PART III

ESTATES OF DECEDENTS; GUARDIANSHIPS

CHAPTER 525

PROBATE CODE

POWERS OF COURT

525.01 PROBATE COURT, PROVISIONS

Homestead as part of decedent's estate. 33 MLR 668.

Remedy of legatee when will is discovered after estate is closed as an intestate estate. 34 MLR 166.

Estate plan. 36 MLR 874.

Lack of jurisdiction generally falls into three classes: jurisdiction of the subject matter, jurisdiction of persons, and jurisdiction to enter the particular judgment or order ordered. In re Hudson, 226 M 532, 33 NW(2d) 848.

On appeal from probate to district court, service of appeal bond is not jurisdictional in the sense that it cannot be corrected, and where ommission is due to mistake or excusable neglect the court should relieve appellant of default where no prejudice will result. Daughter of incompetent ward could maintain appeal from order allowing final account of general guardian. An aggrieved party may appeal to district court from order of probate court allowing guardian's account, even though he made no appearance in probate court or takes a different position in district court from that taken in probate court. On appeal to district court from order of probate court allowing guardian's final account case is tried de novo. Peterson v Willyard, 228 M 508, 37 NW(2d) 742.

Although the probate court has no jurisdiction such as is possessed by a district court, it does have all the powers, legal or equitable, essential to a complete exercise of the plenary and exclusive jurisdiction conferred by Minnesota Constitution, Article VI, Section 7, and cases arising within that jurisdiction. It may apply the law whether it be statutory, common law, or principles of equity. Vesey v Vesey, 237 M 10, 53 NW(2d) 809.

A judge of probate when acting on a matter within the jurisdiction of his own county, cannot hold such hearing in another county. OAG May 17, 1950 (247).

525.02 POWERS

A decree of the probate court in a matter over which it has jurisdiction is res judicata and is binding until reversed or modified on appeal in a direct proceeding. It cannot be attacked collaterally. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

A judge of probate has no jurisdiction in habeas corpus proceedings. Jackson v Willson, 230 M 156, 40 NW(2d) 910.

525.03 BOOKS OF RECORD

A card index is not a "book" within the meaning of section 525.03 which requires the probate court to keep an index. OAG April 29, 1949 (346).

525.031 COPIES

Except for laws specifically retaining a charge the salary of a probate judge compensates him for all services. OAG Sept. 22, 1949 (371-I).

PERSONNEL

525.04 ELECTION OF PROBATE JUDGE, BOND

Where no primary is held, the person who receives the greatest number of votes, whether a plurality or a majority is elected probate judge. OAG Oct. 23, 1952 (347-C).

525.07 ACTING AS COUNSEL PROHIBITED

Where the county provides office space for the county attorney and the judge of probate in premises where they have a common waiting room but separate phones and private offices, such joint occupation of the same suite of offices is not prohibited even though the county attorney engages in the general practice of law in addition to his official service. OAG Dec. 10, 1948 (121-A-7).

525.09 CLERKS; APPOINTMENT, POWERS

Where a judge of probate appointed the clerk of the district court as his clerk and the clerk of the district court appointed the judge of the probate court as a deputy clerk of the district court, the appointments were valid even though the county outgrew the classification which authorized such appointment. OAG Dec. 27, 1949 (358-B-1).

A justice of the peace may also serve as clerk of the probate court. OAG March 3, 1947 (358-D).

525.092 CLERK MAY DESTROY CERTAIN PAPERS

HISTORY. 1947 c 117 s 1, 2; 1949 c 499 s 1; 1951 c 21 s 1.

INTESTATE SUCCESSION

525.13 ESTATE

Titles to property passed by force of rules of law, and those so entitled by law have no power to prevent the vesting of the title in themselves. Hardenberg v Commissioner of Internal Revenue, 198 F(2d) 63.

525.14 DESCENT OF CEMETERY LOT

Equitable relief upon the ground of fraud may be granted against a probate decree notwithstanding a statutory provision that such a decree is conclusive until recovered or set aside on appeal. The doctrine of res judicata has no application in an action for equitable relief against a judgment. Anderson v Lyons, 226 M 330, 32 NW(2d) 849.

A city owning a cemetery may not through an ordinance assess the unused part of a cemetery lot for lot maintenance and cannot enforce its assessment by tax machinery which applies to non-exempt realty. OAG Aug 6, 1947 (870-D).

Section 525.14 relating to the descent of cemetery lots applies to lots in town cemeteries. MSA 1949, Chapter 306, does not so apply. OAG Oct. 29, 1951 (870-I).

525.145 DESCENT OF HOMESTEAD

Statutes are designed to effectuate the policy of the law to protect the homestead right and to preserve the homestead to the family, even at the sacrifice of just demands. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

Any constructive trust in realty in favor of a purchaser, since deceased, established notwithstanding this section, would inure to the purchaser's benefit and

not to the benefit of her surviving husband, whose interest in such realty occupied as his homestead would extend no further than a statutory life interest in the fee. Bastian v Brink, 233 M 25, 45 NW(2d) 712.

Although homestead of decedent in 1888 could be held by decedent's widow for life, exempt from debts of decedent, the fee was part of decedent's estate and subject to the jurisdiction of the probate court, and the court's decree of distribution assigning the fee to the widow although erroneous, was binding on interested parties. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

Where an old age recipient dies intestate the homestead is exempted from all debts which were not valid charges on the homestead at the time of the decedent's death but, as no certificate of assistance as required by section 256.26 had been filed, no lien arose. As a result, there is no ground for recovery of the money paid for old age assistance either by foreclosure of a lien which does not exist or through filing of a claim in the probate court and payment from the exempt property. OAG Apr. 3, 1951 (521-G).

The state's claim for old age assistance cannot be enforced against the homestead of the deceased in probate court because the homestead passes by descent to the surviving child. OAG July 5, 1951 (521-G).

Because of infirmity brought on by age, an aged couple was unable to carry on activities incident to housekeeping and stored their household provisions in one part of the building and the children rented out the remaining rooms. The old folks lived out their life in a rest home. Such state of facts imposes no duty on the county welfare board to object to the assignment by the probate court to the children of this property as the homestead, subject only to the old age lien imposed by law. OAG Nov. 7, 1947 (521-P-4).

The title to the homestead owned by the decedent upon his death descends to the widow for life and the remainder to the children of the decedent. Immediately upon the death of the intestate the title vests in the children subject to the widow's life estate. The widow has no power to dispose of the remainder after her life estate, nor is her consent that the administrator sell the property in any way effective. Notwithstanding any such sale by the administrator, the state has the right to foreclose its lien, under section 256.26. OAG Feb. 1, 1949 (521-P-4).

The probate court has jurisdiction over the estates of deceased persons, that is property which the deceased person owned at the time of his death. The law states that the homestead is not subject to the payment of debts, so the probate court has no authority over the homestead except to determine that it is a homestead. Any claim for reimbursement for old age assistance cannot be enforced in probate court against the homestead. The only procedure would be to foreclose the lien. OAG Sept. 6, 1951 (521-P-4).

Claim of reimbursement of old age assistance lien cannot be enforced in probate court against the homestead. OAG Sept. 6, 1951 (521-P-4).

Where one who purchased land from the department of rural credit by instalment contract dies before the instalments are paid, the state, through the department of rural credit, may execute a deed of conveyance to an heir who has paid the balance due. This may be done before the entry of the final decree in probate court but if the land constitutes the homestead of the decedent and has been set aside by the order of the probate court as a non-asset of the estate the land should be conveyed to the person determined to be entitled thereto. OAG Aug. 26, 1947 (770).

525.15 ALLOWANCES TO SPOUSE

Allowance to spouse. 33 MLR 47.

The transfer of title to himself as an individual by a representative of a decedent owner's estate is illegal and not binding upon the registrar of motor vehicles even if approved by the probate court. Ownership of a motor vehicle originally belonging to a deceased person and claimed by his widow may be established in one

of two ways: (1) an order of the probate court under provisions of section 525.15 or (2) an order of the probate court providing for partial distribution of the decedent's estate. OAG April 8, 1952 (632-E-19).

An order under section 525.15 or under section 525.482, together with the letters of administration, supports an application under section 168.15 to register the deceased's motor vehicle in the name of the widow. OAG Aug. 25, 1950 (632-E-19).

525.16 DESCENT OF PROPERTY

In an action against the bondsmen of the deceased personal representative of an estate, the plaintiffs asserting title to the land on which they contend that the personal representative committed waste, must prove their title against a denial in the answer; and, in case at bar, the plaintiffs have not proved title and have, therefore, failed to prove a cause of action. Bemboom v National Surety Corp., 225 M 163, 31 NW(2d) 1.

The widow, as sole heir of the husband, who died without descendants, inherited the interest in reversionary interest in land retained by the husband's father which the husband inherited from his deceased parents. Shaw v Arnett, 226 M 425, 33 NW(2d) 609.

When a married couple dies in a common disaster and there is no proof available that one survived the other, the rights to recovery under MSA, section 573.02 are to be determined as if death occurred to both at the same instant. The damages awarded are not so excessive as to require either reduction or a new trial. That a child has married does not annul the liability under section 261.01, nor relieve the wrongdoer under section 573.02. Moore v Palen, 228 M 148, 36 NW(2d) 540.

The industrial commission did not abuse its discretion in affirming an equal division of compensation between the widow of a deceased workman and an illegitimate child of such deceased workman, amounting to $15 weekly to each the widow and the child. O'Dell v Hingeveld, 235 M 223, 50 NW(2d) 476.

Where a policy of automobile indemnity insurance exempted the insurer from liability for personal injuries to any member of the family of the insured, an adult brother of the insured living in the same household was within the exclusionary clause. Whether the insured under a policy failed to co-operate with the insurer is a question of fact and the findings of the trial court will not be disturbed on appeal if there is evidence to sustain the finding. Tomlyanovich v Tomlyanovich, ... M ....., 58 NW(2d) 855.

