THE

STATUTES AT LARGE

OF THE

STATE OF MINNESOTA

COMPRISING

THE GENERAL STATUTES OF 1866

As amended by subsequent Legislation to the close of the Session of 1873

TOGETHER WITH

ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, *A.D.* 1873

WITH REFERENCES TO

JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE CONSTITUTION OF THE STATE OF MINNESOTA

VOL. I.

COMPILED AND ARRANGED BY

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CHAPTER XXXV.

OF WILLS AND THE ADMINISTRATION OF ESTATES.

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TITLE I.

OF WILLS.

(This Title is Chapter XLVII. of the Statutes of 1866.)

SECTION 1 (AS AMENDED BY ACT OF MARCH 5, 1869). *Who may devise lands.*—Every person of full age and sound mind, being seized in his own right of any lands, or entitled to any interest therein descendible to his heirs, may devise and dispose of the same by his last will and testament in writing; and all such estate not disposed of by will, shall descend as the estate of an intestate, being chargeable in both cases with the payment of all debts; and any married woman may devise and dispose of any real or personal property held by her, or to which she is entitled in her own right, by her last will and testament in writing, and may alter or revoke the same in like manner as if she was unmarried.

Amendment took effect June 1, 1869. S. L. 1869, 75.

SEC. 2. *Construction of devise.*—Every devise of land in any will hereafter made shall be construed to convey all the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that the devisor intended to convey a less estate.

SEC. 3. *After acquired lands shall pass, how.*—Any estate, right, or interest in lands acquired by the testator after making his will, shall pass thereby in like manner as if possessed at the time of making the will, if such manifestly appears by the will, to have been the intention of the testator.

SEC. 4. *Who may bequeath personal estate.*—Every person of full age and sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate remaining at his decease, and all his right thereto, and interest therein; and all such estate not disposed of by the will, shall be administered as intestate estate.

4 Chand. 155; 19 Wis. 149.

SEC. 5. *Wills, how executed.*—No will, except such nuncupative wills as are hereinafter mentioned, shall be effectual to pass any estate, real or personal, or to charge, or in any way affect the same, unless it is in writing, and signed at the end thereof, by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by two or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it arises, shall not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

SEC. 6. *Nuncupative will valid, when.*—No nuncupative or unwritten will bequeathing personal estate shall be valid, unless made by a soldier while in actual military service, or by a mariner while at sea.

SEC. 7. *Legacies to subscribing witnesses void, when.*—All beneficial devises, legacies, and gifts made or given in any will, to a subscribing witness thereto, shall be wholly void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor for the payment of debts shall not prevent his creditors from being competent witnesses to his will.

SEC. 8. *Share of estate to subscribing witness saved, when.*—But if any witness

to whom a beneficial devise is made or given would be entitled to any share of the estate of the testator, in case the will is not established, then so much of the share that would have descended or been distributed to such witness as will not exceed the devise or bequest made to him in the will, shall be saved to him, and he may recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

SEC. 9. *Wills, how revoked.*—No will, nor any part thereof, shall be revoked, unless by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator, or by some person in his presence, and by his direction; or by some will, codicil, or other writing, signed, attested, and subscribed in the manner provided for the execution of a will; but nothing contained in this section shall prevent the revocation implied by law, from subsequent changes in the condition or circumstances of the testator.

4 Wis. 254.

SEC. 10. *Custodian of will to deliver it to probate court, when.*—Every person having the custody of any will, shall, within thirty days after he has knowledge of the death of the testator, deliver the same into the probate court which has jurisdiction of the case, or to the person named in the will as executor.

SEC. 11. *Executor to present will, when.*—Every person named as executor in any will, shall, within thirty days after the death of the testator, or within thirty days after he has knowledge that he is named executor, if he obtains such knowledge after the death of the testator, present such will to the probate court which has jurisdiction of the case, unless the will has been otherwise delivered to the judge of probate, and shall within the period above mentioned signify to the court his acceptance of the trust, or make known in writing to such court his refusal to accept it.

20 Wis. 452.

SEC. 12. *Violation of two preceding sections—penalty.*—Every person who neglects to perform any of the duties required in the two preceding sections, without reasonable cause, shall be guilty of a misdemeanor, and be liable to any party aggrieved for the damages sustained by such neglect.

SEC. 13. *Custodian of will refusing to deliver will, may be imprisoned.*—If any person having the custody of a will, after the death of the testator, without reasonable cause, neglects to deliver the same to the probate court having jurisdiction of it, after being duly notified by such court for that purpose, he may be committed to the jail of the county by warrant issued by such court, and there be kept in close confinement, until he delivers the will as above directed.

SEC. 14. *Notice of probate of will.*—When any will is delivered to any probate court having jurisdiction of the same, such court shall appoint a time and place for proving it, when all concerned may appear and contest the probate of the will, and shall cause public notice thereof to be given by personal service on all persons interested, or by publication under an order of such court, in such newspaper printed in this state, as the judge shall direct, three weeks successively, previous to the time appointed, and no will shall be proved until notice is given as herein provided.

SEC. 15. *Probate granted, when.*—If no person appears to contest the probate of a will at the time appointed for that purpose, the court may, in its discretion, grant probate thereof, on the testimony of one of the subscribing witnesses only, if

such witness testifies that such will was executed in all the particulars as required in this chapter, and that the testator was of sound mind at the time of the execution thereof.

SEC. 16. *When other witnesses may be admitted to prove will.*—If none of the subscribing witnesses reside in this state at the time appointed for proving the will, the court may in its discretion admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and as evidence of the execution of the will may admit proof of the handwriting of the testator and of the subscribing witnesses.

SEC. 17. *Will not effectual unless probated.*—No will shall be effectual to pass either real or personal estate, unless it is duly proved and allowed in the probate court, as provided in this chapter, or on appeal in the district court; and the probate of a will of real or personal estate, as above mentioned, shall be conclusive as to its due execution.

SEC. 18. *Will proved and allowed in other states, how allowed in this state.*—All wills, duly proved and allowed in any of the United States, or in any foreign country or state, according to the laws of such state or country, may be allowed, filed, and recorded in the probate court of any county in which the testator has real or personal estate, on which such will may operate, in the manner mentioned in the following sections.

SEC. 19. *Notice of hearing to be given.*—When a copy of such will, and the probate thereof duly authenticated, is produced by the executor or other person interested in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

SEC. 20. *If allowed, copy of will to be recorded.*—If, on hearing the case, it appears to the court that the instrument ought to be allowed in this state, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have the same force and effect as if it had been originally proved and allowed in the same court.

SEC. 21 (AS AMENDED BY ACT OF MARCH 3, 1870). *Letters testamentary, etc., to be granted.*—When any will is allowed, as mentioned in the preceding section, the probate court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration shall extend to all the estate of the testator in this state; such estate after payment of his just debts, and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it, and the residue shall be disposed of as is provided by law in cases of estates in this state, belonging to persons who are inhabitants of any other state or country. Letters testamentary, or letters of administration with the will annexed may issue to a foreign executor or administrator with the will annexed, though not a resident of this state, upon filing a duly authenticated copy of his appointment, and of the bond given by him in the state or county in which it was originally proven: *provided*, that the judge of probate before issuing such letters may, in his discretion, require him to give bond as in other cases.

Last clause and provisos added, S. L. 1870, 126. Act repeals all inconsistent acts.

SEC. 22. *Share of child born after will is made.*—When any child is born after the making of his parent's will, and no provision is made therein for him, such child shall have the same share in the estate of the testator, as if he had died intestate,

and the share of such child shall be assigned to him, as provided by law in case of intestate estates, unless it is apparent from the will that it was the intention of the testator that no provision should be made for such child.

Prentiss *v.* Prentiss, 14 Minn. 18.

SEC. 23. *Provision for child in case of omission by accident.*—When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, and it appears that such omission was not intentional, but was made by mistake or accident, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, to be assigned as provided in the preceding section.

Case *v.* Young, 3 Minn. 209.

SEC. 24. *From what estdte provision to be taken.*—When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child or the issue of a child omitted in the will, as hereinbefore mentioned, the same shall first be taken from the estate not disposed of by the will, if any; if that shall not be sufficient, so much as is necessary shall be taken from all the devisees or legatees in proportion to the value of the estate they may respectively receive under the will, unless the obvious intention of the testator, in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated, in which case such specific devise, legacy, or provision may be exempted from such apportionment, and a different apportionment may be adopted in the discretion of the probate court.

SEC. 25. *Issue of deceased legatee shall take estate, when.*—When a devise or legacy is made to any child or other relation of the testator, and the devisee or legatee dies before the testator, leaving issue who survives the testator, such issue shall take the estate so given by the will, in the same manner as the devisee or legatee would have done if he had survived the testator, unless a different disposition is made or directed by the will.

SEC. 26. *Estate of testator liable for debts, etc.*—All the estate of the testator, real and personal, is liable to be disposed of for the payment of his debts and the expenses of administering his estate, and the probate court may make such reasonable allowance as may be judged necessary for the expenses of the maintenance of the widow and minor children, or either, constituting the family of the testator, out of his personal estate or the income of his real estate, during the progress of the settlement of the estate, but never for a longer period than until their shares in the estate are assigned to them.

SEC. 27. *Provisions of will to be followed.*—When the testator makes provision by his will or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated.

SEC. 28. *If provision is insufficient, estate not devised shall be resorted to.*—If the provision made by the will, or the estate appropriated, is not sufficient to pay the debts, expenses of administration, and family expenses, such part of the estate, real and personal, as is not disposed of by the will, if any, shall be appropriated according to the provisions of the law for that purpose.

SEC. 29. *Estate devised, how liable for payment of debts.*—The estate, real and personal, given by will to any devisees or legatees is liable for the payment of the debts, expenses of administration, and family expenses, in proportion to the amount

of the several devises or legacies, except that specific devises and legacies, and the persons to whom they are made, may be exempted, if it appears to the court necessary, in order to carry into effect the intention of the testator, and if there is other sufficient estate.

SEC. 30. *Estate liable for payment of debts may be retained by executor.*—When the estate given by any will is liable for the payment of debts and expenses, as mentioned in the preceding section, or is liable to be taken to make up the share of a child born after the execution of the will, or of a child or of the issue of a child not provided for in the will, as hereinbefore provided, the executor has a right to retain possession of the same until such liability is settled by order of the probate court; and until the devises and legacies so liable, are accordingly assigned by order of such court; and when the same can properly be done, any devisee or legatee may make his claim to such court to have such liability settled, and his devise or legacy assigned to him.

SEC. 31. *When devisee or legatee shall hold subject to liability to contribute.*—All the devisees and legatees who, with the consent of the executor, or otherwise, have possession of the estate given to them by will, before such liability is settled by the probate court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and be held to contribute according to their respective liabilities to the executor, or to any devisee or legatee from whom the estate devised to him has been taken, for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or the issue of a child omitted in the will; and the persons who as heirs have received the estate not disposed of by the will, as provided in this chapter, are liable to contribute in like manner as the devisees or legatees.

SEC. 32. *Who are liable for loss in case of insolvency of persons liable to contribute.*—If any of the persons liable to contribute, according to the provisions of the preceding section, is insolvent, and unable to pay his share, the others shall be severally liable for the loss occasioned by such insolvency, in proportion to and the extent of the estate they may have received; and if any of the persons so liable to contribute dies before having paid his share, the claim shall be valid against his estate in the same manner as if it was his proper debt.

SEC. 33. *Probate court to settle amount of liabilities by decree.*—The probate court may, by decree for that purpose, settle the amount of the several liabilities, as provided in the preceding sections, and decree how much and in what manner each person shall contribute, and may issue execution as circumstances may require; and the claimant may also have a remedy by action.

SEC. 34. *Wills proven, to have certificate—how made evidence.*—Every will when proved, as provided in this chapter, shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal; and every will so certified, and the record thereof or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this state, without further proof.

SEC. 35. *Attested copy to be recorded in registry of deeds.*—An attested copy of every will devising lands or any interest in lands, and of the probate thereof, shall be recorded in the registry of deeds of the county in which the lands lie.

SEC. 36. *Term "executor" defined.*—The word "executor" in this and subsequent titles (chapters) shall be construed to include an administrator with the will annexed.

TITLE II.

LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON PROBATE OF A WILL.

(*This Title is Chapter L. of the Statutes of* 1866.)

SEC. 37 (1). *Letters testamentary, to whom issued.*—When a will is duly proved and allowed, the probate court shall issue letters testamentary thereon to the executor named therein, if he is legally competent, and accepts the trust and gives bond as required by law.

