 1941 (248b-11).

525.762 DETENTION.

HISTORY. 1917 c. 294 ss. 1, 2; G.S. 1923 ss. 8973, 8974; M.S. 1927 ss. 8973, 8974; 1935 c. 72 s. 180; 1937 c. 31 s. 1; M. Supp. s. 8992-180; 1943 c. 612 s. 12.

Feeble-minded cannot be placed except in institution under control of state agency. OAG May 8, 1936 (679h).

The probate court may amend its findings to show dangerous personality so that the patient may be detained under the amended warrant. OAG May 4, 1938 (346).

Person of psychopathic personality if dangerous may be committed directly to St. Peter State Hospital by the probate court. OAG July 7, 1939 (248b-3).

525.763 COMMISSIONER MAY ACT.

HISTORY. 1917 c. 344 s. 17; 1921 c. 269 s. 1; G.S. 1923 s. 8969; M.S. 1927 s. 8969; 1935 c. 72 s. 181; M. Supp. s. 8992-181.

525.77 MALICIOUS PETITION.

HISTORY. 1917 c. 344 s. 19; G.S. 1923 s. 8971; M.S. 1927 s. 8971; 1935 c. 72 s. 182; M. Supp. s. 8992-182.

525.78 RESTORATION OF FEEBLE-MINDED AND EPILEPTICS.

HISTORY. 1917 c. 344 s. 8; 1919 c. 77 s. 1; 1923 c. 260 s. 1; G.S. 1923 s. 8960; M.S. 1927 s. 8960; 1935 c. 72 s. 183; 1939 c. 270 s. 11; M. Supp. s. 8992-183; 1943 c. 612 s. 13.

The burden is upon the one petitioned for restoration to capacity to prove mental capacity by a preponderance of the evidence. In re Masters, 216 M 556, 13 NW(2d) 487.

See annotations under section 525.761.

Procedure and change of venue under this section. 1936 OAG 164, July 18, 1935 (679h); 1938 OAG 253, Aug. 11, 1938 (679h).

Commitments under the code. 20 MLR 341.

Probate code amendments. 23 MLR 998.

525.79 APPEAL.

HISTORY. 1917 c. 344 s. 8; 1919 c. 77 s. 1; 1923 c. 260 s. 1; G.S. 1923 s. 8960; M.S. 1927 s. 8960; 1935 c. 72 s. 184; M. Supp. s. 8992-184; 1943 c. 612 s. 14.

See annotations under sections 525.761, 525.78. In proceedings for restoration to capacity of one previously adjudged a feeble-minded person, the burden is on petitioner to prove mental capacity by preponderence of evidence only. On appeal from a judgment denying a petition for restoration, the supreme court will not disturb the trial court's findings on conflicting evidence, if in arriving at such finding the trial court has applied correct rules regarding burden and quantum of proof. Teubner v State, 216 M 561, 13 NW(2d) 487.

GENERAL PROVISIONS

525.80 REPRESENTATIVE AND MINOR.

HISTORY. 1889 c. 46 s. 128; G.S. 1894 s. 4534; R.L. 1905 s. 3636; G.S. 1913 s. 7214; G.S. 1923 s. 8706; M.S. 1927 s. 8706; 1935 c. 72 s. 185; 1937 c. 435 s. 24; M. Supp. s. 8992-185.

It is legally competent for a female, 18 years of age, to make and execute within this state, a valid deed of lands belonging to her and situate therein. Females 18 years old were of age until the enactment of Laws 1937, Chapter 435, Section 24, and thereafter she came of age at 21 years. Cogel v Raph, 24 M 194; McKitrick v Travelers, 174 M 354, 219 NW 286; Nat'l Biscuit v Nolan, 136 F. 6; Ex Parte Petterson, 166 F 536.

The former statutory rule that women attain majority for all purposes at the age of 18 years was not changed by Revised Laws 1905, Section 3636. Under Laws 1937, Chapter 435, Section 24, the age of majority for both sexes is now 21 years. Vlasak v Vlasak, 204 M 331, 283 NW 489.

Where either party intending to marry is under legal age as defined by section 525.80, the clerk of court is unauthorized to issue a license for the marriage of such persons without consent of the parents or guardians, as the case may be. Lundstrom v Mample, 205 M 91, 285 NW 83.

This statute is not applicable to delinquency statutes. 1938 OAG 22, Aug. 9, 1937 (840a-5).

The fact that an inmate of the state home for girls is over 18 years does not make her release mandatory. Section 525.80 does not apply. 1938 OAG 23, April 24, 1937 (840a-5).

A guardian must be appointed for a female under 21 years of age in order to convey land or accept moneys paid under deceased war veterans act. OAG Nov. 4, 1937 (498c).