While the legislature may have power to alter and control the rights of courtesy and dower, since such rights arise wholly out of the marriage relation itself, it cannot transfer from one spouse to the other a property right which existed before, and entirely independently of, the marriage. The community property law of 1947, in making income and profits derived from property, real or personal, owned by spouse prior to effective date of the law, the common property of both spouses, is unconstitutional. Willcox v Penn Mutual Life Insurance Co., 55 At(2d) 521, 357 Pa. 581.

Cash and other personal property belonging to an inmate in the state reformatory at the time of his death should be distributed if he died intestate in accordance with law of descent, or if he died testate then in accordance with terms of his will. This may be done by the warden of the state reformatory under direction of the probate court having jurisdiction. OAG Dec. 12, 1950 (91-I).

When the state acquires title to property by escheat it is vested with all rights of the former owner and takes the property subject to all debts, liens, and encumbrances against him, including taxes. Upon sale of the escheated property and delivery of the certificate the purchaser has conclusive evidence of title for all purposes and against all persons except the state in case of forfeiture. As of the date of delivery of the certificate the interest of the purchaser is taxable and should be placed on the tax rolls on the next succeeding May first. Although there is no specific statutory requirement that the certificate shall provide for the payment of the current tax when due, the state auditor may include such a provision in the

certificate. The compelling purpose for selling escheated property is to get it back on the tax rolls. Insofar as delinquent taxes assessed prior to the escheat are concerned the state auditor has right to payment at the time of sale of those taxes plus accumulated penalties and interest as one of the terms of sale. OAG Oct. 4, 1948 (414-C-3).

The county auditor has no authority to cancel taxes in a case where at the time property escheated to the state there were unpaid delinquent taxes which were validly spread against the real property before it escheated. Those taxes remain liens against the property even though the liens cannot be enforced so long as the title remains vested in the state. OAG Oct. 4, 1948 (414-C-3).

Where A with his own funds purchased a Series E War Savings Bond, which is made payable to "A or B," A placed the bond in his safety deposit box where it was found upon A's death. A died intestate and B survived him. Such bond evidences a contract between the federal government and the purchaser and is governed by federal law and regulations. Under the 1945 supplement of the code of federal regulations, title 31, section 315.45 (c) if either co-owner dies without the bond having been presented and surrendered the surviving co-owner is recognized as the sole and absolute owner of the bond. Under this rule, upon A's death the ownership of the bond passes directly to B by operation of contract and does not become a part of A's estate.

An inheritance tax accrues on A's death under the provisions of section 291.01 and the surviving co-owner is personally liable for the inheritance tax to the extent of the value of the bonds. OAG March 31, 1948 (424-C-29) (242-A-18).

525.172 ILLEGITIMATE AS HEIR

In conferring the right of inheritance upon an illegitimate child the legislature did not intend to abrogate the common law rule in regard to legitimate children except only with respect to the right of inheritance and then in a limited degree. Jung v St. Paul Fire Dept., 223 M 402, 27 NW(2d) 151.

The industrial commission did not abuse its discretion under record in affirming an equal division of compensation between the widow of a deceased workman and an illegitimate child of such deceased workman, amounting to $15 weekly to the widow and the child. O'Dell v Hingeveld, 235 M 223, 50 NW(2d) 476.

Where in the inheritance tax statute the "lineal descendant" was subject to a tax of two percent and there was an exemption of $10,000 for a "child," the legislators intended "child" to include the lineal descendant of the unmarried mother as well as the child of the wedded mother. Worff v Johnson, Me., 58 At(2d) 553.

525.173 HEIRS TO ILLEGITIMATE

Where in the inheritance tax statute the "lineal descendant" was subject to a tax of two percent and there was an exemption of $10,000 for a "child," the legislators intended "child" to include the lineal descendant of the unmarried mother as well as the child of the wedded mother. Worff v Johnson, Me., 58 At(2d) 553.

The money paid by the father in a lump sum settlement for the care and support of an illegitimate child belongs to the child even after adoption. Such fund becomes a part of the child's estate upon her death and descends to her mother. OAG Oct. 23, 1953 (840-C-9).

WILLS

525.18 EXECUTION OF WILL

HISTORY. Amended, 1949 c 160 s 1.

Testamentary libel; right to recover damages for libel contained in will. 33 MLR 171.

Wills; gifts of undesignated parcels to different persons; allowing beneficiaries to select in order named. 33 MLR 450.

Mental incompetency. 36 MLR 179.

Effect of incorporation into a will of an amendable inter vivor trust and of subsequent trust amendments formally executed. 37 MLR 153.

Where it is claimed that a person was induced to sign a will by undue influence exerted upon him, the existence of undue influence is a question of fact, in the determination of which the court may consider as bearing upon the existence thereof such facts as the opportunity to exercise it, active participation of the person exercising it in preparation of the will, confidential relationship between the person executing the will and the party exercising the influence, disinheritance of those whom the decedent probably would have remembered in his will, singularity of the provisions of the will, and the exercise of influence or persuasion to induce the testator to make the will in question; and while the fact that decedent lived apart a considerable time after executing his will from the person alleged to have exercised the undue influence is entitled to consideration in support of the view that there was none, it is not conclusive. Re Wilson's Estate, 223 M 409, 27 NW(2d) 429.

The sole province of the court in construing the terms of a will is to ascertain and give effect to the intention of the testator. Berrisford Will, 223 M 446, 27 NW(2d) 412.

The court must give effect to the testate intentions as gathered from the instrument as a whole. Consideration must be given to the fact that the instrument was drawn by an experienced lawyer. Words must be construed in their usual and accepted meaning without enlargement or restriction. When particular or technical terms are used they must be given effect as so chosen. Crosby v Atmore, 224 M 173, 28 NW(2d) 175.

Where it is sought to make out a contract by resorting to two or more separate writings, the connection must appear from the writings themselves, without aid of extrinsic evidence. Deed and codicil, neither of which referred to the other, do not constitute a written contract. LeBorius v Reynolds, 224 M 203, 28 NW(2d) 157.

Courts will not decree specific performance of an oral contract to give property by will unless the claimed agreement is reasonable and proved by clear, positive, and convincing evidence. The evidence in the instant case does not satisfy this rule. LeBorius v Reynolds, 224 M 203, 28 NW(2d) 157.

It is a cardinal rule that a testator's intention must be gathered from the language of the will itself; and the court cannot remake the will to provide by conjecture what the testator might have said if he had foreseen future events. Provision for gift on death of life beneficiary indicates an intention that the corpus be kept intact for remainderman without diminution. Cosgrave's Will, 225 M 443, 31 NW(2d) 20.

The opportunity to exercise undue influence, or the existence of a confidential relation between testator and beneficiary is not, standing alone, proof of undue influence; and the fact that a lawyer drew the will and that the witnesses to the will observed no undue influence do not alone establish the absence thereof; and impeachment testimony consisting of prior statements of the witness out of court is not substantive proof of facts stated therein, but is purely negative for the purpose of impairing the credibility of the witness. Olson v Mork, 227 M 289, 35 NW (2d) 439.

"Testamentary capacity" means that the testator at the time of making his will comprehended his relation to those who naturally have claims on his bounty, the extent and situation of his property, and the effect of the will disposing of it, and that he was able to hold these things in mind long enough to form a rational judgment concerning them. Where the evidence as to testamentary capacity and undue influence is conflicting, findings of the trial court with respect to such questions are final, even though the appellate court, if it had the power to try the

question de novo, might determine otherwise upon reading the record. In re Olson's Estate, 227 M 289, 32 NW(2d) 439.

Contestant has the burden of proving that a will was induced by undue influence. A mere suspicion is not enough to justify setting aside a will on the ground of undue influence. Schumacher's Estate, 229 M 382, 39 NW(2d) 604.

The evidence sustained the findings that at the time decedent executed his will he was of sound mind and of sufficient mental capacity to make a will and a will was not made as the result of any undue influence nor was it affected by any confidential relationship. The burden of proof to establish mental competency rests upon the proponent of the will and whether this burden has been successfully sustained is a question of fact, and where an action is tried by a court without a jury, the findings are entitled to the same weight as the verdict of a jury and will not be reversed on appeal unless they are manifestly and palpably contrary to the evidence. Borstad v Ulstad, 232 M 365, 45 NW(2d) 828.

The intent of the testatrix as expressed in the language of the will must be gathered from everything contained within its four corners as read in the light of surrounding circumstances. Quinlan's Estate, 233 M 35, 45 NW(2d) 807.

In a suit for specific performance of an oral contract to make a will disposing of property or to adopt a child, the contract must be proved by clear, positive, and convincing evidence and it must be definite and certain in its terms. The burden is upon the plaintiff to show by full and satisfactory proof the fact of the contract and its terms before specific performance may be granted. In the instant case the evidence was insufficient to sustain the finding of the trial court that such an agreement was made. McCarty v Nelson, 233 M 362, 47 NW(2d) 595.

A will which provides that upon the death of testator's wife two-thirds of a trust created for the wife's benefit should be paid to two of his daughters, and the remaining held in trust to pay the income for life to a third daughter, Euphemia, and upon her death "the share of principal of said part shall be paid in equal proportions to my other two daughters, or all to the survivor thereof if one of them is then living" must be read together with the succeeding paragraph of the article creating the trust, providing that the surviving children of any deceased daughter should take the same share of principal their deceased mother would have taken if living and at the same time. Where there is a latent or patent ambiguity in a will, evidence dehors the instrument is admissible to show the intent of the testator. The fact of making a will raises a strong presumption against partial intestacy. The cardinal purpose of construing a will is ascertaining the intention of the testator at the time he made the will; and the will must be construed as a whole. Re Tweedie's Will, 234 M 444, 48 NW(2d) 657.