19 Wis. 149.

SEC. 38 (2). *Bond to be given, how conditioned.*—Every executor, before entering upon the execution of his trust, and before letters testamentary are issued, shall give bond to the judge of probate in such reasonable sum as he may direct, with one or more sufficient sureties, with conditions as follows: to make and return to the probate court within three months, a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him; to administer according to law and the will of the testator all his goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same pay and discharge all debts, legacies, and charges, chargeable on the same, or such dividends thereon as are ordered and decreed by the probate court; to render a true and just account of his administration to the probate court within one year, and at any other time when required by such court; to perform all orders and decrees of the probate court, by the executor to be performed in the premises.

19 Wis. 149.

SEC. 39 (3). *Bond when executor is residuary legatee.* — If, however, the executor is a residuary legatee, instead of the bond prescribed in the preceding section, he may give a bond in such sum and with such sureties as the court may direct, with condition only to pay all the debts and legacies of the testator, and in such case he shall not be required to return an inventory.

SEC. 40 (4). *Refusal to accept trust and give bond.*—No person named as executor in a will, who neglects to accept the trust, or give bond as prescribed in this chapter, for twenty days after the probate of such will, shall intermeddle or act as executor.

19 Wis. 149; 20 Wis. 452.

SEC. 41 (5). *Other executors appointed, when.*—If a person named executor in any will refuses to accept the trust, or neglects for twenty days after the probate of the same, to give bond as required by law, the probate court may grant letters testamentary to the other executors, if there are any capable and willing to accept the trust; and if there are none such, the court may commit administration of the estate with the will annexed, to such person as would have been entitled thereto if the deceased had died intestate.

15 Wis. 511.

SEC. 42 (6). *Proceedings in case executor is a minor.*—When the person named executor in a will is under full age at the time of proving the will, admini-

stration shall be granted with the will annexed, during the minority of the executor, to the person who would have been entitled thereto if the deceased had died intestate, unless there is another executor who accepts the trust and gives bond, and in that case the executor who gives bond shall have letters testamentary, and shall administer the estate until the minor arrives at full age, when he may be admitted as joint executor on giving bond according to law.

SEC. 43 (7). *Administrator with the will annexed shall give bond.*—Every person appointed administrator with the will annexed, shall, before entering upon the execution of his trust, give bond to the judge of probate, in the same manner, and with the same condition as is required of an executor, and shall proceed in all things to execute the trust in like manner as an executor is required to do.

SEC. 44 (8). *Marriage of executrix extinguishes her authority.*—When an unmarried woman, appointed an executrix, alone, or jointly, with another person, marries, her marriage shall extinguish her authority as executrix.

SEC. 45 (9). *Executor may be removed, when.*—When an executor resides out of this state, or neglects, after due notice given by the judge of probate, to render his account and settle the estate according to law, or perform any decree of the court, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the probate court may remove such executor.

SEC. 46 (10). *Effect of death or removal of executor.*—When an executor dies, or is removed, or his authority is extinguished, the remaining executor, if there is any, may execute the trust; and if there is no other executor, administration, with the will annexed, may be granted of the estate not already administered.

SEC. 47 (11). *When all the executors cannot act, those authorized may discharge trust.*—When all the executors appointed in a will are not authorized according to the provisions of this title (chapter), to act as such, such as are authorized shall have the same authority to perform every act, and discharge every trust, required and allowed by the will; and their acts shall be as valid and effectual for every purpose as if all were authorized and acted together; and administrators with the will annexed shall have the same authority to perform every act, and discharge every trust, as the executor named in the will would have had, and their acts shall be as valid and effectual for every purpose.

SEC. 48 (12). *Executor of executor not to administer.*—The executor of an executor shall not, as such, administer the estate of the first testator, but on the death of the only surviving executor, administration of the estate of the first testator, not already administered, may be granted, with the will annexed to such person as the probate court may judge proper.

SEC. 49 (13). *Separate or joint bonds may be taken.*—When two or more persons are appointed executors of any will, the judge of probate may take a separate bond from each, or a joint bond from all, with sureties.

SEC. 50. AN ACT

REQUIRING ADDITIONAL BONDS OF EXECUTORS, ADMINISTRATORS, AND GUARDIANS IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. Whenever any judge of probate is satisfied that the executor, administrator, or guardian is insufficient, he may on his own motion, or on appli-

cation of any one or more of the relatives of the deceased, or of the ward, require an additional bond, and a refusal or failure to furnish or give the same within a reasonable length of time shall be deemed a sufficient cause for the removal of such executor, administrator, or guardian.

Sec. 2. This act shall take effect and be in force from and after its passage.

S. L. 1873, 180.

TITLE III.

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

(*This Title is Chapter LI. of the Statutes of* 1866.)

SEC. 51 (1, AS AMENDED BY ACT OF MARCH 4, 1872). *Personal estate, how distributed.*—When any person dies, possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:—

First. The widow, if any, shall be allowed all her articles of apparel and ornament, and all the wearing apparel of the deceased, his household furniture, not exceeding in value two hundred and fifty dollars, and other personal property to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband as when he dies intestate.

Second. The widow and children constituting the family of the deceased shall have such reasonable allowance out of the personal estate as the probate court deems necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances; which, in case of an insolvent estate, shall not be longer than one year after granting administration, nor for any time after the dower and personal estate are assigned to the widow.

Third. When a person dies, leaving children under seven years of age having no mother, or when the mother dies before the children arrive at the age of seven years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of seven years, out of such part of the personal estate, and the income of such part of the real estate as would have been assigned to their mother if she had been living.

Fourth. If, on the return of the inventory of any intestate estate, it appears that the value of the whole estate does not exceed the sum of one hundred and fifty dollars, the probate court may, by a decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under seven years of age, if there is no widow, the whole of such estate, after the payment of the funeral charges and expenses of administration.

Fifth. If the personal estate amounts to more than one hundred and fifty dollars, and more than the allowances mentioned in the preceding subdivisions of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral, and settling of his estate.

Sixth. The residue, if any, of the personal estate, shall be distributed in the same proportion, and to the same persons, and for the same purpose as prescribed for the descent and disposition of the real estate, except that the widow or husband

surviving, if any, shall be entitled to receive the same share of such residue as a child of such intestate would be entitled to.

S. L. 1872, 131.

SEC. 52 (2). *Which probate court to have jurisdiction.*—When any person dies intestate, being an inhabitant of this state, letters of administration of his estate shall be granted by the probate court of the county of which he was an inhabitant or resident at the time of his death. If such deceased person at the time of death resides in any other territory, state, or country, leaving estate to be administered in this state, administration thereof shall be granted by the probate court of any county in which there is estate to be administered; and the administration first legally granted shall extend to all the estate of the deceased in this state, and exclude the jurisdiction of the probate court of every other county.

SEC. 53 (3). *Who entitled to letters of administration.*—Administration of the estate of a person dying intestate, shall be granted to one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:

First. The widow, or next of kin, or both, as the judge of probate may think proper, or such person as the widow or next of kin may request to have appointed, if suitable and competent to discharge the trust.

Second. If the widow, or next of kin, or the person selected by them, is unsuitable or incompetent, or if the widow or next of kin neglects for thirty days after the death of the intestate to apply for administration, or to request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it.

Third. If there is no such creditor competent and willing to take administration, the same may be committed to such other person as the judge of probate may think proper.

1 Chand. 136; 5 Wis. 613.

SEC. 54 (4). *Administrator shall give bond.*—Every administrator, before he enters upon the execution of his trust, and before letters of administration are granted to him, shall give a bond to the judge of probate, with such sureties as he shall direct and approve, with the same conditions as required in case of an executor, with such variations only as are necessary to make it applicable to the case of an administrator.

15 Wis. 1.

SEC. 55 (5). *Special administrator appointed, when.*—When there is a delay in granting letters testamentary or of administration, occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the judge of probate may appoint an administrator to act in collecting and taking charge of the estate of the deceased, until the question on the allowance of the will, or such other question as occasions the delay, is terminated, and an executor or administrator is thereupon appointed; and no appeal shall be allowed from the appointment of such special administrator.

15 Wis. 511.

SEC. 56 (6). *Powers and duties of special administrator.*—An administrator, appointed according to the provisions of the preceding section, shall collect all the

goods, chattels, and debts of the deceased, and preserve the same for the executor or administrator who may afterward be appointed, and for that purpose may commence and maintain actions as an administrator, and sell such perishable and other personal estate as the probate court may order to be sold.

SEC. 57 (7). *Not liable for debts.*—Such special administrator shall not be liable to an action by any creditor, or to be called upon in any other way to pay the debts against the deceased.

SEC. 58 (8). *Shall give bond.*—Every such special administrator shall, before entering upon the duties of his trust, give a bond to the judge of probate in such sum as he shall direct, with a condition that he will make and return a true inventory of all the goods, chattels, rights, credits, and effects of the deceased, which come to his possession or knowledge; and that he will truly account for all the goods, chattels, debts, and effects of the deceased, which shall be received by him, whenever required by the probate court, and shall deliver the same to the person who shall afterward be appointed executor or administrator of the deceased, or to such other person as shall be legally authorized to receive the same.

SEC. 59 (9). *Powers shall cease, when.*—Upon granting letters testamentary or of administration on the estate of the deceased, the power of such special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money, or effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute to final judgment any action commenced by such special administrator.

SEC. 60 (10). *Liability of persons embezzling or alienating goods, etc., before letters issue.*—If any person, before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels, or effects of any deceased person, such person shall stand chargeable and be liable to the action of the executor or administrator of such estate, for double the value of the property so embezzled or alienated, to be recovered for the benefit of such estate.

SEC. 61 (11). *Administration with will annexed granted on death of sole executor.*—When any sole executor or administrator dies without having fully administered the estate, the probate court may grant letters of administration with the will annexed, or otherwise, as the case may require, to some suitable person to administer the goods and estate of the deceased not already administered.

13 Wis. 291.

SEC. 62 (12). *Administrator may be removed, when.*—If an administrator resides out of this state, or neglects after due notice by the judge of probate to render his account, and to settle the estate according to law, or to perform any decree of said court, or absconds or becomes insane, or otherwise unsuitable or incapable of discharging the trust, the probate court may remove such administrator.

Vide 4 Minn. 25.

SEC. 63 (13). *Marriage of administratrix extinguishes her authority.*—When an unmarried woman, who is administratrix alone or jointly with another person, marries, her marriage extinguishes her authority as administratrix.

SEC. 64 (14). *When administrator is removed, who may execute trust.*—When an administrator is removed, or his authority extinguished, the remaining administrator, if any, may execute the trust; if there is no other, the court of probate

may commit administration of the estate, not already administered, to some suitable person, as in case of the death of a sole administrator.

SEC. 65 (15). *Powers of administrator de bonis non.*—An administrator appointed in the place of any former executor or administrator for the purpose of administering the estate not already administered, has the same power, and shall proceed in settling the estate, in the same manner as the former executor or administrator had or should have done; and may prosecute or defend any action commenced by or against the former executor or administrator, and have execution on any judgment recovered in the name of such former executor or administrator.

SEC. 66 (16). *First administration to be revoked on proving will.*—If after the granting of letters of administration by any probate court, on the estate of any deceased person, as if he had died intestate, a will of such deceased person is duly proved and allowed by such court, the first administration shall, by decree of said court, be revoked, and the powers of the administrator cease, and he shall thereupon surrender his letters of administration into the probate court, and render an account of his administration within such time as the court shall direct.

SEC. 67 (17). *Powers of executor in such cases.*—The executor of the will in such case is entitled to demand, sue for, and collect all the goods, chattels, rights, and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment the [and] suit commenced by the administrator before the revocation of his letters of administration.

SEC. 68 (18). *Acts of executor or administrator before revocation of letters, valid.*—All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are valid to all intents and purposes.

SEC. 69 (19). *Joint or separate bonds may be taken.*—When two or more persons are appointed administrators on any estate, the judge of probate may take a joint or separate bond with sureties.

SEC. 70 (20). *Notice of application for appointment of administrator, how given.*—When application is made to the judge of probate for the appointment of an administrator of an intestate estate, or for letters of administration with the will annexed, he shall cause notice of the same, and of the time and place of hearing thereof, to be published for three successive weeks in such newspaper as he may direct.

TITLE IV.

INVENTORY AND COLLECTION OF EFFECTS OF DECEASED PERSONS.

(*This Title is Chapter LII. of the Statutes of* 1866.)

SEC. 71 (1). *Executor or administrator to make inventory.*—Every executor or administrator shall, within three months after his appointment, make and return into the probate court a true inventory of the real estate, and of all the goods, chattels, rights, and credits of the deceased, which have come to his possession or knowledge; but an executor who is a residuary legatee, and has given bond to pay all the debts and legacies, as provided by law, shall not be required to return an inventory.