The effect of the enactment of Laws 1937, Chapter 435, Section 34, continues the guardianship of a minor child, created under the old law, until she is 21. OAG Dec. 9, 1937 (346d).

Guardianships and commitments under the probate code. 20 MLR 334.

Age of majority of females. 23 MLR 851.

Emancipation; earnings of child; care and custody. 28 MLR 275.

525.81 PETITION VERIFIED; DEFECT OF FORM SHALL NOT INVALIDATE.

HISTORY. 1889 c. 46 s. 305; G.S. 1894 s. 4718; R.L. 1905 s. 3638; G.S. 1913 s. 7227; G.S. 1923 s. 8708; M.S. 1927 s. 8708; 1935 c 72 s. 186; M. Supp. s. 8992-186.

In probate practice, proceedings are initiated by petition. Issues are not joined by formal pleadings as in district court. All petitions and motions relating to a particular subject matter may be heard and disposed of at the same time. Chadwick v Dunham, 83 M 366, 86 NW 351; Hanson v Nygaard, 105 M 30, 117 NW 235.

It conclusively appeared that no petition was presented to the court for the appointment of a special administrator. Such petition is jurisdictional, and, without it, the probate court has no jurisdiction to appoint. A settlement made by the special administrator in the instant case was a nullity. Bombolis v M. & St. L. 128 M 112, 150 NW 385.

A person, claiming to be incompetent, may petition the probate court for the appointment of a guardian for himself. Scott v Whitely, 168 M 74, 209 NW 640.

The probate court acquired jurisdiction even though the person making the petition was not a person interested in the estate, the petition on its face stating that she was. Eklund's Estate, 174 M 28, 218 NW 235.

The probate court barring claims unless presented in time but allowing later presentation for cause and upon notice, is mandatory in requiring notice and a showing of cause. Application should be under section 525.81. Daggett's Estate, 204 M 513, 283 NW 750.

Conveyances under the probate code. 20 MLR 109.

Guardianships and commitments. 20 MLR 335.

525.82 VENUE.

HISTORY. 1889 c. 46 ss. 3, 4; G.S. 1894 ss. 4410, 4411; R.L. 1905 ss. 3626, 3627; G.S. 1913 ss. 7204, 7205; G.S. 1923 ss. 8694, 8695; M.S. 1927 ss. 8694, 8695; 1935 c. 72 s. 186; M. Supp. s. 8992-187.

This section prevents conflicts between the probate courts of the several counties and to remove doubt as to the proper probate court before which to present a petition. Culver v Hardenbergh, 37 M 225, 33 NW 792.

A right of action for the death of a non-resident is an "asset" giving the court of the county where the injury resulting in death was inflicted jurisdiction. A special administrator has the right to bring action. Hutchins v St. P. M. & Man. 44 M 5, 46 NW 79; Castigliano v Gt. Northern, 129 M 279, 152 NW 413.

In case of a non-resident proceedings must be had in the county where there is property of the estate subject to administration. And this is so although the proceedings are based on a will probated in another state. There must be a showing that there is property. Putnam v Pitney, 45 M 242, 47 NW 790; Southard's Will, 48 M 37, 50 NW 932.

The appointment of the administrator being merely irregular, the question of the validity of the proceedings cannot be raised years later in a collateral proceeding. Hanson v Nygaard, 105 M 30, 117 NW 235.

Deposit in a bank is property under this section. Gregory v Lansing, 115 M 73, 131 NW 1010.

Where the probate court of the county of a resident decedent's domicile has first acquired jurisdiction over the estate, the probate court of the county wherein was the temporary abode at the time of death is not thereafter entitled to take jurisdiction of the same estate. State ex rel v Probate Court, 130 M 269, 153 NW 520.

Jurisdiction over assets suffices, regardless of domicile. Slimmer's Estate, 141 M 137, 169 NW 536.

A recital that an Indian allottee decedent was a resident of Becker county, the petition for probate being in Norman county, was immaterial the court finding facts on which jurisdiction in Norman county could be founded. Horn v Clark, 155 M 77, 192 NW 363.

The jurisdiction of the probate court is granted by the state constitution. Its exercise may be regulated by law but its scope cannot be limited. The language of the statute assumes that the constitutional jurisdiction of the probate courts is concurrent, so that if the jurisdiction of one probate court is invoked as to a particular estate, a similar proceeding begun in another should be stayed until the conclusion of the one first instituted. Davidson's Estate, 168 M 151, 210 NW 40.

Bar association recommendations. 9 MLR 177.

Venue of actions as affecting jurisdiction. 11 MLR 260, 282.

Conflict of laws as to domicile. 15 MLR 671.

Probate practice. 20 MLR 713.