Trial court could justifiably conclude that a fifteen-minute observation of the decedent after not having seen him for five months, even though she had seen him often prior to that time, was not sufficient observation to enable her to draw a reasonably reliable conclusion as to the decedent's mental capacity to make a will on a certain date. Hartz's Estate, 237 M 313, 54 NW(2d) 784.

Where the trial court in a case tried by the court without a jury errs as to the rule of law to be applied in considering the evidence in making its findings, the appellate court should vacate the findings made and remand the case with directions to reconsider the entire record and make new findings in the light of the applicable rule of law. Cade v Hoff, 237 M 313, 54 NW(2d) 784.

In a proceeding to contest the validity of a will on the ground of mental incapacity or undue influence, if there are two or more beneficiaries whose interests under the will are several and not joint, inconsistent extrajudicial declarations or admissions of one beneficiary are inadmissible as substantive evidence if they are prejudicial, not merely in a technical sense, to the interests of the co-beneficiaries. Cade v Hoff, 237 M 313, 54 NW(2d) 784.

Where a will was admitted to probate notwithstanding conflicting evidence as to undue influence, but extrajudicial declarations or admissions of the principal beneficiary were erroneously considered for impeachment purposes only and not

as substantive evidence of the facts stated therein, though the evidence sustained the findings, an order denying contestants' motion for amended findings or a new trial must be reversed and the cause remanded for reconsideration of the entire record and the making of new findings in the light of such declarations or admissions considered as substantive evidence. Cade v Hoff, 237 M 313, 54 NW(2d) 784.

The specific performance of an oral contract to give or devise is not a matter of right but rests in the sound discretion of the trial court; and the contract must be definite as to its terms and statute proof thereof must be submitted by plaintiff before specific performance will be decreed. Zuelch v Droege, ... M ....., 56 NW(2d) 651.

Extrinsic evidence is always admissible to identify devisees and legatees. In re Munson's Estate, ... M ....., 57 NW(2d) 22.

Where the witness' recollection of her conversation with decedent testatrix was exhausted and her opinion as to testamentary capacity was restricted to such conversations, it could not be said to be an abuse of the trial court's discretion to receive her opinion. In re Palmer's Estate, ... M ....., 57 NW(2d) 409.

The statute barring conversations with a party since deceased prevented plaintiff from relating any conversations had with the decedent as to a contract to devise certain property to plaintiff. Alsdorf v Svoboda, ... M ....., 57 NW(2d) 824.

Where an inmate of the state reformatory died leaving money and personal property the probate court had jurisdiction to distribute the property in accordance with the law of descent or by the terms of the deceased's will. OAG Dec. 12, 1950 (91-I).

525.181 COMPETENCY OF WITNESSES

The court cannot assume to separate the competent from the incompetent evidence but must consider all of it as being in the case without objection, no error being assigned to its admission and where evidence as to testator's capacity and undue influence is conflicting the findings of the trial court with respect to such questions are final on appeal, even though the appellate court might determine otherwise if it had power to try the question de novo. Borstad v Ulstad, 232 M 365, 45 NW(2d) 828.

525.184 BENEFICIARY A WITNESS

In an action by the executrix to set aside gifts made by testatrix during her lifetime on the ground of undue influence and lack of mental capacity, testimony of one of the donees as to conversations had with the testatrix in order to show testatrix' mental condition was inadmissible unless such testimony was invited. Sullivan v Brown, 225 M 524, 31 NW(2d) 439.

525.19 REVOCATION OF WILL

Contract to make a will as it relates to an anticipatory breach of the contract and as it relates to the statute of limitations. 32 MLR 630.

Wills; under influence, fraud, duress in preventing revocation, constructive trust. 34 MLR 80.

The evidence supports a finding by the trial court that L, plaintiff's brother, in consideration of substituting a tenancy in common for an existing joint tenancy of the brothers in a certain property, contracted to make a will devising to plaintiff the income from L's share of the property for life and that L never performed his part of the contract. The evidence supports a finding by the trial court that the promise to make such a will was made with the intent not to fulfill that promise and that defendant, with the purpose of defrauding plaintiff of L's share in the property in controversy, participated throughout the transaction which induced plaintiff to substitute a tenancy in common for a joint tenancy. The court was justified in decreeing a rescission of all instruments executed in furtherance of the scheme to defraud. Hafften v Kirsch, 227 M 525, 36 NW(2d) 35.

A statute embodying the doctrine of cy pres becomes applicable when the will discloses (1) a valid bequest, (2) a trustee indicated in some manner, (3) a definable charitable use or object, and (4) a charitable intent. A devise or bequest, although in form an outright gift, is in purpose and effect a charitable trust when made to an institution whose sole reason for existence is charitable. This is true even though no words of express trust are used. In the instant case, testator bequeathed the residue of his estate for the purpose of erecting a children's orphan home, to be under the management of a specified existing home. Stoppel v Red River Valley Conference, ... M ....., 57 NW(2d) 22.

An instrument intended as a will but executed without the formalities required by law, does not operate as a revocation of a prior will. Whether subsequent changes in the conditions or circumstances of a testator implied a revocation of his will made prior thereto is a question of fact. In re Munson's Estate, ... M ....., 57 NW(2d) 26.

525.191 REVOCATION BY MARRIAGE OR DIVORCE

A marriage which violates section 517.03 because contracted within six months after one of the parties had been divorced from a former spouse is effective under the provisions of section 525.191 to revoke a will executed before the marriage. In re Kinkead's Estate, ... M ....., 57 NW(2d) 628.

525.201 OMITTED CHILD

The verbal acts rule as an exception to section 595.04 and referred to in Estate of Munn, 177 Minn. 226, 225 NW 102, does not permit a party or person interested to give conversations with a deceased as a basis for the drawing of an inference as to the decedent's actual intent on the theory that the conversations reveal that decedent's mental attitude was one of hostility or prejudice toward a certain person or subject. In re Eklund's Estate, 233 M 519, 47 NW(2d) 422.

525.21 QUANTITY OF ESTATE DEVISED

Title to real estate vests in the heirs upon the death of the owner and such heirs thereupon become freeholders. OAG Dec. 21, 1948 (771-B).

525.212 RENUNCIATION AND ELECTION

Where the husband consented to the wife's will after the wife executed a codicil bequeathing to the husband such household goods and effects as he desired, but thereafter the wife, without the husband's knowledge, executed another codicil bequeathing to a sister-in-law considerable silverware with all linen, napkins, bath towels, pillow cases and bed sheets and gave to a niece twin beds with bedding, rugs, pillows, dishes, glasses, and curtains, there were sufficient changes affecting the husband's rights in the first codicil to justify the husband in renouncing the will. The term "household goods and effects" includes not only household furniture but everything else in the house that is usually held and used by the occupants to lend to the comfort and accommodation of the household. State ex rel v Probate Court, 226 M 346, 32 NW(2d) 863.

525.222 PROBATE ESSENTIAL

Wills; belatedly discovered wills; remedy of legatee. 34 MLR 166.

PROBATE OF WILLS

525.24 HEARING AND PROOF

In construing a will the cardinal rule is that the testator's intention is to be gathered from the language of the will itself; and the court does not possess the power to, and never should, rewrite or remake a will to provide by conjecture what the testator might have said if he had foreseen events occurring subsequent to his

death, or to escape what seems to be an undesirable result. Cosgrave's Will, 225 M 443, 31 NW (2d) 22.

525.241 OBJECTIONS

Wills; under influence, fraud, duress in preventing revocation, constructive trust. 34 MLR 80.

Wills, no contest clause. 34 MLR 169.

525.244 WILL IN OPPOSITION

Wills; fraud, undue influence and mistake; executor's right to contest codicil. 37 MLR 224.

525.25 APPOINTMENT OF REPRESENTATIVE

A state warrant in payment of adjusted compensation issued to a veteran who died before presenting the warrant for payment cannot be endorsed by the administrator of his estate. OAG July 24, 1950 (822).

LOST AND DESTROYED WILLS

525.261 SUFFICIENCY OF PROOF

In an action to recover on a conventional promissory note, certain parol testimony was inadmissible to vary the terms of the instrument. It was error to receive such testimony. Higan v Church of St. Anne, 236 M 52, 53 NW(2d) 449.

GENERAL ADMINISTRATION

525.28 PERSONS ENTITLED

Administration of the estate of a decedent is a proceeding in rem. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

525.291 ADMINISTRATOR D.B.N.

Section 525.291 restates the common law ruling and authorizes the appointment of an administrator de bonis non to administer an estate not already administered. Bemboom v National Surety, 225 M 163, 31 NW(2d) 1.

SPECIAL ADMINISTRATION

525.301 POWERS

Where the appeal of a special guardian of an incompetent from an order allowing the final account of the general guardian was pending at the time of the death of the special guardian, any interest which the special guardian might have had which would permit an appeal, was not an interest which would pass to his special administrator and permit an appeal by the special administrator. The sole duty of the administrator was to collect the assets and conserve the estate of the deceased, and not to protect the interests, if any, of a special guardian. Sargent v Willyard, 236 M 550, 53 NW(2d) 136.

A special guardian of an incompetent whose authority was limited to prosecution of an appeal from an order restoring a ward to capacity and whose power was terminated by termination of the appeal, had no function to perform, and no interest

in the final act of the general guardian. He was not an "aggrieved party" entitled to appeal from an order allowing the final account of the general guardian of the estate of the ward. Guardianship of Hudson, 236 M 550, 53 NW(2d) 136.