15 Wis. 1.

SEC. 72 (2). *Appraisers to be appointed and sworn.*—The estate and effects, comprised in the inventory, shall be appraised by two or more disinterested persons, appointed by the judge of probate for that purpose, who shall be sworn to the faithful discharge of their trust; and if any part of such estate or effects are in any other county, appraisers thereof may be appointed in such county by said judge.

SEC. 73 (3). *Appraisal, how made and certified.*—The appraisers shall set down, opposite to each item in such inventory, distinctly, in figures, the value thereof in money, and deliver the same, certified by them, to the executor or administrator.

SEC. 74 (4). *Property allowed widow, to be inventoried and appraised separately.*—A separate and distinct inventory and appraisement shall be made and returned, as aforesaid, of all the household furniture and other personal property, which may be allowed to the widow, pursuant to the provisions of the preceding title (chapter); but the same shall not be considered assets in the hands of the executor or administrator.

SEC. 75 (5). *Estate, how chargeable with debts.*—The personal estate of the deceased, which comes into the hands of the executor or administrator, is first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights, and credits, in the hands of the executor or administrator, are not sufficient to pay the debts of the deceased, and the expenses of administration, the whole of his real estate, except the widow's dower, or so much thereof as may be necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor, in the manner provided by law.

SEC. 76 (6). *Rights of executor or administrator on estate.*—The executor or administrator has a right to the possession of all the real, as well as personal, estate of the deceased, and may receive the rents, issues, and profits of the real estate, until the estate is settled, or until delivered over, by order of the probate court, to the heirs or devisees; and he shall keep in good tenantable repair all houses, buildings, and fences thereon, which are under his control.

2 Chand. 96; 16 Wis. 181; 18 Wis. 169; 20 Wis. 381; 23 Wis. 454.

SEC. 77 (7). *Proceedings on complaint for embezzlement.*—If any executor or administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, complains to the judge of probate, on oath, that any person is suspected to have concealed, embezzled, carried away, or disposed of any money, goods, or chattels of the deceased, or that such person has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings, which contain evidence of, or tend to disclose the right, title, interest, or claim of the deceased to any real or personal estate, or any claim or demand, or any last will and testament of the deceased, the said judge may cite such suspected person to appear before the court of probate, and may examine him on oath upon the matter of such complaint.

SEC. 78 (8). *Persons cited, refusing to appear, etc., may be committed.*—If the person so cited refuses to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the common jail of the county, there to remain in close custody until he submits to the order of the court; and all such interrogatories and answers shall be in writing and signed by the party examined, and filed in the probate court.

SEC. 79 (9). *Proceedings to compel account.*—The judge of probate, upon the complaint, on oath, of any executor or administrator, may cite any person who has been intrusted by such executor or administrator with any part of the estate of the deceased person, to appear before such court, and may require such person to render a full account, on oath, of any money, goods, chattels [bonds], accounts, or other papers belonging to such estate, which have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

SEC. 80 (10). *Executor may compound with debtor, when.*—When any debtor of a deceased person is unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge upon receiving a fair and just dividend of his effects.

SEC. 81 (11). *Interest in mortgaged premises to be considered personal assets.*—When any mortgagee of real estate, or any assignee of such mortgage, dies without having foreclosed the right of redemption, all the interest in the mortgaged premises conveyed by such mortgage, and the debts secured thereby, shall be considered as personal assets in the hands of the executor or administrator, and he may foreclose the same, and have any other remedy for the collection of such debt which the deceased could have had if living; or may continue any proceedings commenced by the deceased for that purpose.

SEC. 82 (12). *Release given, when.*—In case of the redemption of any such mortgage, or the sale of the mortgaged premises, by virtue of a power of sale contained therein or otherwise, the money paid thereon shall be received by the executor or administrator, and he shall thereupon give all necessary releases and receipts; and if upon a sale of the mortgaged premises, the same is bid in by the executor or administrator for such debt, he shall be seized of the same, for the same persons, whether creditors, next of kin, or others, who would have been entitled to the money if the premises had been redeemed or purchased at such sale by some other person.

SEC. 83 (13). *Real estate purchased by executor, how sold.*—Any real estate so held by an executor or administrator, or which is purchased by him as such, upon a sale on execution for the recovery of a debt due the estate, may be sold for the payment of debts or legacies, and the charges of administration, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor, from the probate court in the manner provided by law.

SEC. 84 (14). *Disposition of such land, if not sold.*—If any land held by an executor or administrator, as mentioned in the preceding section, is not sold by him, as therein provided, it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if upon such distribution, the estate shall come to two or more persons, partition thereof may be made between them, in like manner as if it was real estate which the deceased held in his lifetime.

SEC. 85 (15). *Action to recover lands, when brought.*—When there is a deficiency of assets in lands of an executor or administrator, and when the deceased in his lifetime has conveyed any real estate, or any right or interest therein, with the intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or has so conveyed such estate that by law the deeds or conveyances are void as

against creditors, the executor or administrator shall commence and prosecute to final judgment an action for the recovery of the same, and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of such creditors, sue and recover for all goods, chattels, rights, or credits which may have been so fraudulently conveyed by the deceased in his lifetime.

9 Wis. 379; 18 Wis. 545; 22 Wis. 260.

SEC. 86 (16). *When executor is bound to commence such action.*—No executor or administrator is bound to commence such action, unless on application of creditors of the deceased, nor unless the creditors making the application pay such part of the costs and expenses, or give such security to the executor or administrator therefor, as the probate court deems equitable.

SEC. 87 (17). *Estate recovered, how disposed of.*—All real estate recovered, as provided in the eighty-fifth (fifteenth) section of this chapter, shall be sold for the payment of debts, in the same manner as if the deceased had died seized thereof, upon obtaining a license therefor, from the probate court, and the proceeds of all goods, chattels, rights, and credits, recovered as aforesaid, shall be appropriated in payment of the debts of the deceased, in the same manner as other assets in the hands of the executor or administrator.

TITLE V.

PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

(*This Title is Chapter LIII. of the Statutes of* 1866.)

SEC. 88 (1). *Commissioners appointed to examine and adjust claims.*—When letters testamentary or of administration are granted by any probate court, the judge thereof shall appoint two or more suitable persons commissioners to receive, examine, and adjust all claims and demands of all persons against the deceased, except in the following cases:

First. When it appears that there are no debts existing against such deceased person.

Second. When the value of the whole estate, exclusive of the furniture and other personal property allowed to the widow, does not exceed one hundred and fifty dollars, and is assigned for the support of the widow and children, as provided by law; in which case such assignment shall be deemed a full and final administration, and shall bar all claims against the estate.

SEC. 89 (2). *Whole estate assigned to children, when.*—Whenever any male person dies leaving issue but no widow, or whenever any female person dies leaving issue but no surviving husband, the probate court of the county where by law such person's estate is settled, may, in its discretion, on the return of the inventory, if the same does not exceed one hundred and fifty dollars, and the estate is intestate, assign the whole of such estate to the children of the deceased for their own use.

SEC. 90 (3). *Commissioners to appoint times and places of meeting, and give notice thereof.*—When such commissioners are appointed they shall appoint convenient times and places, when and where they will meet for the purpose of

examining and allowing the claims; and, within sixty days after their appointment, they shall give notice of the times and places of their meeting, and of the time limited for creditors to present their claims, by posting a notice thereof in four public places in the same county, and by publishing the same at least four weeks successively in some newspaper printed in said county, or in any other manner which the court may direct.

SEC. 91 (4). *Publication of notice, how made.*—The judge of probate in the commission issued to the commissioners, shall designate the paper in which such notice shall be published, and the number of places in the county in which it shall be posted, or any other mode of notifying which he deems necessary and proper.

SEC. 92 (5). *Commissioner not acting, another may be appointed.*—If any commissioner appointed by the probate court dies, removes out of the state, refuses, or becomes in any other way incapacitated, to perform the duties of his appointment, the court may appoint another commissioner in his place; and no further notice of the meetings of the commissioners shall be required in consequence of such appointment.

SEC. 93 (6). *Time allowed for presenting claims.*—The probate court shall allow such time as the circumstances of the case require, for the creditors to present their claims to the commissioners for examination and allowance, which time shall not, in the first instance, exceed eighteen months, nor be less than six months; and the time allowed shall be stated in the commission.

19 Wis. 199.

SEC. 94 (7). *Time extended, how long.*—The probate court may extend the time allowed to creditors to present their claims; but not so that the whole time shall exceed two years from the time of appointing such commissioner.

4 Wis. 295; 20 Wis. 475.

SEC. 95 (8). *Commission renewed and further time allowed, when.*—On the application of a creditor who has failed to present his claim, if made within six months from the time previously limited, and before the settlement of the final account of administration of the estate, the court may, for good cause shown, renew the commission, and allow further time, not exceeding three months, for the commissioners to examine such claim; in which case the commissioners shall personally notify the parties of the time and place of hearing, and as soon as may be, make return of their doings to the probate court.

6 Wis. 433; 19 Wis. 199; 20 Wis. 475.

SEC. 96 (9). *Set-offs—claims barred not to be allowed.*—When a creditor against whom the deceased had claims, presents a claim to the commissioners, the executor or administrator shall exhibit the claims of the deceased, in offset to the claims of the creditor, and the commissioners shall ascertain and allow the balance against or in favor of the estate, as they find the same to be; but no claim barred by the statute of limitations, shall be allowed by the commissioners, in favor of or against the estate, as a set-off or otherwise.

SEC. 97 (10). *Commissioners to be sworn, and may administer oaths to parties and witnesses.*—The commissioners shall be sworn, and any one of them may administer oaths to parties and witnesses, when the same are required or proper for the investigation and trial of persons before them.

SEC. 98 (11). *Commissioners to make report.*—At the expiration of the time

limited, or as soon thereafter as the hearing of the claims presented is completed, the commissioners shall make a report of their doings to the probate court, embracing lists of the claims presented or exhibited in offset, and stating how much was allowed and how much was disallowed, together with the final balance, whether in favor of the creditor or the estate; and shall state particularly the manner of giving notice to the claimants.

SEC. 99 (12). *Powers of commissioners.*—The commissioners have power to try and decide upon all claims which by law survive against or in favor of executors and administrators, except claims for the possession or title of real estate; and may examine and allow all demands, at their then present value, which are payable at a future day, including claims payable in specific articles, and may offset such demands in the same manner in favor of the estate.

SEC. 100 (13). *Executor may pay debts, when.*—Nothing in the preceding section shall be construed to prevent any executor or administrator from paying any debt which is payable at a future day, according to the terms, and at the time specified in the contract.

SEC. 101 (14). *Claims barred, when.*—Every person having a claim against a deceased person proper to be allowed by the commissioners, who shall not, after the publication of notice as required herein, exhibit his claim to the commissioners within the time limited by the court for that purpose, shall be for ever barred from recovering such demand, or from setting off the same in any action whatever.

16 Wis. 626; 20 Wis. 44.

SEC. 102 (15). *Actions against executor or administrator commenced, when.*—When commissioners are appointed, as provided in this title (chapter), for examining and allowing claims against any estate, no action shall be commenced against the executor or administrator, except to recover the possession of real estate, or the possession of personal property; nor shall any attachment or execution be issued against the estate of the deceased, until the expiration of the time limited by the court for the payment of debts.

SEC. 103 (16). *Proceedings in actions pending.*—All actions which are pending against a deceased person at the time of his death may, if the cause of action survives, be prosecuted to final judgment, and the executor or administrator may be admitted to defend the same; and if judgment is rendered against the executor or administrator, the court rendering it shall certify the same to the probate court, and the amount thereof shall be paid in the same manner as other claims duly allowed against the estate.

SEC. 104 (17). *Executor or administrator may commence action, when.*—Nothing in this title (chapter) shall be construed to prevent an executor or administrator, when he thinks it necessary, from commencing and prosecuting any action against any other person, or from prosecuting any action, commenced by the deceased in his lifetime for the recovery of any debt or claim, to final judgment, or from having execution on any judgment.

SEC. 105 (18). *Proceedings in such case.*—In such case the defendant may set off any claim he has against the deceased, instead of presenting it to the commissioners, and if final judgment is rendered in favor of the defendant, the same shall be certified by the court rendering it to the probate court, and the judgment shall be considered the true balance.

20 Wis. 44, 381.

SEC. 106 (19). *Joint debtor dying, estate how liable.*—When two or more persons are indebted on any joint contract, or upon a judgment founded on a joint contract, and either of them dies, his estate is liable therefor, and the amount thereof may be allowed by the commissioners, as if the contract had been joint and several, or as if the judgment had been against him alone.