525.83 NOTICE.

HISTORY. R.L. 1905 ss. 3639, 3640; G.S. 1913 ss. 7228, 7229; 1917 c. 151 s. 1; G.S. 1923 ss. 8709, 8710, 8712; M.S. 1927 ss. 8709, 8710, 8712; 1935 c. 72 s. 188; M. Supp. s. 8992-188; 1941 c. 422.

An order of the probate court consenting to the compounding of a claim due from an insolvent debtor of the decedent, is not invalid because the order was

made without notice to the persons interested in the decedent's state. Stampka's Estate, 168 M 283, 210 NW 85.

A proceeding to vacate a voidable final decree is a new proceeding by direct attack. Title to the real estate sought to be reached has then passed to other persons and the property is no longer a part of the estate of the decedent. Neither the probate court, nor the district court on appeal, has authority to vacate the decree without notice to the persons who there hold title to such real property. Koffel's Estate, 175 M 524, 222 NW 68.

Mandamus lies to compel a judge of probate by order to fix the time and place of hearing on a petition for the probate of a will that notice thereof might be given pursuant to section 525.83. Stenzel's Estate, 210 M 510, 299 NW 2.

Summary probate proceedings. 19 MLR 838.

Conveyances under the code. 20 MLR 108.

Guardianships and commitments. 20 MLR 336, 340.

Probate practice. 20 MLR 712.

525.84 ERRONEOUS ESCHEAT.

HISTORY. 1917 c. 72 s. 1; G.S. 1923 s. 8727; M.S. 1927 s. 8727; 1935 c. 72 s. 189; M. Supp. s. 8992-189.

The whole of the estate of Michael Clifford was distributed to the state. Subsequently Mary Clifford petitioned the district court for a decree that she was a sister, and sole heir. Johanna Colbert and Catherine Delaney filed their complaint in intervention, claiming to be sisters of Michael, and sole heirs. Findings were properly found that the intervenors were the sole heirs and entitled to the moneys erroneously escheated. Clifford v Colbert, 141 M 151, 169 NW 529.

In a contest between two groups of claimants asserting heirship to moneys escheated to the state each group must carry the burden of proof and cannot rely on the weakness of the opposition; and the testimony of one of the petitioners as to what he had learned from his father respecting the death of a near relative was properly received such testimony relating to a matter of family history. Gravander's Estate, 195 M 487, 263 NW 458.

525.841 ESCHEAT RETURNED.

HISTORY. 1917 c. 72 s. 2; G.S. 1923 s. 8728; M.S. 1927 s. 8728; 1935 c. 72 s. 190; M. Supp. s. 8992-190.

525.85 DISCLOSURE PROCEEDINGS.

HISTORY. 1889 c. 46 ss. 91, 92; G.S. 1894 ss. 4498, 4499; R.L. 1905 ss. 3722, 3723; G.S. 1913 ss. 7315, 7316; G.S. 1923 ss. 8804, 8805; M.S. 1927 ss. 8804, 8805; 1935 c. 72 s. 191; M. Supp. s. 8992-191.

525.86 NO ABATEMENT.

HISTORY. 1935 c. 72 s. 192; M. Supp. s. 8992-192.

525.87 MURDERER DISINHERITED.

HISTORY. 1917 c. 353 s. 1; G.S. 1923 s. 8734; M.S. 1927 s. 8734; 1935 c. 72 s. 193; M. Supp. s. 8992-193.

Statutes of disinheritance. Right of heir to inherit from a person whose life he has taken. 5 MLR 76.

Statutes of disinheritance. Murder of one tenant by the other as affecting the right of survivorship. 24 MLR 430.

525.88 STATE PATENTS.

HISTORY. 1919 c. 287 s. 1; G.S. 1923 s. 8721; M.S. 1927 s. 8721; 1935 c. 72 s. 194; M. Supp. s. 8992-194.

525.881 FEDERAL PATENTS.

HISTORY. 1901 c. 275; Ex. 1902 c. 12; R.L. 1905 s. 3658; G.S. 1913 s. 7249; 1919 c. 244 s. 1; 1921 c. 36 ss. 1, 2; G.S. 1923 ss. 8733, 8733-1; M.S. 1927 ss. 8733, 8733-1; 1935 c. 72 s. 195; M. Supp. s. 8992-195.

Certain so-called mining leases, executed by a non-resident testatrix in her lifetime upon lands in this state, and in which her husband joined, held to be leases and not conditional sales of the ore in place, thus entitling her husband, claiming as statutory heir, to one-third of the royalties accruing and to accrue thereunder subsequently to her death. Boeing v Owsley, 122 M 190, 142 NW 129.

525.89 CITATION.

HISTORY. 1935 c. 72 s. 199; M. Supp. s. 8992-197.

525.90 SIMULTANEOUS DEATH ACT.

HISTORY. 1943 c. 248.