Where an old age recipient left no surviving wife or children, and if a petition is made to the probate court for special administration alleging necessity and expediency therefor, the court has jurisdiction to appoint said special administrator and the proper proceedings being had may confirm a sale of the homestead and application of the proceeds to apply upon or satisfy the old age assistance lien. The proceedings being regular, the probate judge may confirm the sale. An interested person may attack the proceeding collaterally if he alleges lack of jurisdiction or irregularity. If the purchaser is in doubt as to whether or not he has acquired a marketable title, he may resort to the usual remedies in such cases. OAG March 21, 1949 (521-P-4).

DETERMINATION OF DESCENT

525.31 ESSENTIALS

HISTORY. Amended, 1949 c 659 s 1.

Where in the inheritance tax statute the "lineal descendant" was subject to a tax of two percent and there was an exemption of $10,000 for a "child," the legislators intended "child" to include the lineal descendant of the unmarried mother as well as the child of the wedded mother. Worff v Johnson, Me., 58 At(2d) 553.

525.311 CONTENTS OF PETITION

HISTORY. Amended, 1949 c 659 s 2.

525.312 DECREE OF DESCENT

HISTORY. Amended, 1949 c 659 s 3.

Equitable relief upon the ground of fraud may be granted against a probate decree notwithstanding a statutory provision that such a decree is conclusive until recovered or set aside on appeal. The doctrine of res judicata has no obligation in an action for equitable relief against a judgment. Anderson v Lyons, 226 M 330, 32 NW(2d) 849.

A judgment is entitled under the federal constitution to the same, but no more, faith and credit in the state other than the one wherein it was rendered as it is entitled to in the state of its rendition; and equitable relief may be granted against the decree of the probate court of a sister state distributing plaintiff's share of the estate of the decedent to the proponent-executor of the decedent's will and to others as residuary legatees where the decree was obtained by the proponent-executor by concealing from the court a violation of his statutory duty, plaintiff's existence and his right to take under the will; and concealing from the plaintiff the pendency of the probate proceedings; and this notwithstanding the fact that the estate has been distributed. Anderson v Lyons, 226 M 330, 32 NW(2d) 849.

525.314 OMITTED PROPERTY ASSIGNED

HISTORY. 1949 c 696 s 1.

525.315 PETITION, CONTENTS OF

HISTORY. 1949 c 696 s 2.

525.316 SUMMARY DECREE, INHERITANCE TAX, APPRAISAL

HISTORY. 1949 c 696 s 3.

BONDS

525.32 CONDITION

The cost of a special administrator's bond, filed in the probate court in compliance with the statute and not for the purpose of allowing a special administrator, as substituted plaintiff, to respond to appeal by defendant from an adverse judgment in an action instituted by the administrator's decedent, was not taxable against defendant upon affirmance of the judgment. LeMire v Nelson, ... M ....., 58 NW(2d) 189.

COLLECTION OF ASSETS

525.34 POSSESSION

Title to all real estate vests in decedent's heirs or devisees upon his death. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

525.35 LIMITATION, LIABILITY OF REPRESENTATIVE

An administrator de bonis non is not entitled to recover against the surety on the deceased administrator's bond for devastavit committed by the administrator who is alleged to have wrongfully and unlawfully wrecked certain buildings. Bemboom v National Surety Co., 225 M 163, 31 NW(2d) 1.

525.39 PROPERTY SET APART

It is the policy of the law to protect the homestead right and to preserve the homestead to the family even at the sacrifice of just creditor demands; and the statutes are designed to effectuate this policy. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

525.391 PROPERTY FRAUDULENTLY CONVEYED

Wills; under influence, fraud, duress- in preventing revocation, constructive trust. 34 MLR 80.

525.392 PROPERTY CONVERTED

Good faith as a defense to application of a statute authorizing award of double damages if any person embezzles, alienates, or converts to his own use any other personal estate of a decedent or award before the appointment of a representative. 36 MLR 277.

525.401 ABANDONMENT OF PROPERTY

Abandonment of personal property; intent. 37 MLR 483.

CLAIMS

525.41 NOTICE TO CREDITORS

Decree of identification of trust res is necessary to avoid the bar of a non-claim statute. 35 MLR 209.

525.411 FILING OF CLAIMS

A husband is entitled to reimbursement for expenses of his wife's burial where the wife leaves an estate, by having it paid either as a claim against her estate or an expense of administration, or where there is a recovery for her wrongful death, by

asserting a claim therefor against the fund recovered. Mattfeld v Nester, 226 M 106, 32 NW(2d) 291.

Section 525.411 which provides that all claims against a decedent arising upon contract shall be barred forever unless filed in probate court within the time limited therefor does not relate to actions upon a contract instituted against a decedent prior to his death. Milner v First Nat'l Bank, 228 M 324, 37 NW(2d) 450.

Where the federal government, failing to file its claim against decedent's estate with the probate court within statutory period provided by state law, did serve notice thereof on the administrator at a time when the administrator had sufficient moneys in his hands to pay the claim. The administrator, upon thereafter paying out moneys in his hands to nonpriority creditors, could himself be held responsible for the Government's claim if established. United States v Luce, 78 F. Supp. 241.

Claims against representatives of deceased person, based on alleged fraud or deceit of the deceased, did not come within the statute providing that all claims against a deceased, arising on contract, whether due or not due, shall be barred forever unless filed in court within time limited. Halvorson v Geurkink, ... M ....., 56 NW(2d) 793.

Where decedent had in his lifetime been ordered to pay certain moneys to the mother of his illegitimate child, it is the mother and not the child or the county welfare board who should file a claim against the decedent's estate. OAG Feb. 9, 1948 (840-C-9).

525.42 ADJUDICATION OF CLAIMS

HISTORY. Amended, 1949 c 692 s 1.

Note executed by father of payee at the same time and as a part of the same transaction as an attached instrument which recited that payee agreed not to attempt to collect the note until maker's death, and further recited that the note was given in consideration of services, and did not become due and payable until date of maker's death. Stucky v Harris, 224 M 220, 28 NW(2d) 155.

Instruments, attached together and duly and personally signed by claimant's father acknowledging the amount he admitted owing his daughter were properly admitted in evidence when duly identified by the testimony of witnesses present when they were so executed. In the eye of the law the several instruments were deemed to be one instrument. Claimant is entitled to full payment of her claim. Holtorp's Estate, 224 M 220, 28 NW(2d) 155.

Where the divorced wife performed no services for her divorced husband for at least six years prior to his death, and such services as she did perform on occasions before that were unsolicited and constituted only cleaning house of the divorced husband once or twice a year, the evidence sustained an order denying a claim on the part of the divorced wife for compensation from the estate of the deceased divorced husband. Pearson's Estate, 231 M 252, 42 NW(2d) 697.

Where the federal government, failing to file its claim against decedent's estate with the probate court within statutory period provided by state law, did serve notice thereof on the administrator at a time when the administrator had sufficient moneys in his hands to pay the claim, the administrator, upon thereafter paying out moneys in his hands to nonpriority creditors, could himself be held responsible for the government's claim if established. United States v Luce, 78 F. Supp. 241.

525.43 ACTIONS PENDING

Applicability of the doctrine of abatement and revival of state law to cause of action created by federal statute and litigated in the state courts. 31 MLR 371.

A cause of action based upon a contract survives the death of the defendant therein. In such cases the court on motion may substitute the representative of the decedent as defendant, and the action may thereupon be prosecuted to final judgment as provided in sections 540.12 and 525.43. Milner v First National Bank, 228 M 324, 37 NW(2d) 450.

A judgment for plaintiff against defendants for recovery upon liability for negligence does not determine the liability for contribution, if any, of the defendants among themselves. The reinsurer of the insurer of a party claiming contribution from his judgment codebtor is not the proper party to bring the proceeding for the recovery thereof. A judgment for damages for personal injuries caused by negligence, recovered in the district court by plaintiff against several defendants in an action wherein the representative of a deceased defendant was substituted as a party and which then proceeded to judgment, is not a judgment in favor of a codefendant against the representative to be paid in the course of administration within the meaning of the provisions of MSA, Section 525.43, to the effect that an action to recover upon a cause of action surviving the death of a party may proceed to judgment upon substitution of such party's representative as a party and that any judgment recovered against the personal representative may be certified to the probate court to be paid as a claim in due course of administration. Schunk v Hotchkiss, 231 M 219, 43 NW(2d) 104.

525.431 ACTIONS PRECLUDED

Section 525.411 which provides that all claims against a decedent arising upon contract shall be barred forever unless filed in probate court within the time limited therefor does not relate to actions upon a contract instituted against a decedent prior to his death. Milner v First National Bank, 228 M 324, 37 NW(2d) 450.

Claims against representatives of deceased person, based on alleged fraud or deceit of the deceased, did not come within the statute providing that all claims against a deceased, arising on contract, whether due or not due, shall be barred forever unless filed in court within time limited. Halvorson v Geurkink, ... M ....., 56 NW(2d) 793.

525.44 PRIORITY OF DEBTS

A husband is entitled to reimbursement for expenses of his wife's burial where the wife leaves an estate, by having it paid either as a claim against her estate or an expense of administration, or where there is a recovery for her wrongful death, by asserting a claim therefor against the fund recovered. Mattfeld v Nester, 226 M 106, 32 NW(2d) 291.

ACCOUNTING, DISTRIBUTION

525.481 HEARING AND DECREE

Decrees of distribution of probate court are binding on everyone interested in the estate if the decree covers a subject over which the court has jurisdiction. Bengston v Setterberg, 227 M 337, 35 NW(2d) 623.

The federal estate tax law contemplates that state law shall govern distribution of the remainder of decedent's estate after payment of such tax and ultimate impact of tax, not that it must be paid from residue of estate in all cases. Gelin v Gelin, 229 M 516, 40 NW(2d) 343.