APPEALS FROM THE DECISIONS OF COMMISSIONERS.

SEC. 107 (20). *Who may appeal from report of commissioners.*—Any executor, administrator, or creditor, may appeal from the decision and report of the commissioners, to the district court for the same county, if application for such appeal is made in writing, filed in the probate office within sixty days after the return of the report of the commissioners, in the following cases:

First. When such commissioners disallow any claim in favor of any creditor, or of the estate, in whole or in part, to the amount of twenty dollars.

Second. When the commissioners allow any claim in whole or in part, to the amount of twenty dollars.

Estate of Columbus *v.* Monti, 6 Minn. 568; Wood *v.* Myrick, 9 Minn. 149.

SEC. 108 (21). *Claimant appealing shall give bond.*—If a claimant appeals he shall, within the time aforesaid, give a bond to the adverse party, with sureties to be approved by the judge of probate, and filed in his office, with a condition that he shall prosecute his appeal with effect, and pay all damages and costs which may be awarded against him on such appeal.

Estate of Columbus *v.* Monti, 6 Minn. 258.

SEC. 109 (22). *Appellant to file certified copy of record.*—The party appealing shall procure and file in the district court to which the appeal is taken, at or before the next term of such court, after the appeal is allowed, a certified copy of the record of allowance or disallowance appealed from, and of the application for the appeal.

19 Wis. 199.

SEC. 110 (23). *Proceedings in district court on appeal.*—When such certified copy is filed in the district court the said court acquires jurisdiction as of actions duly commenced therein. The party having the affirmative shall file his complaint, setting forth the cause of action, but no allegations shall be permitted except such as relate or are essential to the specific matter appealed from; issues may be joined by demurrer, answer and reply as in other cases, and the cause proceed in conformity to the rules established for the conduct of civil actions, except that no execution shall be awarded against an executor or administrator for a debt or demand found due to the claimant. Either party may appeal to the supreme court as in other cases.

Estate of Columbus *v.* Monti, 6 Minn. 258.

SEC. 111 (24). *Final judgment to be certified to probate court.*—The final decision and judgment, in cases so appealed, shall be certified by the district court, or supreme court, as the case may be, to the probate court; and the same proceedings shall be had thereon, as if such decision had been reported by the commissioners.

SEC. 112 (25). *Claim of appellant barred, when.*—If any claimant, appealing on account of the disallowance of his claim by the commissioners, fails to prosecute his appeal in the district court, such claim shall be for ever barred.

SEC. 113 (26). *Allowance affirmed, when.*—If the person objecting to a claim, and appealing on account of the allowance of such claim, neglects to prosecute his appeal, the district court, on motion of the adverse party, and on his producing an attested copy of the record of the probate court, showing such appeal, shall affirm the allowance appealed from.

SEC. 114 (27). *Executor or administrator declining to appeal, any person interested may appeal—bond shall be given.*—When an executor or administrator declines to appeal from the decision of the commissioners, any person interested in the estate, as creditor, devisee, legatee, or heir, may appeal from such decision, in the same manner as the executor or administrator might have done; and the same proceedings shall be had, in the name of the executor or administrator: *provided*, that the person appealing in such case, gives a bond, with sureties, to be approved by the judge of probate, as well to secure the estate from damages and costs, as to secure the intervening damages and costs to the adverse party.

Estate of Columbus *v.* Monti, 6 Minn. 258; 22 Wis. 200.

SEC. 115 (28). *Notice of appeal in certain cases, how given.*—When an executor or administrator has a claim against the estate which he represents, which is disallowed by the commissioners, and he takes an appeal therefrom to the district court, notice of such appeal shall be given to all concerned, by personal service thereof, or by publication, under an order of the probate court, in some newspaper which circulates in the county, three weeks successively, the last publication of which shall be four weeks before the hearing of the appeal.

LIMITATION OF TIME FOR PAYING DEBTS.

SEC. 116 (29). *Probate court shall limit time for paying debts, etc.*—The probate court, at the time of granting letters testamentary, or letters of administration, shall make an order, allowing to the executor or administrator a period of time for disposing of the estate, and paying the debts and legacies of the deceased person, not exceeding, in the first instance, one year and six months.

SEC. 117 (30, AS AMENDED BY ACT OF MARCH 10, 1873). *Time may be extended.*—The probate court may, on application of the executor or administrator, extend the time for paying debts and legacies, not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed three years. "Unless under the provisions of the will in case of an executor a longer time may be necessary: *and provided* that after the expiration of the time finally limited, an executor or administrator shall not be disqualified from doing anything necessary to settle the estate which he might have done before, unless removed by the probate court; but this provision shall not relieve him from any liability or penalty incurred by his failure to settle the estate within the time limited."

S. L. 1873, 178.

SEC. 118 (31). *Notice of application to extend time, how given.*—When an executor or administrator makes application to have the time for paying debts and legacies extended beyond one year and six months from the time of granting letters testamentary, or of administration, the probate court shall appoint a time for hearing and deciding on such application, and cause notice of such application, and of the time and place of hearing to be given to all persons interested, by publication

three weeks successively, in some newspaper designated by the court; and no such order, extending the time, shall be granted, unless such notice has been previously given.

SEC. 119 (32, AS AMENDED BY ACT OF MARCH 10, 1873). *Time may be extended when executor or administrator dies.*—When an executor or administrator dies, or becomes incapable of discharging his trust, and a new administrator is appointed, the probate court may extend the time for the payment of the debts and legacies beyond the time allowed to the original executor or administrator, not exceeding one year at a time, and not exceeding one year beyond the time which the court might by law allow to such original executor or administrator, upon due notice given as required in the preceding section.

S. L. 1873, 178.

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

SEC. 120 (33). *Debts to be paid, when.*—If after the report of the commissioners has been made, and the claims against the estate ascertained, it appears that the executor or administrator has in his possession sufficient to pay all the debts, he shall pay the same in full within the time limited or appointed for that purpose.

SEC. 121 (34). *If assets are insufficient, debts shall be paid in what order.*—If the assets which the executor or administrator has received, and which can be appropriated to the payment of debts, are not sufficient therefor, he shall, after paying the necessary expenses of his funeral, last sickness, and administration, pay the debts against the estate in the following order:

First. Debts having a preference by the laws of the United States.

Second. Public rates and taxes.

Third. Judgments docketed, according to the priority thereof.

Fourth. Debts due to other creditors.

SEC. 122 (35). *Debts to have no preference as to payment.*—No preference shall be given in the payment of any debt, over other debts of the same class, except those specified in the third class; nor shall a debt due and payable be entitled to preference over debts not due; nor shall the commencement of an action for the recovery of any debt, or the obtaining a judgment thereon against the executor or administrator, entitle such debt to any preference over others of the same class.

SEC. 123 (36). *Decree for payment of debts and distribution of assets to be made, when.*—After the return of the report of commissioners, and at or before the expiration of the time limited for the payment of debts, the probate court shall make an order or decree for the payment of the debts and the distribution of the assets which have been received by the executor or administrator, at the time for that purpose, among the creditors, according to the provisions of this title (chapter).

SEC. 124 (37). *Decree suspended, when.*—If an appeal is taken from the decision of the commissioners, and remains undetermined, the probate court may suspend the decree for the payment of debts, mentioned in the preceding section, or may order a distribution among the creditors whose claims are allowed, leaving in the hands of the executor or administrator, sufficient assets to pay the claim which has been disputed and appealed.

SEC. 125 (38). *Disputed claims when settled, paid how.*—When the disputed claim is finally settled, the probate court shall order the same to be paid out of

the assets retained, to the same extent and in the same proportion as the claims of the other creditors.

SEC. 126 (39). *Further decree of distribution may be made.*—If the whole of the debts were not paid by the first distribution, and if the whole assets have not been distributed, or if other assets afterward come to the hands of the executor or administrator, the probate court may, from time to time, make further decree for the distribution of assets.

SEC. 127 (40). *Executor or administrator personally liable, when.*—Whenever a decree is made by the probate court, for the distribution of the assets among the creditors, the executor or administrator, after the time of payment arrives, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt, to the extent of the assets in his hands applicable thereto; or he shall be liable on his bond, and the same may be put in suit on the application of the creditor whose debt or dividend is not paid as abovementioned.

18 Wis. 115.

SEC. 128 (41). *Notice of time limited for payment of debts may be given.*—When the time for paying the debts of a deceased person is finally limited, by order of the probate court, or by the expiration of the time allowed for that purpose, whether the estate is insolvent or not, the probate court may, on the application of the executor or administrator, by an order for that purpose, cause notice to be given to the creditors, of the time appointed or limited for the payment of such debts, by publishing the same at least three weeks successively, in some paper to be designated by the court, or in such other manner as the court may direct.

6 Wis. 433.

SEC. 129 (42). *Creditor neglecting to demand debt or dividend within two years to be barred.*—If, after notice, as is provided in the preceding section, any creditor neglects to demand from the executor or administrator, his debt, or the dividend thereon, within two years from the time so limited for the payment of the debts; or, if the notice is given, after such time, within two years from the last publication, the claim of such creditor shall be for ever barred.

CONTINGENT CLAIMS.

SEC. 130 (43). *Contingent claims, how presented and paid.*—If any person is liable as security for the deceased, or has any other contingent claim against his estate, which can not be proved as a debt before the commissioners, or allowed by them, the same may be presented with the proper proof to the commissioners, who shall set forth the claim and proof in their report; and said court may order the executor or administrator to retain in his hands sufficient to pay such contingent claim when the same becomes absolute; or if the estate is insolvent, sufficient to pay a proportion equal to the dividends of the other creditors.

20 Wis. 44.

SEC. 131 (44). *Contingent claim becoming absolute, may be presented, etc.*—If such contingent claim becomes absolute and is presented to the executor or administrator, at any time within two years from the time limited for other creditors to present their claims to the commissioners, it may be proved before the commissioners already appointed, or before others to be appointed for that purpose, in the same manner as if presented for allowance before the commissioners had

made their report; and the persons interested shall have the same right of appeal as in other cases.

SEC. 132 (45). *Contingent claim entitled to payment, when.*—When such contingent claim is allowed, as mentioned in the preceding section, or established on appeal, the creditor is entitled to receive payment to the same extent as other creditors, if the estate retained by the executor or administrator is sufficient for that purpose; but if the claim is not finally established, or if the assets retained in the hands of the executor or administrator are not wholly exhausted in the payment of such claims, such assets, or the residue, shall be disposed of by order of the probate court, to the person entitled to the same, according to law.

SEC. 133 (46). *Contingent claim may be presented to probate court, when.*—If the claim of any person accrues or becomes absolute at any time after the time limited for creditors to present their claims, the person having such claim may present it to the probate court, and prove the same at any time within one year after it accrues or becomes absolute; and if established in the manner provided in this chapter, the executor or administrator shall pay it if he has sufficient assets for that purpose, or such part as he has assets to pay; and if real or personal estate afterward comes to his possession, he shall pay such claim, or such part as he has assets sufficient to pay, not exceeding the proportion of the other creditors, in such time as the probate court may prescribe.

SEC. 134 (47). *Creditor may recover of heirs, et al., when.*—When a claim is presented within one year from the time it accrues, and is established, as mentioned in the preceding section, and the executor or administrator has not sufficient assets to pay the whole of such claim, the creditor may recover such part of his claim as the executor or administrator has not assets to pay, against the heirs, devisees, or legatees, who have received sufficient real or personal property from the estate.

SEC. 135 (48). *Defence by executor or administrator in certain actions.*—If any action is commenced against an executor or administrator on such claim, as is mentioned in the preceding one hundred and thirty-third (forty-sixth) section, and for the payment of which sufficient assets have not been retained, the executor or administrator may plead that he has fully administered the estate which has come to his possession or knowledge, and if it is found that the defendant had fully administered at the time the claim was presented, and had no assets which could be lawfully appropriated for that purpose, judgment shall be rendered in his favor, but if it is found that he had assets sufficient to pay only a part of such claim, judgment shall be rendered against him for such sum only as is equal to the amount of assets in his hands.

SEC. 136 (49). *If commissioners are not appointed, claimant not prevented from suing, etc.*—If the appointment of commissioners to allow claims in any case is omitted, no person having any contingent or other lawful claim against a deceased person, shall thereby be prevented from prosecuting the same against the executor, administrator, heirs, devisees, or legatees, as provided by law, and in such case a claimant having a lien upon real or personal estate of the deceased, by attachment previous to his death, may on obtaining judgment have execution against such real or personal estate.

Wilkinson *et al. v.* Winne, 15 Minn. 159.

SEC. 137 (50). *No action to be brought against executor or administrator except as provided in this chapter.*—In no other case, except such as are expressly

provided for in this title (chapter), shall any action be commenced or prosecuted against an executor or administrator; nor shall any writ of attachment or execution issue against such executor or administrator, or against the estate of the deceased in his hands, during the time allowed him for the payment of debts.

12 Wis. 626.

SEC. 138. AN ACT

RELATING TO AUDITING ACCOUNTS AGAINST THE ESTATE OF DECEASED PERSONS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. That the duties conferred upon commissioners by chapter fifty-three* of the general statutes shall be performed by the judge of probate in all cases where the estate does not exceed in value the sum of five thousand dollars.

Sec. 2. The judge of probate shall keep a book, to be provided by the county, in which he shall register all claims filed with him, and when he has completed the hearing of all claims presented to him, he shall enter an order in said register, under the head of each estate, embracing everything required in the report of the commissioners, and such order may be appealed from the same as from the report of commissioners.

Sec. 3. The judge of probate shall at the time for appointing commissioners, as in said chapter provided, enter an order fixing a time and place when and where he will hear, examine, and allow claims against the estate of the deceased; the time allowed for creditors to present their claims and the manner in which notice shall be given to creditors, which notice shall be given by the administrator or executor of the estate.

Sec. 4. The fees of the judge of probate for examining and allowing claims against an estate shall not exceed three dollars per day, nor in the aggregate amount to more than twelve dollars, without the approval of a judge of the district court.

Sec. 5. All acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved March 3, 1870.

TITLE VI.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

(*This Title is Chapter LIV. of the Statutes of* 1866.)

SEC. 139 (1). *With what executor or administrator is chargeable.*—Every executor and administrator is chargeable in his account with the whole of the goods, chattels, rights, and credits of the deceased which come to his possession; also with all the proceeds of the real estate which is sold for the payment of debts and legacies, and with all the interest, profit, and income that in any way comes to his hands from the estate of the deceased.

13 Wis. 1; 14 Wis. 131; 15 Wis. 1; 18 Wis. 202.

* Title V. of chapter XXXIV. part II. of this compilation.

SEC. 140 (2). *Shall account for personal estate, how.*—Every executor and administrator shall account for the personal estate of the deceased, as the same is appraised, except as provided in the following section.

SEC. 141 (3). *Shall not make profit or suffer loss, etc.*—An executor or administrator shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the personal estate; and he shall account for the excess when he sells any part of the personal estate for more than the appraisal; and if he sells any for less than the appraisal, he is not responsible for the loss, if it appears to be beneficial to the estate to sell it.

SEC. 142 (4). *Personal estate may be sold, when and how.*—The probate court, on the application of the executor or administrator, may, at any time, order the personal estate to be sold at private sale or at public auction, when it appears to be necessary for the purpose of paying debts or legacies, or expenses of administration, or for the preservation of the property, or when it is requested by all the heirs residing in this state; or the court may order such personal estate to be sold, either at private sale or public auction, as the executor or administrator may find most beneficial. If the order is to sell at auction, the probate court shall direct the mode of giving notice of the time and place of sale.

SEC. 143 (5). *Account of sale to be rendered.*—When the executor or administrator sells personal estate under an order of the probate court, he shall account for the same at the price for which it is sold.

SEC. 144 (6). *Not accountable for debts, when.*—No executor or administrator is accountable for any debts due to the deceased, if it appears that they remain uncollected without his fault.

SEC. 145 (7). *Shall account for income of real estate.*—The executor or administrator is accountable for the income of the real estate, while it remains in his possession; and if he uses or occupies part of it, he shall account for it as may be agreed upon between him and the parties interested, or adjudged by the court, with their assent; and if the parties do not agree upon the sum to be allowed, the same may be ascertained by one or more disinterested persons appointed by the probate court, whose award, being accepted by such court, shall be final.

18 Wis. 202.

SEC. 146 (8). *Is accountable for loss or delay occasioned by neglect.*—When an executor or administrator neglects or unreasonably delays to raise money, by collecting the debts or selling the real or personal estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened, or unnecessary cost, or interest accrues, or the persons interested suffer loss, the same shall be deemed waste, and the damages sustained may be charged against the executor or administrator in his account, or he shall be liable therefor on his administration bond.

SEC. 147 (9). *Account rendered, when.*—Every executor or administrator shall render his account of his administration within one year from the time of his receiving letters testamentary or of administration, unless the court gives permission to delay, in consideration that the time for selling the estate and paying the debts is extended; and he shall render such further accounts of his administration, from time to time, as are required by the court, until the estate is wholly settled.

12 Wis. 369.

SEC. 148 (10). *Executor or administrator to be examined on oath as to account.*

—The judge of probate shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed, but such examination may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees, and distributors may be examined on oath upon any matter relating to the account of any executor or administrator whenever the correctness thereof is called in question.

SEC. 149 (11). *Compensation of executors and administrators.*—The executor or administrator shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services, such fees as the law provides, together with all extra expenses: *provided*, that when the deceased, by his will, makes some other provision for compensation to his executor, that shall be deemed a full compensation for his services, unless by a written instrument, filed in the probate court, he renounces all claim to the compensation provided by the will.

9 Wis. 194; 15 Wis. 1, 684.

SEC. 150 (12). *Executor, et al., liable on bond, when.*—When an executor or administrator, after being duly cited by the probate court, neglects to render his account, he is liable on his bond for all damages which may accrue, and his bond may be put in suit by any person interested in the estate.

SEC. 151 (13). *Execution for costs issued, when.*—When costs in any case are allowed against an executor or administrator, execution shall not issue against the estate of the deceased in his hands therefor, but shall be awarded against him as for his own debt; and the amount paid by him shall be allowed in his administration account, unless it appears that the action or proceeding in which the costs are taxed has been prosecuted or resisted without just cause.

SEC. 152 (14). *Notice of examination of account to be given.*—Before the administration account of any executor or administrator is allowed, notice shall be given to all persons interested, of the time and place of examining and allowing the same; and such notice may be given personally, to such persons as the probate court deems interested, or by public notice under the direction of the court.

TITLE VII.

PARTITION AND DISTRIBUTION OF ESTATES.

(*This Title is Chapter LVI. of the Statutes of* 1866.)

SEC. 153 (1). *Children under seven years of age to have allowance.*—Before any partition or division of any estate among the heirs, devisees, or legatees, an allowance shall be made for the necessary expenses of the support of the children of the deceased under seven years of age; and the probate court may order the executor or administrator to retain in his hands sufficient estate for that purpose; except where some provision has been made by will for their support.

13 Wis. 1.

SEC. 154 (2). *Lands may be sold to raise money to support children, when.*—If, in case of intestate estates, after the payment of debts and charges of administration, there is no personal estate, or not enough remaining in the hands of the

administrator to maintain the minor children under seven years of age, as now provided by law, the probate court may, upon application of such administrator, and with the assent in writing, of all the heirs, by themselves or guardians, residing in this state, authorize and empower such administrator, to sell at public auction, or private sale, as he may find necessary, so much of the lands of such estate, as will raise a sum of money sufficient for the support of such minor children, till they arrive at the age of seven years, which sum of money so raised shall, under the order of the probate court, be retained in the hands of such administrator for the purpose aforesaid, and partition of the residue of such estate may be made in the same manner as now provided by law.

SEC. 155 (3). *Sale, how made.*—In making such sale of lands as is by this chapter authorized, the administrator shall be sworn to the faithful discharge of his trust, and the rules and regulations, so far as applicable, relative to the sale of real estate by executors and administrators now by law established, shall be observed.

SEC. 156 (4). *After payment of debts, etc., court to assign residue of estate, how.*—After the payment of the debts, funeral charges, and expenses of administration, and after the allowances made for the expenses of the maintenance of the family of the deceased, and for the support of the children under seven years of age, and after the assignment to the widow of her dower, and of her share in the personal estate, or when sufficient effects are reserved, in the hands of the executor or administrator, for the above purposes, the probate court shall, by a decree for that purpose, assign the residue of the estate, if any, to such other persons as are by law entitled to the same; and in such decree, the court shall name the persons, and the proportions or parts to which each is entitled; and such persons may demand and recover their respective shares from the executor, or administrator, or any other person having the same.

13 Wis. 472.

SEC. 157 (5). *Decree in such case made, when.*—Such decree may be made on the application of the executor, or administrator, or of any person interested; but no heir, devisee, or legatee is entitled to a decree for his share, until payment of the debts, and allowances, and expenses, mentioned in the preceding section, is made or provided for, unless he gives a bond to the judge of probate, with such sureties as the court directs, to secure the payment of his just proportion of such debts and expenses, or such part thereof as shall remain unprovided for, and to indemnify the executor or administrator against the same.

SEC. 158 (6). *Partition may be made, when.*—When the estate, real or personal, assigned to two or more heirs, devisees, or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition and distribution may be made by three discreet and disinterested persons, to be appointed commissioners for that purpose, by the probate court, who shall be duly sworn, and the judge of probate shall issue a warrant to them for that purpose.

SEC. 159 (7). *Proceedings when real estate lies in different counties.*—If the real estate lies in different counties, the probate court may appoint different commissioners for each county, and in such case the estate in each county shall be divided separately, as if there was no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the probate court, make divisions of such real estate, wherever situated within this state.

SEC. 160 (8). *Partition may be ordered, when.*—Such partition and distribu-

tion may be ordered on the petition of any of the persons interested; but before any partition is ordered, as directed in this title (chapter), notice shall be given to all persons interested, who reside in this state, or their guardians, and to the agents, attorneys, or guardians, if there are any in this state, of such as reside out of the state, either personally, or by public notice, as the probate court shall direct.

SEC. 161 (9). *Partition when shares have been conveyed.*—Partition of the real estate may be made as provided in this title (chapter), although some of the original heirs or devisees have conveyed their shares to other persons; and such shares shall be set to the persons holding the same in the same manner as they would have been to such heirs or devisees.

SEC. 162 (10). *Shares, how set out.*—The several shares in the real and personal estate shall be set out to each individual in proportion to his right, by such metes and bounds, or description, that the same can be easily distinguished; unless any two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

SEC. 163 (11). *When estate cannot be divided, court may assign the whole to one of the parties.*—When any such real estate cannot be divided without prejudice or inconvenience to the owners, the probate court may assign the whole to one or more of the parties entitled to shares therein, who will accept it; always preferring the males to the females, and among children, preferring the elder to the younger: *provided*, the party so accepting the whole, pays to the other parties interested, their just proportion of the true value thereof, or secures the same to their satisfaction; the true value of the estate shall be ascertained by commissioners appointed by the probate court and sworn for that purpose.

SEC. 164 (12). *When tract of land is of greater value than either party's share, and cannot be divided, court may assign the whole to one of the parties.*—When any tract of land, messuage, or tenement, is of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to either of the parties who will accept it, giving preference as prescribed in the preceding section: *provided*, the party accepting it pays or secures to one or more of the others, such sums as the commissioners award, to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court until the sums so awarded are paid to the parties entitled to the same, or secured to their satisfaction.

SEC. 165 (13). *Estate to be divided in certain cases.*—When partition of real estate among heirs or devisees is required, or dower is to be assigned to a widow in the same, and such real estate lies in common, and undivided, with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common; and such division so made and established by the probate court is binding on all persons interested.

SEC. 166 (14). *Guardians to be appointed for minors, and agents for non-residents—notice to be given.*—Before any partition is made, or any estate divided, as provided in this title (chapter), guardians shall be appointed for all minors and insane persons, interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the state; and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians

or agents, by the commissioners, of the time when they will proceed to make partition.

15 Wis. 415.

SEC. 167 (15). *Report of commissioners and proceedings thereon.*—The commissioners shall make report of their proceedings to the probate court in writing, and the court may, for sufficient reasons, set aside such report and commit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the records of the probate court, and a copy thereof, attested by the judge of probate under the seal of the court, shall be recorded in the office of the register of deeds of the county where the lands lie.

SEC. 168 (16). *When partition may be dispensed with.*—When the probate court makes a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

SEC. 169 (17). *Probate court to determine questions relating to advancements, and give decree—effect of final decree.*—All questions as to advancements made, or alleged to be made by the deceased to any heirs, may be heard and determined by the probate court, and shall be specified in the decree assigning the estate and the warrant to the commissioners; and the final decree of the probate court, or in case of appeal, of the district or supreme court, shall be binding on all persons interested in the estate.