525.49 ALLOWANCE TO REPRESENTATIVE

Executor's compensation is sufficient interest to contest the probate of a will provided the costs are not assessed against the estate. 37 MLR 224.

Under a trust agreement which provides that expenses incurred by the trustee be paid, an allowance of attorney's fees for services rendered to a trustee rests in the discretion of the court. Where the individual trustee served without compensation, payment for legal services can only be made when the services are beyond the duties the trustee should perform. In re Conan's Will, 231 M 164, 42 NW(2d) 400.

Where council for a general guardian rendered a statement for legal services; and where such statement indicated a possibility that some of such services had been

previously compensated for, and council for the guardian could give no definite testimony clarifying the issue, the order allowing the general guardian's final act should be reversed and the case remanded for further proceedings. In re Hudson's Estate, 235 M 444, 51 NW(2d) 103.

In the absence of proof that other sums or property could be claimed by or were accessible to the general guardian of an incompetent ward, and in the light of evidence that assets of the ward delivered to a general guardian were fully covered in his final act, findings that the general guardian had accounted for all the assets of the estate are sustained. In re Hudson's Estate, 235 M 444, 51 NW(2d) 103.

525.501 REMOVAL OF REPRESENTATIVE

It is the duty of the administrator with the will annexed to act as a champion of the will and not as an opponent. In proceedings on the devisees petition for removal of an administrator with the will annexed, the record sustains the finding that the representative was personally and financially interested as an heir in the final administration of the estate and presumed to be antagonistic to carrying out the terms of the will. It is within the discretion of the trial court upon appeal from the probate court to determine from the record whether a representative is unsuitable to act and whether such representative may be removed. In re Munson's Estate, ... M ....., 57 NW (2d) 26.

525.504 DISCHARGE OF REPRESENTATIVE

HISTORY. 1935 c 72 s 124; 1937 c 485 s 15; 1953 c 23 s 1.

ADVANCEMENTS

525.53 ADVANCEMENT

In an action by the executrix to set aside gifts made by testatrix during her lifetime on the ground of undue influence and lack of mental capacity, testimony of one of the donees as to conversations had with the testatrix in order to show testatrix' mental condition was inadmissible unless such testimony was invited. Sullivan v Brown, 225 M 524, 31 NW(2d) 439.

525.531 VALUATION

The chief distinction between a "gift inter vivos" and a "gift causa mortis" is that the former is absolute and irrevocable, while the latter is conditional, taking effect only upon the death of the donor who, in the meantime, has the power of revocation. In either case the gift must be complete and the property delivered and accepted. The public policy surrounding the issues and retention of Series "E" federal bonds is clearly revealed in the form and regulations originally made and in the amendments subsequently issued. They are of such character and purpose that they might be described as thrift or savings securities. The purpose of the government to restrict ownership and to prohibit transfers is clear. They may not be transferred by the registered owner as a gift inter vivos or causa mortis by manual delivery to a donee without compliance with treasury department regulations applicable thereto. Connell v Bauer, ... M ....., 61 NW(2d) 177.

GUARDIANSHIPS

525.54 PERSONS SUBJECT TO GUARDIANSHIP

Nature of illegal proceedings for the creation of a guardianship status. 32 MLR 637.

Power of the guardian of an incompetent to bring a divorce action for his ward. 32 MLR 827.

In the absence of voluntary submission to a court's jurisdiction, the filing of a proper petition in guardianship proceedings to have a person adjudged incompetent does not confer jurisdiction over the person of the alleged incompetent. In order to confer this jurisdiction and as a prerequisite to a valid adjudication, an adequate notice, conforming to constitutional requirements of due process of law, must be served upon the alleged incompetent advising him of the time and place of hearing and affording him an opportunity to be present and contest the proceedings. A judgment of a probate court cannot be attacked collaterally for want of jurisdiction not affirmatively appearing on the face of the record. In determining the question of jurisdiction from an examination of the record, if the record shows that jurisdiction was acquired in a particular mode or manner, it will not be presumed to have been obtained in any other way, in the absence of any averment or recital to that effect. Jasperson v Jacobson, 224 M 76, 27 NW(2d) 788.

Because of the humanitarian as well as the constitutional doctrines upon which it rests, the requirement of notice is equally applicable in incompetency proceedings involving minors, who are ordinarily totally incapable of asserting or protecting their rights, and, even in the absence of statute or motion, the court must take protective measures adequately to safeguard the person of a minor by appointment of a disinterested party as guardian ad litem, upon whom service of process may be made and who can adequately protect the interest of such minor in an incompetency proceeding. Re Wretlind, 225 M 554, 32 NW(2d) 161.

On appeal from probate to district court, service of appeal bond is not jurisdictional in the sense that it cannot be corrected, and where omission is due to mistake or excusable neglect the court should relieve appellant of default where no prejudice will result. Daughter of incompetent ward could maintain appeal from order allowing final account of general guardian. An aggrieved party may appeal to district court from order of probate court allowing guardian's account, even though he made no appearance in probate court or takes a different position in district court from that taken in probate court. On appeal to district court from order of probate court allowing guardian's final account, case is tried de novo. Peterson v Willyard, 228 M 508, 37 NW(2d) 742.

In determining the necessity for the appointment of a guardian for an aged person, the ultimate test is incompetence to manage his person or estate; and on appeal the appellate court will not disturb the trial court's finding of incompetence where there is evidence reasonably tentative to support it. Wolff v Lerum, 232 M 144, 44 NW(2d) 465.

Where minor children domiciled in Lyon county with parents, were placed in a home in Martin county after having been adjudged neglected children and their temporary custody placed in the Lyon county welfare board, the children retained the domicile of the father at the time the parents were found to have neglected them, and their constructive domicile in Lyon county, without actual physical presence therein, was sufficient to meet the requirements of being residents of Lyon county, and the probate court of Lyon county had jurisdiction of the proceedings for the appointment of a general guardian of the children. Where minors are abandoned by both parents they retain the domicile of their father at the time of their abandonment. Where venue does not affect the jurisdiction of the subject matter, a defective venue may be waived either by failing to object to the venue in the trial court or by seeking affirmative relief in alleged improper venue. The church welfare society which is organized for the purpose of aiding minor children and licensed by the state to place children in adopted homes and act as agent for the county welfare boards in caring for neglected and abandoned children, is a suitable and competent guardian for two neglected children. In re Kowalke's Guardianship, 232 M 292, 46 NW(2d) 275.

A minor for whom a guardian has been appointed is a ward of the probate court. Martineau v City of St. Paul, 172 F(2d) 777.

525.541 PETITIONERS

The court upon its own motion should have appointed a guardian ad litem to protect the interests of a child alleged to be incompetent. Re Wretlind, 225 M 554, 32 NW(2d) 161.

525.543 LIS PENDENS

Nature of original proceedings in probate court for creation of a guardianship status. 32 MLR 637.

Section 525.543 applies only in those cases where the guardian has been validly appointed. Jasperson v Jacobson, 224 M 76, 27 NW(2d) 788.

A reasonable test for the purpose of determining whether a commitment for insanity, senility, epilepsy, and mental deficiency, or the possession of psychopathic personality operates to render a person incapable of binding himself absolutely by contract is whether his mind has been so affected as to render it impossible for him to understand the nature and consequences of his act or the character of the transaction in question. Each individual case must be determined by the instant facts. Because of the various factors to be considered in reaching a decision the commissioner of the department of public welfare or the superintendent of an asylum is under no obligation to make a decision as to whether or not a person under their control is so mentally incompetent as to be unable to contract for insurance or transact other matters of business importance. OAG June 24, 1953 (248-C).

525.55 NOTICE OF HEARING

Nature of original proceedings in probate court for creation of a guardianship status. 32 MLR 637.

A judgment of a probate court, as a court of superior jurisdiction, cannot be attacked collaterally for want of jurisdiction not affirmatively appearing on the face of the record, but in determining the question of jurisdiction from an examination of the record, if the record shows a particular mode or manner in which jurisdiction over the alleged incompetent was acquired, it will not be presumed to have been obtained in any other way, in the absence of any averment or recital to that effect. Jasperson v Jacobson, 224 M 76, 27 NW(2d) 788.

The statutory requirements must be strictly observed in appointing the guardian of an alleged incompetent. Jurisdiction can be acquired only in the manner the statute specifies. Jasperson v Jacobson, 224 M 76, 27 NW(2d) 788.

525.56 GUARDIAN'S DUTIES

HISTORY. 1935 c 72 s 135; 1941 c 395 s 1; 1947 c 209 s 1; 1953 c 457 s 1.

Power of guardian of incompetent person to bring a divorce action for his ward. 32 MLR 827.

Institution of suits by guardians on behalf of wards. 33 MLR 47.

Where the guardian of a minor assumes, without approval of the probate court, to waive the priority of a mortgage running to him as guardian for the ward, such waiver is not binding on the ward. Those who deal with guardian are bound, at their peril, to determine under what authority the guardian acts. Vadnais v State, 225 M 439, 28 NW(2d) 694.

Appointment of a guardian over a minor does not divest the district court of jurisdiction to determine custody. As between a parent and a guardian the welfare of the child is the controlling factor. State ex rel v Rensch, 230 M 160, 40 NW(2d) 881.

The guardian of a minor is merely an officer or agent of the probate court. The minor is the real party in interest in an action by the guardian for his beneficiary, although the guardian is the proper party to the record and has control of prosecution of the action. The minor's name should be inserted as plaintiff. Martineau v City of St. Paul, 172 F(2d) 777.

The father, having been deprived of the custody and care of his child by the commitment of the child to the guardianship of its grandmother, cannot be convicted of abandoning the child. OAG Nov. 14, 1947 (133-B-1).

When the estate of an inmate of a state mental hospital has fallen to less than $1,000 in cash the probate court may order the money turned over to the hospital superintendent as guardian with the agreement that the monthly payments for the patient's care are to continue until the funds are exhausted. The superintendent must qualify and must disburse the money as required by section 246.15. OAG Feb. 10, 1948 (248-A-1).

The guardian of the estate of a ward is the ward's representative and, in respect to the ward's estate, may do what the ward could do for himself if competent. OAG June 1, 1951 (331-A-11).

525.57 TRANSFER OF VENUE

The resident's requirements in section 525.54 is jurisdictional in requiring that the person or property of a minor be within the state before a guardian of a minor can be appointed. Propriety of commencing guardianship proceedings in a given county of the state is a matter of venue. Kowalke's Guardianship, 230 M 292, 46 NW(2d) 275.

525.58 FILING OF ACCOUNTS

A final account in a guardianship proceeding contemplates, and it is allowed and settled only on the basis, that it constitutes the last statement of all receipts and disbursements made and to be made by the guardian in his official capacity as an essential part of the procedure pursuant to which his entire authority is terminated for all purposes except that of effecting a proper distribution of assets to the ward or a surrender thereof to his successor. Lack of jurisdiction falls into three classes: (1) jurisdiction of the subject matter; (2) jurisdiction of the persons; and (3) jurisdiction to enter the particular judgment or order entered. Re Hudson's Guardianship, 226 M 532, 33 NW(2d) 848.

Where the appeal of a special guardian of an incompetent from an order allowing the final account of the general guardian was pending at the time of the death of the special guardian, any interest which the special guardian might have had which would permit an appeal, was not an interest which would pass to his special administrator and permit an appeal by the special administrator. The sole duty of the administrator was to collect the assets and conserve the estate of the deceased, and not to protect the interests, if any, of a special guardian. Sargent v Willyard, 236 M 550, 53 NW(2d) 136.

525.582 ADJUDICATION ON ACCOUNT

The probate court is a court of superior jurisdiction and the allowing and settling of a guardian's final account is a final and appealable order. It cannot be attacked collaterally for want of jurisdiction not affirmatively appearing on the face of the record. Hudson's Guardianship, 226 M 532, 33 NW(2d) 848.

525.59 SUCCEEDING GUARDIAN

In an application for remission of bail, where the bail money was paid to the county treasurer by the clerk of court, it is essential to the jurisdiction of the court that the court have before it the party (in this case the county) which has possession of the bail money. In re Shetsky, 234 M 416, 48 NW(2d) 518.

525.591 SPECIAL GUARDIAN

Where the appeal of a special guardian of an incompetent from an order allowing the final account of the general guardian was pending at the time of the death of the special guardian, any interest which the special guardian might have had which would permit an appeal, was not an interest which would pass to his special administrator and permit an appeal by the special administrator. The sole duty of the administrator was to collect the assets and conserve the estate of the deceased,

and not to protect the interests, if any, of a special guardian. Sargent v Willyard, 236 M 550, 53 NW(2d) 136.

SALES, LEASES, MORTGAGES OF REALTY

525.63 REASONS FOR SALE, MORTGAGE, LEASE

It is the policy of the law to protect the homestead right and to preserve the homestead to the family even at the sacrifice of just creditor demands and the statutes are designed to effectuate this policy. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

Where a mortgage was given to the guardian of two wards as purchase price for the wards' interest in land, each ward had a one-half severable interest and either could dispose of his interest without joinder of the other; and where the ward after reaching majority joined the guardian in executing a waiver of priority of mortgage to guardian in favor of a mortgage running to the state but the guardian's action was not approved by the probate court and the mortgage to the state had been foreclosed, only the ward who was a minor at the time of execution of the waiver was entitled to foreclose to protect her interest. Vadnais v State, 224 M 439, 28 NW(2d) 694.

The probate court has jurisdiction over the estates of deceased persons, that is property which the deceased person owned at the time of his death. The law states that the homestead is not subject to the payment of debts, so the probate court has no authority over the homestead except to determine that it is a homestead. Any claim for reimbursement for old age assistance cannot be enforced in probate court against the homestead. The only procedure would be to foreclose the lien. OAG Sept. 6, 1951 (521-P-4).

Upon the husband's death the homestead passes to the children subject to the life estate of the widow. The matter of any sale of the homestead and the payment of an old age assistance lien thereon is for the district court and not the probate court. The administrator may not sell the homestead and pay the lien thereon. OAG Feb. 28, 1949 (525-P-4).

525.641 ORDER FOR SALE, MORTGAGE, LEASE

Where the guardian of a minor assumed without the approval of the probate court to waive priority of a motion running to him as guardian for the ward, such waiver was not binding on the ward. Vadnais v State, 224 M 439, 28 NW(2d) 694.

525.66 SALE OF CONTRACT INTEREST

In a suit by the vendee for specific performance, the vendor may not set up as a defense his own failure or neglect to make the title marketable where he has not sustained the burden of proof of showing that he cannot make the title marketable as agreed. Hensche v Young, 226 M 339, 28 NW(2d) 767.

In a suit for specific performance of an oral contract to make a will disposing of property or to adopt a child, the contract must be proved by clear, positive, and convincing evidence and it must be definite and certain in its terms. The burden is upon the plaintiff to show by full and satisfactory proof the fact of the contract and its terms before specific performance may be granted. In the instant case the evidence was insufficient to sustain the finding of the trial court that such an agreement was made. McCarty v Nelson, 233 M 362, 47 NW(2d) 595.

Specific performance of an oral contract to devise land will be granted where promisee pursuant to such contract has assumed peculiarly personal and domestic relation as a member of family of the promisor and has given to the promisor society and services incident to such relation and of a kind and character the value of which is not measureable in money, provided the terms of the contract are clearly

established and the consideration therefor is not grossly inadequate or its terms otherwise unfair. O'Brien v DeMeules, 234 M 133, 47 NW(2d) 772.

To justify specific performance of an oral contract to leave property to a specified person, the contract must be proved by clear, positive, and convincing evidence, and where the court denies a motion for amended findings of fact, such action is equivalent to making findings negativing the facts asked to be found. Alsdorf v Svoboda, ... M ....., 57 NW(2d) 824.

APPEALS

525.71 APPEALABLE ORDERS

An "appeal" under sections 525.71 to 525.731, or under sections 532.37 to 532.50 from the probate court and from the court of a justice of the peace to the district court upon questions of law and fact, is an "appeal" in the strict and original sense and is tried de novo in the appellate court. State ex rel v Civil Service Board, 226 M 253, 32 NW(2d) 574.

On appeal from probate to district court, service of appeal bond is not jurisdictional in the sense that it cannot be corrected, and where omission is due to mistake or excusable neglect the court should relieve appellant of default where no prejudice will result. Daughter of incompetent ward could maintain appeal from order allowing final account of general guardian. An aggrieved party may appeal to district court from order of probate court allowing guardian's account, even though he made no appearance in probate court or takes a different position in district court from that taken in probate court. On appeal to district court from order of probate court allowing guardian's final account, case is tried de novo. Peterson v Willyard, 228 M 508, 37 NW(2d) 742.

Where council for a general guardian rendered a statement for legal services; and where such statement indicated a possibility that some of such services had been previously compensated for, and council for the guardian could give no definite testimony clarifying the issue, the order allowing the general guardian's final act should be reversed and the case remanded for further proceedings. In re Hudson's Estate, 235 M 444, 51 NW(2d) 103.

In the absence of proof that other sums or property could be claimed by or were accessible to the general guardian of an incompetent ward, and in the light of evidence that assets of the ward delivered to a general guardian were fully covered in his final act, findings that the general guardian had accounted for all the assets of the estate are sustained. In re Hudson's Estate, 235 M 444, 51 NW(2d) 103.

525.712 REQUISITES

HISTORY. 1935 c 72 s 166; 1937 c 435 s 21; 1953 c 476 s 1.

The jurisdiction of the district court relating to appeals from probate court is appellate and not original and such appeals must be made pursuant to statutory direction. Stevens v Carlsen, 224 M 102, 27 NW(2d) 872.

The daughter of an incompetent ward may maintain an appeal from an order allowing the final account of the general guardian; and on appeal from the probate to the district court, service of an appeal bond is not jurisdictional in the sense that it cannot be corrected, and where the omission is due to mistake or excusable neglect, the court should relieve the applicant of the default where no prejudice will result. Hudson's Guardianship, 228 M 508, 37 NW(2d) 742.

In appeals to the district court from an order of juvenile court in the case where a delinquent is committed to the youth conservation commission, the procedure is in accordance with the provisions of section 525.712 and related sections. OAG Aug. 25, 1948 (145-B).

525.714 SUSPENSION BY APPEAL

An appeal by a special guardian from an order restoring an incompetent ward to capacity suspended the order of restoration, and the ward remained an incompetent person while such appeal was pending. Re Hudson's Guardianship, 226 M 532, 33 NW(2d) 848.

525.72 TRIAL

The jurisdiction of the district court relating to appeals from the probate court is appellate and not original and such appeals must be pursuant to statutory direction. Stevens v Carlsen, 224 M 102, 27 NW(2d) 872.

On an appeal to the district court from an order of the probate court allowing guardian's final account, the case is tried de novo. Hudson's Guardianship, 228 M 508, 37 NW(2d) 742.

525.73 AFFIRMANCE, REVERSAL

A residuary beneficiary under the will approved the federal estate tax settlement, including a refund of tax paid by the testator's widow, as executrix, on value of bond purchased by her, but held in joint tenancy with the testator, and erroneously included in the inventory. Gelin v Gelin, 229 M 516, 40 NW(2d) 342.