SEC. 170 (18). *Any person aggrieved may appeal.*—Any person aggrieved by any order, decree, or denial of a probate court, in pursuance of the provisions of this title (chapter), may appeal therefrom, as provided in other cases.

SEC. 171 (19). *Partition conclusive, when.*—The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees, and all persons claiming under them, and upon all persons interested.

13 Wis. 472.

SEC. 172 (20). *Expenses of partition or distribution, how paid.*—If at the time of the partition or distribution of any estate, as provided in this title (chapter), the executor or administrator has retained sufficient effects in his hands, which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator, when it appears to the court just and equitable, and not inconsistent with the intention of the testator.

SEC. 173 (21). *Parties interested to pay expenses, when.*—But if there are no effects in the hands of the executor or administrator, which may be lawfully applied to that purpose, the expenses and charges of the partition being ascertained by the probate court, shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises: and the proportion shall be settled and allowed by the probate court; and if any one neglects to pay the sum assessed on him by the court, an execution may be issued thereof against him by such court, in favor of the person entitled to the same.

SEC. 174 (22). *Partition of reversion made, when.*—When the term of a widow entitled to dower or other life estate in the lands of a deceased person expires, the reversion may be assigned to the person entitled to the same, and the partition thereof be made in the manner prescribed in this title (chapter) in relation to other estates of deceased persons.

SEC. 175 (23). *Court may appoint agent of absent person, when.*—When any estate is assigned by decree of the court, or distributed by commissioners, as provided in this title (chapter), to any person residing out of this state, and having no agent therein, and it is necessary that some person should be authorized to take possession and charge of the same, for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absent person, in the partition and distribution.

SEC. 176 (24). *Agent to give bond.*—Such agent shall give a bond to the judge of probate, to be approved by him, faithfully to manage and account for such estate, before he is authorized to receive the same, and the court appointing such agent may examine and allow his account, on application made by him or any person interested, and may allow a reasonable sum out of the estate for his services and expenses.

TITLE VIII.

SALE OF LANDS BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

(*This Title is Chapter LVII. of the Statutes of* 1866.)

SALES BY EXECUTORS AND ADMINISTRATORS.

SEC. 177 (1). *Real estate of deceased sold, when.*—When the personal estate of a deceased person is insufficient to pay his debts, with the charges of administration, his executor or administrator may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding as herein provided.

SEC. 178 (2). *License to sell, how obtained.*—To obtain such license the executor or administrator shall present a petition to the probate court from which he received his appointment, setting forth the personal estate that has come into his hands, the disposition thereof, and how much, if any, remains undisposed of; the debts outstanding against the deceased, as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seized, the condition and value of the respective portions or lots, the persons interested in said estate, with their residences, if known, and if unknown that fact shall be stated; which petition shall be verified by the oath of the party presenting the same.

SEC. 179 (3). *Notice of petition and order to show cause.*—If it appears by such petition that there is not sufficient personal estate in the hands of the executor or administrator to pay the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole, or some portion of the real estate, for the payment of such debts, the judge of probate shall thereupon make an order directing all persons interested in the estate to appear before him at a time and place therein to be specified, not less than six weeks nor more than ten weeks from the time of making such order, to show cause why a license should not be granted to the executor or administrator applying therefor, to sell so much of the real estate of the deceased as shall be necessary to pay such debts.

SEC. 180 (4). *Order, how published and served.*—Every such order shall be published at least four successive weeks in such newspaper as the court directs,

the last of which publications shall be at least fourteen days before the day of hearing, and a copy of such order shall be served personally on all persons interested in the estate residing in the county where the application is made, at least fourteen days before the day of hearing, and on all other persons interested by depositing forthwith a copy of such order in the post office with postage prepaid, directed to them respectively at their place of residence, unless it appears that their residence is unknown: *provided*, that if all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

SEC. 181 (5). *Proceedings on hearing.*—The judge of probate, at the time and place appointed in such order, or at such other time as the hearing is adjourned to, upon proof of the due service or publication of a copy of the order, or upon filing the consent in writing, to such sale of all the persons interested, shall proceed to the hearing of such petition, and if such consent is not filed, shall hear and examine the allegations and proofs of the petitioner, and of all persons interested in the estate who oppose the application.

SEC. 182 (6). *Whole estate may be sold, when.*—If it appears to the court that it is necessary to sell a part of the real estate, and that by a sale of such part the residue of the estate or some specific part or piece thereof would be greatly injured, said court may license a sale of the whole estate, or of such part thereof as may be judged necessary, and most for the interest of all concerned.

SEC. 183 (7). *Bond to be given—how conditioned.*—License shall not be granted if any of the persons interested in the estate gives bond to the judge of probate, in such sum and in such sureties as he directs and approves, with condition to pay all the debts, and the expenses of administration so far as the goods and chattels, rights and credits, of the deceased are insufficient therefor, within such time as the judge of probate directs.

SEC. 184 (8). *Bond, how prosecuted.*—The bond mentioned in the preceding section shall be for the security, and may be prosecuted for the benefit of the creditors, as well as the executor or administrator.

SEC. 185 (9). *Judge of probate shall make order of sale, when.*—If the judge of probate is satisfied, after a full hearing upon the petition, and an examination of the proof and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for the payment of valid claims against the deceased, and charges of administration, or if such sale is assented to by all persons interested, he shall thereupon make an order of sale, authorizing the executor or administrator to sell the whole or so much, and such part of the real estate described in the petition as he deems necessary or beneficial.

SEC. 186 (10). *Order shall contain, what.*—The order shall specify the lands to be sold; and the judge of probate may therein direct the order in which several tracts, lots, or parcels shall be sold; and if it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the judge of probate shall order that part descended to heirs to be sold before that so devised; and if it appears that any lands devised or descended have been sold by the heirs or devisees, then the lands in their hands remaining unsold shall be ordered to be first sold.

SEC. 187 (11). *License to sell extends to reversion of dower.*—License to sell real estate, as provided in this title (chapter), may extend to the reversion of the dower of the widow of a deceased person; and if such reversion is not sold

with the other real estate, it may be sold after the expiration of the widow's term.

SEC. 188 (12). *Administrator with will annexed, licensed to sell, when.*—When a testator has given a legacy which, with his debts and the charges of administration, his goods, chattels, rights, and credits, are insufficient to pay, the executor or administrator with the will annexed may be licensed to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter, in the case of a sale for the payment of debts.

SEC. 189 (13). *Contract made by deceased, interest in may be sold.*—If a deceased person, at the time of his death, was possessed of a contract for the purchase of land, his interest in such land, and under such contract, may be sold on the application of his executor or administrator, in the same cases, in the same manner, and upon like terms and conditions as are prescribed in respect to land of which he died seized, except as hereinafter provided.

SEC. 190 (14). *Sale, how made and confirmed—purchaser to give bond.*—Such sale shall be made subject to all payments that may thereafter become due on such contract; and if there are any such payments thereafter to become due, such sale shall not be confirmed by the judge of probate until the purchaser executes a bond to the executor or administrator, for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the judge of probate approves.

SEC. 191 (15). *Bond, how conditioned.*—The bond shall be conditioned that such purchaser will make all payments for such land that shall become due after the date of such sale, and fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs, charges, and expenses by reason of any covenant or agreement contained in such contract; but if there is no payment thereafter to become due on such contract, no bond shall be required of the purchaser.

SEC. 192 (16). *Assignment of contract to be made.*—Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of such contract, which shall invest in the purchaser, his heirs and assigns, all the right, interest, and title of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the deceased would have had if living.

SEC. 193 (17). *Proceeds of sale, how disposed of.*—The proceeds of every such sale of the interest of the deceased persons in lands under contract as hereinbefore mentioned, shall be disposed of in all respects in the same manner as the proceeds of the sale of lands of which the deceased died seized, according to the provisions of this chapter.

SEC. 194 (18). *Sales and conveyances subject to all charges, etc.*—All sales and conveyances of land made by executors or administrators pursuant to the provisions of this title (chapter), shall be subject to all charges thereon, by mortgage or otherwise, existing at the time of the death of the testator or intestate; and in case the estate of the deceased is in any way liable for the amount secured by any such mortgage or for any such charge, the sale shall not be confirmed by the judge of probate, until the purchaser executes a bond to the executor or administrator, as required in

the case of a sale of a contract for the purchase of lands, on which payments are to become due.

SEC. 195 (19, AS AMENDED BY ACT OF MARCH 6, 1868). *Foreign executors, how licensed to sell real estate in this state.*—An executor or administrator appointed in another state, upon whose estate there is no executor or administrator appointed in this state, may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the deceased; after which he may be licensed by the same probate court to sell real estate for the payment of debts, legacies, and charges of administration, in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state, except as hereinafter provided. And such foreign executor or administrator may act by his attorney in fact thereto by him duly appointed, under his hand and seal, and executed and acknowledged in the same manner as is required for the conveyance of real estate, which power of attorney shall be recorded in the office of the register of deeds for the county in which the real estate is situated.

S. L. 1868, 104. *Vide* also S. L. 1867, 115, and 1869, 76, 77.

BY GUARDIANS FOR THE PAYMENT OF DEBTS.

SEC. 196 (20). *Guardian licensed to sell real estate of ward, when.*—When the goods, chattels, rights, and credits in the hands of a guardian are insufficient to pay all the debts of the ward, with the charges of managing the estate, the guardian may be licensed to sell his real estate, in like manner, and upon like terms and conditions as are prescribed in this title (chapter), in the case of a sale by executors or administrators, except as hereinafter provided.

SEC. 197 (21). *Whole estate sold, when.*—If it is represented in the petition, and appears necessary to sell some part of the real estate of the ward, and that by such partial sale, the residue of the estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as it deems necessary, and most for the interest of all concerned.

S. L. 1868, 106.

FOR MAINTENANCE AND INVESTMENT.

SEC. 198 (22). *Sale of real estate for support of ward, when.*—When the income of the estate of a ward is insufficient to maintain him and his family, or to educate the ward when a minor, or the children of any ward, or when it appears that it would be for the benefit of a ward that his real estate or any part thereof should be sold, and the proceeds thereof put out on interest or invested in some productive stock, his guardian may sell the same upon obtaining a license therefor, and proceeding therein as hereinafter provided.

SEC. 199 (23). *Proceeds of sale, how applied or invested.*—If the estate is sold for any purpose mentioned in the preceding section, the guardian shall apply the proceeds of the sale to such purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, or for the education of the ward when a minor, or the children of any ward, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate.

SEC. 200 (24). *Investment, how made.*—If the estate is sold in order to invest the proceeds, the guardian shall make the investment according to his best judgment, or in pursuance of any order that may be made by the probate court.

SEC. 201 (25). *Petition for sale, to show what.*—To obtain a license for such sale, the guardian shall present to the probate court a petition, setting forth the estate of his ward, real and personal, its condition, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; which petition shall be verified by the oath of the petitioner.

SEC. 202 (26). *Notice of hearing to be given.*—If it appears to the court from such petition that it is necessary, or would be beneficial to the ward that such real estate, or some part of it, be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place therein to be specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

SEC. 203 (27). *Proceedings on hearing.*—The judge of probate at the time and place appointed in such order, or at such other time as the hearing shall be adjourned to, upon proof of the due service of the order, and upon filing the certificate of approbation of the commissioners of the county, when necessary, shall hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

SEC. 204 (28). *License to sell granted, when.*—If, after a full examination, it appears to the court either that it is necessary, or that it would be for the benefit of the ward, that the real estate, or any part of it, be sold, such court may grant a license therefor, specifying therein whether the sale is to be made for the maintenance of the ward and his family, or for the education of the ward or his children, or in order that the proceeds may be invested as aforesaid.

BY FOREIGN GUARDIANS.

SEC. 205 (29, AS AMENDED BY ACT OF MARCH 7, 1870). *Foreign guardian, how to obtain leave to sell real estate of ward.*—When a minor, or other person, residing out of this state, is under guardianship in the state or county in which he resides, and has no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment in the probate court for any county in which there is real estate of the ward; after which he may be licensed to sell real estate of the ward in any county, in the same manner and upon the same terms and conditions as are prescribed in this title (chapter) in the case of a guardian appointed in this state, except as hereinafter provided. And such foreign guardian may act by his attorney in fact thereto by him duly appointed under his hand and seal, and executed and acknowledged in the same manner as is required for the conveyance of real estate, which power of attorney shall be recorded in the office of the register of deeds for the county in which the real estate is situated.

S. L. 1870, 125. *Vide* also 1868, 106, and 1869, 76. Townsend *v.* Kendall, 4 Minn. 412.

PROVISIONS COMMON TO SALES BY GUARDIANS.

SEC. 206 (30). *Condition of granting license.*—No license shall be granted to any guardian to sell real estate of his ward except in case of minors, unless the commissioners of the county of which the ward is an inhabitant, or in which he

resides, certify to the judge of probate, in writing, their approbation of such proposed sale, and that they deem it necessary.

SEC. 207 (31). *Notice of petition, on whom to be served.*—All those who are next of kin, and heirs apparent or presumptive of the ward, shall be considered as interested in the estate, and may appear and answer to the petition of the guardian, and when personal notice of the time and place of hearing the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators.

SEC. 208 (32). *Notice, how published and served.*—Such notice shall be published at least four successive weeks in such newspaper as the court directs; the last of which publications shall be at least fourteen days before the day of hearing, and a copy of such order shall be served personally on all persons interested, as aforesaid, residing in the county where the application is made, at least fourteen days before the day of hearing, and on all other persons interested, by depositing forthwith a copy of such notice in the post office, with postage pre-paid, directed to them respectively at their place of residence, unless it appears that their residence is unknown.

PROVISIONS COMMON TO SALES BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SEC. 209 (33). *Bond to be given in all cases.*—Every executor, administrator, and guardian licensed to sell real estate for any purpose whatever, whether appointed in this state or elsewhere, shall, before sale, give bond to the judge of probate with sufficient surety or sureties, to be approved by said judge, conditioned to sell the same and account for and dispose of the proceeds as provided by law, and a further bond may be required by said judge whenever he considers one necessary.

SEC. 210 (34). *Court to deliver certified copy of order.*—After an order of sale is made, and said bond filed with the judge of probate, he shall deliver a certified copy of said order to the executor, administrator, or guardian, who shall thereupon be authorized to sell the real estate as therein directed, within one year after the making of such order, or within such further time, not exceeding one year, as may be allowed by said judge.

SEC. 211 (35, AS AMENDED BY ACT OF FEB. 28, 1872). *Notice of sale to be posted and published.*—When a public sale is ordered, notice of the time and place shall be posted up in three of the most public places in the county in which the land is situated, and shall be published in a newspaper, if there is one printed in the same county, and if there is none, then in such paper as the court may direct, for three weeks successively next before such sale, in which notice the lands and tenements to be sold shall be described with common certainty.

S. L. 1872, 132.

SEC. 212 (36, AS AMENDED BY ACT OF FEB. 28, 1872).—*Manner of making sale.*—Every sale made under the provisions of this title (chapter) shall be made in the county where the lands are situated, and between the hours of nine o'clock in the morning and the setting of the sun the same day, and shall be at public auction unless in the opinion of the probate judge it would benefit the estate of the deceased or of the wards to sell the whole or any part thereof at private sale, in which case

the court, if such sale is asked for in the petition may order and direct such real estate or any part thereof to be sold at private sale by the executor, administrator, or guardian. But the same shall not be thus sold until the executor, administrator, or guardian shall have had said real estate appraised by two competent persons to be appointed by the probate court; also, before proceeding to make such appraisal shall take and subscribe an oath to faithfully and honestly appraise said land at its fair cash valuation, which [oath], together with their appraisement, shall be filed in the probate court, and no such real estate shall be sold at private sale for less than its full appraised value, nor until after such notice of the terms of the sale as said court may direct, shall have been given, nor shall any such sale be made until a bond shall have been filed as provided in section thirty-three in this chapter, nor shall the executor, administrator, or guardian become the purchaser at such sale.

S. L. 1872, 133.

SEC. 213 (37). *Executor, etc., not to be purchaser.*—No executor, administrator, or guardian making the sale, shall directly or indirectly purchase or be interested in the purchase of any part of the real estate so sold; and all sales made contrary to the provisions of this section shall be void; but this section shall not prohibit any such purchase by a guardian for the benefit of his ward.

SEC. 214 (38). *Length of credit given—security.*—On such sale the executor, administrator, or guardian may give such length of credit, not exceeding one year, and for not more than one-half of the purchase money, as shall seem best calculated to produce the highest price, and shall have been directed, or shall be approved by the judge of probate, and shall secure the moneys for which credit is given, with interest, by a bond of the purchaser, and a mortgage of the premises sold.

SEC. 215 (39). *Return of proceedings on sale to be made.*—The executor, administrator, or guardian making any sale, shall immediately make a return of his proceedings upon the order of sale, in pursuance of which it is made, to the judge of probate granting the same, who shall examine the proceedings, and may also examine such executor, administrator, or guardian, or any other person, on oath, touching the same; and if he is of the opinion that the proceedings were unfair, or that the sum bid is disproportionate to the value, and that a sum exceeding such bid, at least ten per cent. exclusive of the expenses of a new sale, may be obtained, he shall vacate such sale, and direct another to be had, of which notice shall be given; and the sale shall be conducted in all respects as if no previous sale had taken place.

SEC. 216 (40). *Sale confirmed, when.*—If it appears to the judge of probate that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum than above specified can not be obtained, he shall make an order confirming such sale, and directing conveyances to be executed.

SEC. 217 (41, AS AMENDED BY ACT OF FEBRUARY 21, 1873). *Executor et al. to take oath—form of oath.*—Every executor, administrator, and guardian licensed to sell real estate, as provided in this title (chapter), shall, before fixing on the time and place of sale, take and subscribe an oath in substance as follows: That in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing on the time and place of sale, and will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested; which oath shall be filed with the judge of probate before confirmation of the sale:

provided, that when any executor, administrator, or guardian so licensed to sell real estate, resides out of this state, he may take and subscribe such oath before any notary public or clerk of a court of record of the state where he resides, and the same, with the seal of the officer before whom the same was taken attached, shall have the same force and effect as if taken before any officer within this state authorized to administer oaths.

S. L. 1873, 176. For sec. 2 of this act *vide* pt. v. of Curative Acts.

SEC. 218 (42). *Proof of notice of sale to be filed and recorded.*—An affidavit of the executor, administrator, or guardian, or of some other person having knowledge of the fact, that notice of any such sale was given as provided in this title (chapter), being made, and filed and recorded in the probate court, together with a copy of the notice, shall be admitted as evidence of the time, place, and manner of giving the notice.

SEC. 219 (43). *Sale may be adjourned.*—If at the time appointed for any such sale, the executor, administrator, or guardian deems it for the interest of all persons concerned therein, that the sale be postponed, he may adjourn the same from time to time, not exceeding in all three months.

SEC. 220 (44). *Notice of adjournment, how given.*—In cases of adjournment, notice thereof shall be given by a public declaration, at the time and place first appointed for the sale, and if the adjournment is for more than one day, further notice shall be given by posting or publishing the same, or both, as time and circumstances may admit.

SEC. 221 (45). *Surplus of proceeds of sale, considered real estate.*—In all sales by executors, administrators, or guardians, appointed in this state or elsewhere, of part or the whole of the real estate of a deceased person or ward, the surplus of the proceeds remaining on the final settlement of the accounts shall be considered as real estate, and be disposed of to the same persons, and in the same proportions as the real estate would descend or be disposed of by the laws of this state, if not sold.

SEC. 222 (46). *Limitation of action.*—No action for the recovery of any estate sold by an executor or administrator under this chapter shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale: and no action for any estate so sold by a guardian shall be maintained by the ward, or by any person claiming under him, unless commenced within five years next after the termination of the guardianship; except that persons out of the state and minors, and others under legal disability to sue at the time when the right of action first accrues, may commence such action at any time within five years after the removal of the disability, or their return to the state.

SEC. 223 (47). *Sale not to be avoided, when.*—In case of an action relating to any estate sold by an executor, administrator, or guardian, in which an heir or person claiming under the deceased, or in which the ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings: *provided*, it appears—

First. That the executor, administrator, or guardian was licensed to make the sale by the probate court having jurisdiction;

Second. That he gave a bond which was approved by the judge of probate, in case a bond was required upon granting a license;

Third. That he took the oath prescribed in this chapter;

Fourth. That he gave notice of the time and place of sale, as in this chapter prescribed; and,

Fifth. That the premises were sold accordingly, by public auction, and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

21 Wis. 632; 13 Wis. 291; 19 Wis. 541; 20 Wis. 374.

SEC. 224 (48). *Executor et al. liable for neglect or misconduct.*—If there is any neglect or misconduct in the proceedings of the executor, administrator, or guardian in relation to such sale, by which any person interested in the estate suffers damage, he may recover compensation therefor on the probate bond, or otherwise, as the case may require.

SEC. 225 (49). *Validity of sale not affected by irregularity, when.*—If the validity of a sale is drawn in question by a person claiming adversely to the title of the deceased, or the ward, or claiming under a title that is not derived from or through the deceased or ward, the sale shall not be void on account of any irregularity in the proceedings, if it appears that the executor, administrator, or guardian was licensed to make the sale by a probate court having jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

SEC. 226 (50). *Executor et al. making fraudulent sale, how liable.*—Any executor, administrator, or guardian who fraudulently sells any real estate of his testator, intestate, or ward, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages, to be recovered in a civil action, by the person having an inheritance therein.

SALE AND CONVEYANCE OF REAL ESTATE BELONGING TO LUNATIC.

SEC. 227 (51, AS AMENDED BY ACT OF MARCH 7, 1867). *Real estate of lunatic sold, when.*—Any lunatic seized of any real estate, or entitled to any term for years in lands, or having any tenancy by the curtesy, or any tenancy by the curtesy initiate, may by guardian duly appointed, or if such lunatic is a married woman, having any real estate held by her as her separate estate, or having any dower admeasured, or right of dower, or inchoate right of dower, in any real estate, she may by guardian duly appointed, or by her husband, apply to the probate court of the county in which such real estate or some part thereof is situate, or if such lunatic is a married woman, in the county in which her husband resides, for the sale or disposition of the same in the manner hereinafter directed.

S. L. 1867, 118.

SEC. 228 (52, AS AMENDED BY ACT OF MARCH 7, 1867). *Bond to be given.*—On such application said guardian or said husband shall give bonds to the judge of probate of the county in which such proceedings are had for the benefit of such lunatic (in addition to any bond given on appointment as guardian), to be filed with the judge of said probate court, in such penalty, with sureties, and in such form as the said probate court shall direct, conditioned for the faithful performance of the trust reposed, for the paying over, investing, and accounting for all moneys that shall be received by such guardian or husband, according to the order of any

court having authority to give directions in the premises and for the observance of the orders and directions of the court in relation to the trust.

S. L. 1867, 118.

SEC. 229 (53). *Bond prosecuted, when.*—If such bond is forfeited, the court shall direct it to be prosecuted for the benefit of the party injured.

SEC. 230 (54). *Application, how considered.*—Upon the filing of such bond the court may proceed in a summary manner by reference to a referee, to inquire into the merits of such application.

SEC. 231 (55). *Sale may be ordered, when.*—Whenever it appears satisfactorily that a disposition of any part of the real estate of such lunatic, or of any interest in any term for years, or of a tenancy by the curtesy, or tenancy by the curtesy initiate, in any real estate, or a disposition of any real estate, or of her interest in a term of years of a married woman who is a lunatic, held by her as her separate estate, or of any dower admeasured, or right of dower, or inchoate right of dower of a married woman who is a lunatic, is necessary and proper either for the support and maintenance of such lunatic, or for his education; or that the interest of such lunatic requires or will be substantially promoted by such disposition on account of any part of such property being exposed to waste and dilapidation, or on account of its being wholly unproductive, or when the same has been contracted to be sold and a conveyance thereof cannot be made by reason of such lunacy, or for any other peculiar reasons or circumstances, the court may order the letting for a term of years, or the sale or other disposition of such real estate or interest to be made by such guardian or husband of such married woman who is a lunatic, in such manner and with such restrictions as shall be deemed expedient, or may order the fulfillment of said contract, by conveyance by such guardian or husband according to the terms of the contract.

SEC. 232 (56). *Real estate not to be sold or leased, when.*—But no real estate or term of years of any interest in real estate hereinbefore named, shall be sold, leased, or disposed of in any manner against the provisions of any last will, or of any conveyance by which such estate, or term, or interest was devised or granted to such lunatic.

SEC. 233 (57). *Report to be made to court.*—Upon an agreement for the sale, leasing, or other disposition of such property being made, or upon any conveyance in fulfillment of a contract being executed in pursuance of such order, the same shall be reported to the court on the oath of the guardian or husband making or executing the same, and (except in case of a conveyance to fulfill a contract), if the report is confirmed, a conveyance shall be executed under the direction of the court.

SEC. 234 (58). *Sales, etc., valid, when.*—All sales, leases, dispositions, and conveyances, made in good faith by such guardian or husband in pursuance of such orders, shall be valid and effectual as if made by such lunatic when of sound mind.