COMMITMENTS

525.749 DEFINITIONS

NOTE: "Center for emotionally disturbed children" is not recognized as being separate from "state hospital." Where parents of a mentally ill child execute an application on behalf of the child, voluntary hospitalization may be had under the provisions of section 525.75.

Commitment and release of incompetent persons. 33 MLR 51.

Mental incompetency. 36 MLR 179.

This appeal being limited to a determination of the question of the probate court's jurisdiction at time of the commitment of a 12-year-old girl to the Minnesota school and colony at Faribault, sufficiency of evidence to sustain the court's order finding such child feebleminded and ordering her commitment is not material. Re Wretlind, 225 M 554, 32 NW(2d) 163.

The probate court may not commit a tribal Indian, a ward of the federal government, to a state institution. OAG Nov. 14, 1952 (240-S).

If it is found after commitment that the patient is entitled to hospitalization at a veterans hospital, the probate court may amend the order of commitment nunc pro tunc. OAG Jan. 17, 1949 (248-A-7) (248-B-10).

525.751 INSTITUTION OF PROCEEDINGS

Rights of the insane offender. 36 MLR 933.

The voluntary appearance by a mother and stepfather of a minor child, who were petitioners for the child's commitment as a feebleminded person, and by a county attorney, who by virtue of statute, was authorized to represent the child, did not constitute a waiver of the child's right to notice or give the probate court jurisdiction over the child's person. Re Wretlind, 225 M 554, 32 NW(2d) 161.

Where transients from other states are found in Minnesota and committed after compliance with the provisions of section 525.751 with respect to notifying the director of public institutions, the committed county shall pay to the state the charge pre-

scribed in section 246.31, subdivision 4, for such time as the patient is confined in a state institution. OAG July 3, 1947 (248).

Where it is found that a person committed to the state training school for boys or home school for girls is insane as defined in section 525.749, proceedings should be instituted for such persons committed as insane. OAG Aug. 8, 1947 (85-A-26).

Where a patient having a legal settlement in Y county went to X county to receive medical attention, it is not within the discretion of the probate court of Y county to refuse to entertain jurisdiction of proceedings for the commitment of the patient. Upon refusal, mandamus will lie. OAG Jan. 5, 1948 (248-B-3).

In all counties where the population is less than 150,000 it is the duty of the county attorney to prepare petitions in connection with hearings for juvenile delinquents and for commitment of allegedly feebleminded, insane, or inebriate persons. OAG June 9, 1948 (121-B).

The court may appoint the same person as guardian ad litem and as an attorney in a proceeding to commit a minor, but the court has no authority to authorize payment of fees to the guardian ad litem in a proceeding to commit a minor as mentally ill or feebleminded. The court may authorize the payment of the fee set by statute to an attorney for his services. OAG Oct. 7, 1948 (679-G).

The probate court of the county of residence cannot refuse to entertain a petition for commitment; and the probate court of the county of residence may entertain a petition for commitment of persons confined in a hospital in another county but no valid commitment may be made except in accordance with the constitutional requirements of due process of law, notice of the fact of hearing and the purpose thereof, and opportunity to be heard before the order of commitment is issued. OAG March 17, 1950 (247).

525.752 EXAMINATION

HISTORY. Amended, 1949 c 81 s 1.

Infants; jurisdiction of probate court over feeblminded minors; appointment of guardian ad litem. 33 MLR 76.

The voluntary appearance by mother and stepfather of a minor child, who were petitioners for the child's commitment as a feebleminded person, as well as by the county attorney authorized to represent the child, did not constitute a waiver of notice or give the probate court jurisdiction over the minor's person in such proceeding, since the mother and stepfather as petitioners were adversary parties. Re Wretlind, 225 M 554, 32 NW(2d) 163.

Section 525.752 authorizes restraint and confinement of a patient only for observation and examination in any licensed hospital or other place or institution consenting to receive him. The section does not grant authority for taking the patient into custody and bringing him into court. OAG March 17, 1950 (247).

Even though in the court's opinion it is very obvious that the patient is mentally deficient, section 525.752 as amended by Laws 1947, Chapter 622, Section 4, Subdivision 1, requires that two doctors or persons skilled in the ascertainment of mental deficiency be appointed to examine the patient and report. OAG June 12, 1947 (679-E).

525.753 COMMITMENT

The petition in the instant case contained no allegations applicable to a petition for restoration and was in fact only a petition in habeas corpus of which the probate court has no jurisdiction. State ex rel v Willson, 230 M 156, 40 NW(2d) 910.

Where a veteran minor, whose parents lived in another state, upon discharge from the army because of physical disability, obtained a marriage license in Minnesota and was committed as an epileptic, the director of public institutions was not

authorized except with the veteran's consent to transport him out of the state. OAG Oct. 2, 1947 (88-A-27).

If after commitment it is found that the patient is entitled to hospitalization at the veterans' hospital, the probate court may amend the order of commitment nunc pro tunc. OAG Jan. 17, 1949 (248-A-7) (248-B-10).

At the expiration of 60 days when a patient is returned to the probate court after the chief medical officer files a certificate saying that the patient needs no further treatment, it is the duty of the probate court to make a finding based upon the certificate of the chief medical officer. OAG Aug. 14, 1953 (248-B-3).

Each commitment to a public institution shall be for a period of not more than 60 days. At the expiration of this period, if the chief medical officer of the public institution finds that the patient is in no further need of institutional care and treatment, he shall be returned to the committing court by the institution to which he was committed, and the guardianship of the director of public institutions discharged. OAG Nov. 20, 1953 (248-B-3).

A voluntary inebriate patient may not be transferred to a hospital for the insane without a commitment. OAG July 10, 1951 (248-B-6).

In addition to the fundamental duties of the sheriff, the legislature has seen fit under section 252.06 to require him to transport feebleminded and epileptic persons to public institutions, and under section 525.753 he is required to execute warrants of commitment in insanity cases; but where a mentally ill person is provisionally discharged and placed in the care of friends or relatives and it becomes necessary to return the patient to the institution for treatment, the sheriff is under no obligation to obey the instruction of the superintendent or director to pick up and return the mentally ill person. OAG Nov. 23, 1949 (390-C-6).

In a proceeding to have an adult committed as a mentally deficient person it is advisable to have a guardian ad litem appointed. Service should then be made upon the guardian ad litem as well as upon the person charged with being mentally deficient in the proceeding to determine whether he is mentally deficient. OAG Dec. 22, 1948 (679-G).

525.754 FEES, MILEAGE

HISTORY. 1935 c 72 s 177; 1943 c 612 s 10; 1947 c 622 s 6; 1953 c 546 s 1.

The terms "mileage" and "transportation charges" as used in section 357.09, subdivision 2, and "actual disbursement for travel" used in section 525.754, are not synonymous. Mileage is compensation to the officer for travel, measured by miles of travel, while transportation charges are compensation for carrying of the patients, and actual disbursements for travel are moneys paid out. OAG April 28, 1947 (390-C-6).

An officer serving in relation to commitment and release of incompetent persons receives $3 per day for services, plus his disbursements for travel, and board and lodging of himself, his authorized assistants, and the patient. OAG Jan. 23, 1948 (390-A-11).

The court may appoint the same person as guardian ad litem and as an attorney in a proceeding to commit a minor, but the court has no authority to authorize payment of fees to the guardian ad litem in a proceeding to commit a minor as mentally ill or feebleminded. The court may authorize the payment of the fee set by statute to an attorney for his services. OAG Oct. 7, 1948 (679-G).

In probate commitment proceedings witness fees and mileage are payable only to witnesses who appear in answer to a subpoena. OAG Aug. 24, 1949 (248-B-3).

A sheriff paid a stated salary is not entitled to a fee for conveying a committed person to the place of detention, but his authorized assistants are entitled to compensation at not to exceed $3 per day. OAG May 26, 1952 (390-C-6).

Relatives or the guardian of insane persons may transport them to the state hospital when so committed by the probate court, in which event the county officials are not allowed any compensation. In cases where the county pays the expense there is no provision for reimbursement. OAG Oct. 29, 1952 (248-B-3).

525.76 RELEASE BEFORE COMMITMENT

Section 525.76 prevents the release of a psychopathic personality before commitment, and section 525.761 prevents a release after commitment except upon an order of a court of competent jurisdiction. Section 525.762 places the patient under the control of the director of the division of public institutions and prevents the release of a patient found by the committing court to have a psychopathic personality except upon order of a court of competent jurisdiction. OAG Oct. 27, 1948 (248-B-11).

When the probate court has committed a person as an inebriate to the state hospital at Willmar, the jurisdiction of the probate court ceases upon making the commitment. When the patient is committed the control of the director is complete until the patient is discharged by him or by a court of competent jurisdiction. OAG June 6, 1950 (660).

525.761 RELEASE AFTER COMMITMENT

HISTORY. 1935 c 72 s 179; 1943 c 612 s 11; 1945 c 425 s 2; 1947 c 622 s 8; 1953 c 604 s 1.

The superintendent of a state hospital may grant to a patient, who has been committed as mentally unwell, parole for the purpose of visiting his friends or relatives without placing him on a provisional discharge status. OAG Feb. 1, 1952 (248-A-2).

The automatic restoration to capacity under section 525.753, subdivision 4, applies only to persons who have been provisionally discharged as distinguished from persons paroled. OAG Nov. 3, 1947 (248-B-8).

The authority of the probate court is granted by the constitution and cannot be divested by the legislature. Such authority extends to insane persons who are subject to guardianship. The laws relating to insane persons apply to persons having a psychopathic personality. All laws applicable to persons found to be dangerously insane apply to psychopathic personalities. No patient found by the committing court to be dangerous to the public shall be released except upon an order of a court of competent jurisdiction. OAG Sept. 13, 1949 (248-B-11).

A committed psychopathic personality may be released by the committing board only after a hearing, as provided by section 525.78. OAG July 11, 1953 (248-B-11).

If private employment is available to a patient at a state hospital, he may be released on provisional discharge even though not fully recovered. The state is not liable for injuries to a patient who has been provisionally discharged to accept employment; and the superintendent of the hospital wherein the patient was confined would not be liable for injuries to the patient while employed during the period of his provisional discharge provided that the hospital superintendent released the patient in accordance with the authority contained in section 525.761, and such release was not negligent on the part of the superintendent. OAG Oct. 7, 1948 (844-G).

525.762 DETENTION

"T" was indicted for murder in the first degree in October, 1938. While awaiting trial his sanity was questioned and on being tested, under the provisions of section 631.18, he was found to be insane and the district court committed him to the state hospital at St. Peter. He escaped from that hospital on Aug. 28, 1948, and is still under indictment for murder. Under the provisions of section 525.762, the state hospital at St. Peter is required to file notice of the inmate's escape in the court of his commitment. Upon receiving notice it is the duty of the county attorney of the county of the inmate's commitment to determine whether or not he desires to

institute extradition proceedings. If there are extradition agreements between Minnesota and the state to which he escaped, section 246.234 applies. OAG Sept. 28, 1948 (248-A-3).

525.78 RESTORATION TO CAPACITY

The probate court has no jurisdiction in habeas corpus proceedings. An intervenor has no right to change the issue between the original parties. A petition labeled as a petition to vacate the order of commitment of a person found by the probate court to be a psychopathic personality, and to restore him to capacity, but which contained no allegations applicable to a petition for restoration and merely asked for vacation of commitment order and a warrant of commitment on the ground that the probate court lacked jurisdiction to make the order, was a petition for habeas corpus of which the probate court had no jurisdiction. State ex rel v Willson, 230 M 156, 40 NW(2d) 910.

GENERAL PROVISIONS

525.80 REPRESENTATIVE AND MINOR

The disabilities of infancy are personal privileges conferred on infants by the law of their domicile, and constitute limitations on the legal capacity of infants, not to defeat their rights, but to shield and protect them from acts of others, as well as from their own improvidence. Davidson's Will, 223 M 268, 26 NW(2d) 223.

Where a divorce judgment provides for monthly payments until the further order of the court of a certain sum to the wife as alimony for the wife and as support money for their minor children, whose custody was awarded to the wife during their minority, but without specifying how much thereof shall be alimony for the wife and how much shall be support money for the children, and declared the payments a lien on real estate which the wife was adjudged to convey to the husband, prior to all encumbrances thereof of record, the court has the power after the death of the husband to modify and amend the provisions of the judgment concerning alimony and support money. Garber v Robitshek, 226 M 398, 33 NW(2d) 30.

525.82 VENUE

Where minor children, who were domiciled in Lyon County with parents, were placed in a home in Martin County after having been adjudged negligent children and their temporary custody placed in the Lyon County welfare board, the children retained the domicile of the father at the time the parents were found to have neglected them, and their constructive domicile in Lyon County, without actual physical persons therein, was sufficient to meet the requirements of being "residents" of Lyon County, and the probate court of such county had jurisdiction of the proceedings for the appointment of a general guardian of the children. Kowalke's Guardianship, 232 M 292, 46 NW(2d) 275.

525.83 NOTICE

Where hearings are set by probate court and before time of hearing the judge dies and no successor judge is appointed before time of hearing, the successor judge under inherent powers of court may appoint new time of hearing and order that personal notice of hearing to persons interested be given. OAG Sept. 16, 1949 (347-K).

525.87 MURDERER DISINHERITED

Intentional and felonious killing of principal beneficiary by contingent beneficiary. 35 MLR 415.

Pursuant to Minnesota Constitution, Article VI, Section 7, the probate court is vested with a plenary and exclusive original jurisdiction over the estates of deceased persons in all matter relating to their complete administration, inclusive of both settlement and the determination of the person to whom property passes by will or descends by statutory inheritance, and this jurisdiction cannot be enlarged or diminished by the legislature.

In the settlement and distribution of the estates of deceased persons, the district court has only appellate jurisdiction, with the sole exception that it may exercise a purely ancillary jurisdiction to aid (but not to controvert or obstruct) the probate court in the performance of its proper functions in those special cases where, without such aid, the probate court would manifestly be unable to afford an adequate remedy for an alleged wrong to the estate, the heirs, legatees, or creditors. Vesey v Vesey, 237 M 10, 53 NW(2d) 810.

Since the surviving joint owner of a joint bank account takes an interest in the account not from the estate of the deceased joint owner but by virtue of the contract of deposit, the provisions of section 525.87 are not applicable to bar a surviving joint owner who feloniously takes the life of the other joint owner from acquiring balance of joint account. Vesey v Vesey, 237 M 295, 54 NW(2d) 385.

An original adjudication of whether a person is disqualified under MSA, Section 525.87 from inheriting from a decedent on the alleged ground of having feloniously taken decedent's life is a determination of heirship, or of the right to take share of a deceased person's estate; as such, it involves an exercise of original jurisdiction, which belongs exclusively to the probate court.

Although a probate court has no general jurisdiction such as is possessed by a district court, it does have all the powers, legal or equitable, essential to a complete exercise of the plenary and exclusive jurisdiction conferred by the constitution; and, in cases arising within that jurisdiction, it may apply the law, whether it be statutory law, the rules of the common law, or principles of equity. Vesey v Vesey, 237 M 10, 53 NW(2d) 810.

Plaintiffs were children by a prior marriage of the decedent alleged to have been feloniously killed by his widow. Plaintiffs alleged that at the time of decedent's marriage to the defendant decedent was a robust man in good health but that with premeditation and design to impair his health and hasten his death defendant began a course of conduct which weakened defendant physically and mentally. At a time when decedent was suffering from a serious heart ailment, aggravated by asthma, defendant knowing decedent's condition and that exertion might be fatal, coerced decedent to walk with her through deep snow on a cold and windy day which exertion and exposure caused his death after he had walked two blocks. It was sufficient that the acts complained of accelerated the decedent's death. It was held that if the defendant was responsible for decedent's death a constructive trust would be imposed upon the balance of a joint and several bank account for the benefit of the estate of the decedent. Vesey v Vesey, 237 M 295, 54 NW(2d) 385.

Since the surviving joint owner of a joint and several bank account takes an interest in the account not from the estate of the deceased joint owner but by virtue of the contract of deposit, the provisions of section 525.87 are not applicable to bar surviving joint owner who feloniously takes the life of the other joint owner from acquiring the balance of the account. The court will impose a constructive trust upon the entire account for the benefit of the estate of the decedent. Vesey v Vesey, 237 M 295, 54 NW(2d) 385.

525.88 STATE PATENTS

Where the purchaser of trust fund loans dies, upon his death his heirs become tenants in common and one of the heirs having an interest in the certificate and being a holder of the certificate has a right to make the necessary payment, file an application for extension and surrender the certificate in accordance with the terms of section 92.163. A new certificate modifying the original certificate in accordance with the facts may be issued. OAG Jan. 24, 1951 (700-D).

525.89 Unnecessary.

525.90 DISPOSITION OF PROPERTY OF PERSONS DYING SIMULTANEOUSLY

Where there are simultaneous deaths of husband and wife and property of the kind which, while includible in decedent's gross estate, nevertheless, under the Uniform Act passes under the spouse's will or to her heirs there is survivorship for the purposes of the marital deduction under the federal estate tax with regard to the property. 36 MLR 50, 53.

525.91 LETTERS, CONTENTS

HISTORY. 1951 c 140 s 1.

CHAPTER 526

PROBATE GENERAL PROVISIONS

526.01 INSANE PERSONS' SUPPORT

HISTORY. 1917 c 294 s 4; 1931 c 301 s 1; 1941 c 313 s 1; 1953 c 732 s 6.

A contract between the father of an inmate and the director of public institutions by which the father paid a lump sum and was released from further contribution would not be valid. OAG Aug. 5, 1948 (88-A-4).

Laws 1947, Chapter 534, Section 4, coded as section 246.31, supersedes the provisions of section 526.01 relating to payment or refundment of the $10 per month charged for maintenance of an inmate of a state institution. OAG Dec. 9, 1947 (248).

As respects collection of the per capita cost of maintenance of persons in mental hospitals sections 526.01 to 526.07 will not conflict with section 246.31, subdivision 4; and the enforcement of a claim under sections 526.01 to 526.07 permits discretion on the part of the director as to enforcement of the claim. OAG July 3, 1947 (248).

A person committed to the school for feebleminded on Feb. 5, 1935, was transferred to the hospital for the insane on Feb. 27, 1942. The patient's guardian, having paid the monthly amount chargeable while the patient was an inmate of the school for the feebleminded, the said school has no further claim. The inmate having been permanently transferred to the hospital for the insane, any charge must be determined by the provisions of section 526.01. This section does not provide for a claim against a county of the settlement of the inmate. Laws 1947, Chapter 534, has no application. OAG Feb. 27, 1948 (248-A-1).

The guardian of an insane person receiving rental from the patient's homestead and other lands cannot resist state's claim for reimbursement under the claim that such funds are exempt from execution and attachment. OAG May 12, 1948 (248-A-1).

Under the provisions of Laws 1947, Chapter 534, Section 4, the county which actually makes the commitment to the home school for girls at Sauk Centre and not the county of the inmate's residence is the committing county within the meaning of section 4. OAG Oct. 27, 1947 (248-D-3).

526.04 PETITION FOR RELEASE OR MODIFICATION OF ORDER

NOTE: Under section 245.04 the powers and duties of the director of public institutions are transferred to the commissioner of public welfare.