SEC. 235 (59). *Court to make order concerning proceeds of sale.*—The court shall make order for the application and disposition of the proceeds of such property, and for the investment of the surplus belonging to such lunatic, so as to secure the same for the benefit of such lunatic, and shall direct the ascertainment of the value of such tenancy by the curtesy, or tenancy initiate, or dower, or right of dower, or inchoate right of dower, and shall direct a return of such investment and disposition to be made on oath, as soon as may be, and shall require accounts to be ren-

dered periodically by any committee or other person who may be entrusted with the disposition of the income of such proceeds.

SEC. 236 (60). *Effect of sale.*—No sale made as aforesaid, of the real estate or interest therein of any lunatic, shall give to such lunatic any other or greater interest or estate in the proceeds of such sale than such lunatic had in the estate so sold; but the said proceeds shall be deemed real estate of the same nature as the property sold, or the interest therein of the said lunatic, and the court shall make order for the preservation of the same.

SEC. 237 (61). *Agreement in lieu of dower.*—If the real estate of any lunatic, or any part of it, is subject to dower or other life estate, and the person entitled thereto consents, in writing, to accept a gross sum in lieu of such dower or other life estate, or the permanent investment of a reasonable sum, in such manner as that the interest thereof be made payable to the person entitled to such dower or life estate during life, the court may direct the payment of such sum in gross, or the investment of such sum as shall be deemed reasonable and be acceptable to the person entitled to said dower or other life estate, or right therein, actual or contingent, in manner aforesaid.

SEC. 238 (62). *Dower to be released.*—Before any such sum is paid or investment made, the court shall be satisfied that an actual release of such right of dower or other life estate, actual or contingent, has been executed.

SEC. 239. AN ACT

TO ENABLE FOREIGN EXECUTORS, ADMINISTRATORS, AND GUARDIANS TO DISCHARGE JUDGMENTS AND MORTGAGES OF LANDS WITHIN THIS STATE, AND TO RELEASE ANY LANDS WITHIN THIS STATE FROM THE LIEN OF ANY SUCH JUDGMENT OR MORTGAGE.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. *Foreign executors, etc., to file copy of appointment.*—That an exemplification of the record of the appointment of any executor, administrator, or guardian, in another state or in a foreign country, may be filed and recorded in the office of the register of deeds of any county in this state; and such record in the register's office, or a transcript thereof duly certified, shall in all cases be *prima facie* evidence of such appointment.

Sec. 2. *Power of such executor, etc.*—That any such executor, administrator, or guardian may release and fully discharge of record any judgment or mortgage of land in this state belonging to the estate or to the minor children represented by him, and may also release and fully discharge any land in this state, from the lien of such judgment or mortgage.

Sec. 3. *May act by attorney.*—That any such executor, administrator, or guardian may act by his attorney in fact thereto by him duly appointed, by a power of attorney executed and acknowledged in the same manner as is required for a conveyance of real estate, and recorded in the office of the register of deeds of the county in this state in which such act may be performed.

S. L. 1869, 76. Act approved March 4, 1869, repealed chapter 70, S. L. 1867, 115. It was made retroactive.

SEC. 240. AN ACT

RESPECTING THE ESTATE OF NON-RESIDENT WARDS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. *When guardian may demand and remove property to place of residence of ward.*—That in all cases where the guardian and his ward may both be non-residents of this state, and such ward may be entitled to property of any description in this state, such guardian, on producing satisfactory proof to the probate court, by certificate according to act of congress in such case provided, that he has given bond and security in the state in which he and his ward reside, in double the amount of the value of the property, as guardian, and is bound that a removal of property will not conflict with the time and limitations attending the right by which the ward owns the same, then any such guardian may demand, sue for, and remove any such property to the place of residence of himself and ward.

Sec. 2. *Duty of judge of probate.*—When such non-resident guardian shall produce an exemplification from under the seal of the office (if there be a seal) of the proper court in the state of his residence containing all the entries on record in relation to his appointment and giving bond and authenticated as required by the act of congress as aforesaid, the probate court of the proper county in this state may cause suitable orders to be made, discharging any resident guardian, executor, or administrator, and authorizing the delivery and passing over such property, and also requiring receipts to be passed and recorded, if deemed advisable: *provided*, that in all cases thirty days' notice shall be given to the resident guardian, executor, or administrator of the intended application for the order of removal, and the court may reject the application, and refuse such order whenever it is satisfied that it is for the interest of the ward that such removal should not take place.

Approved March 5, 1868. S. L. 1868, 106.

SEC. 241. AN ACT

PROVIDING FOR PROCEEDINGS IN THE DISTRICT COURTS OF THIS STATE, TO QUIET AND PERFECT TITLES TO REAL ESTATE SOLD BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. *Defects and irregularities, how rectified.*—Whenever a sale of real estate or any interest therein has heretofore been made by any administrator, executor, or guardian in good faith, and the purchase money in fact paid, and any defects or irregularities have occurred in proceedings touching such sale, which did not render such sale absolutely void, such defects and irregularities may be rectified and the sale confirmed by the district court of the county where such real estate or some part thereof is situated, in the manner provided in this act: *provided*, that the provisions of this act shall not apply to sales of property heretofore made by executors, administrators, or guardians who have been removed by order of the probate court, or whose appointment has been declared illegal, or is now being contested or litigated.

Sec. 2. Duty of court upon application for relief—for what purpose.—Any person interested in such real estate may make application to the district court for the relief provided for in this act, which application shall set forth a description of the real estate, the date of the sale, the defects or irregularities claimed to exist, and the name and residence, if known, of every person interested in such real estate, and thereupon the court may examine or appoint a referee to examine and report touching the facts alleged in such application, and the fact of the good faith of such sale.

Sec. 3. Time and place to be appointed for hearing—publication of notice—parties interested required to be present.—Upon such examination, or coming in of the report of the referee, the court may by an order appoint a time and place for hearing such application, and shall direct that a notice of such application and the time and place appointed for hearing the same, be published for six weeks successively in some newspaper to be designated in the order, published at the capital of the state, and also for the same length of time in some newspaper designated in the order, published in the county where such real estate is situated, or some part thereof—if there be one—and that a copy of the application and order be served personally upon every person interested in the real estate, if a resident of this state, in such manner as summonses in the district court are served, or if residing out of this state and their place of residence is known, that a copy of such application and order be served by depositing the same in the post office enclosed in an envelope securely sealed, and directed to each of such persons at their places of residence respectively, and the postage required by law paid thereon. The order shall require all persons interested in the real estate to appear before the court at the time and place so fixed, and show cause, if any exists, why such application should not be granted.

Sec. 4. When hearing not to be had—when notice of publication deemed sufficient service.—No hearing shall be had upon such application until it shall be made to appear to the court by satisfactory proof that the application and order have been served and notice published as required by this act at least twenty days prior to such hearing, and in all cases before making any order for such service by depositing the same in the post office, as herein provided for, it shall be made to appear to the court by satisfactory proof, that the persons so to be served reside out of this state: *provided*, that it shall in like manner appear that such persons' place of residence is unknown, and cannot with reasonable diligence be ascertained, the publication of notice as provided in this act shall be deemed sufficient service as to such persons.

Sec. 5. May issue order confirming such sale, when.—If upon the hearing of such application, and the examination of the proceedings, it shall appear to the satisfaction of the court that the purchase moneys were paid to the administrators, executors, or guardians in good faith, and that no intention existed by the purchaser at the administrator's, executor's, or guardian's sale, to defraud or injure the heirs or devisees, the court may make an order or judgment confirming such sale, on such terms as it shall deem equitable, and such sale shall from that time be confirmed and valid, according to the terms of the order or judgment, and the court may in its discretion order any further conveyance or assurance of title, and the order or judgment of the court shall be sufficient to pass the title to such real estate, and may be recorded in the office of register of deeds.

Sec. 6. *Remedy of persons aggrieved.*—Any party aggrieved by any order or judgment made by the district court, may appeal to the supreme court in the same manner and within the same time as in civil actions, and on such appeal the supreme court may reverse, affirm, or modify any order or judgment of the district court in any respect, and pass upon the equities involved in the application to the same extent as the district court.

Act went into effect March 4, 1871. S. L. 1871, 112.

SEC. 242. AN ACT

TO PRESERVE THE EVIDENCE OF TITLE TO REAL ESTATE PURCHASED AT EXECUTORS', ADMINISTRATORS', OR GUARDIANS' SALES.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. It shall be the duty of the judge of probate to furnish to any person applying therefor, a certified copy under his official seal of any paper on file in his office relating to or in any way connected with the sale of any real estate by any executor, administrator, or guardian.

Sec. 2. The register of deeds of the county where such real etate is situated, or of the county to which it is attached for judicial purposes, may record any such certified copy in the book of miscellaneous records.

Sec. 3. Such certified copy, or the record thereof, shall, in case of any action concerning the title to said real estate, or the validity of said sale, be *prima facie* evidence of the original, and in case of the loss or destruction of the original, shall be conclusive evidence thereof.

Act of February 21, 1873. S. L. 1873.

SEC. 243. AN ACT

TO AUTHORIZE GUARDIANS TO CONVEY TO RAILROAD COMPANIES THE RIGHT OF WAY AND DEPOT SITES ON AND UPON LANDS BELONGING TO THEIR WARDS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. Whenever any railroad company has located the line of its road upon a crop, or contiguous to any lands or lots belonging to infant heirs, or other wards, or in which such heirs or wards have any interest, it shall be lawful for the guardian of such heirs or wards to sell and convey to such railroad company, upon such terms as may be agreed upon between said guardian and said company, such portion of said lands or lots as may be deemed necessary or required by said company, and the right of way upon and across the same, together with all necessary grounds for depots, engine, and station houses and side tracks, subject only to the approval and confirmation of the probate court of the county having jurisdiction of the matter of the guardianship of such heirs or wards. Such approval and confirmation shall be indorsed upon or annexed to the deed or other instrument between the parties, and shall be recorded with and as a part of such deed or instrument in the office of the register of deeds in the proper county, and shall be notice to all parties interested of the facts therein stated: *provided*, that before granting such approval and confirmation, the judge of probate shall require a petition subscribed and verified by such guardian, and signed by some officer of said company, to be

filed in said probate court, setting forth the names of such heirs or wards, the name of such railroad company, a description of the lands or lots to be conveyed, the terms of sale, and that the price to be paid is the just and full value of the lands or lots intended to be conveyed to said company, and upon the filing of such petition the judge of probate shall determine the matter without any further formality, notice, order, or delay whatever.

Took effect February 24, 1870. S. L. 1870, 26. *Vide* also S. L. 1869, 75, which it amended.

TITLE IX.

GENERAL PROVISIONS.

ARTICLE I.

CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

(*This Article is Chapter LVIII. of the Statutes of* 1866.)

SEC. 244 (1). *Court may decree conveyance of lands, when.*—When any person, who is bound by a contract in writing to convey any real estate, dies before making the conveyance, the probate court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to execute such conveyance.

SEC. 245 (2). *Time of hearing shall be appointed and notice given.*—On the presentation of a petition by any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the names, ages, and residences, if known, of all persons interested in the estate to be conveyed, and the facts upon which sum claim is predicated, the judge of probate shall appoint a time and place for hearing such petition, and notice thereof shall be given to those interested in the same manner as in civil actions.

SEC. 246 (3). *Proceedings on hearing.*—At such hearing, or any adjournment thereof, upon proof by affidavit, of the due publication of the notice, all persons interested in the estate may appear before the probate court and defend against such petition; and the court may examine on oath the petitioner, and all others produced before it for that purpose.

SEC. 247 (4). *Decree shall be made, when.*—After a full hearing upon such petition, and examination of the facts and circumstances of such claim, if the judge of probate is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, according to the provisions of his chapter, he shall thereupon make a decree authorizing and directing the executor or administrator to make and execute a conveyance thereof to such petitioner, otherwise he shall dismiss such petition.

SEC. 248 (5). *Party interested may appeal from decree.*—Any person interested may appeal from such decree or dismissal to the district court for the same county, as in other cases, but if no appeal is taken from such decree within the time limited therefor by law, or if such decree is affirmed on appeal, the executor or administra-

tor shall execute the conveyance according to the direction contained in such decree and a certified copy of the decree shall be recorded with the deed, in the office of the register of deeds in the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

SEC. 249 (6). *Effect of decree.*—Every conveyance made in pursuance of a decree of the probate court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself was still living, and executed the conveyance.

SEC. 250. (7). *Effect of recording copy of decree in registry of deeds.*—A copy of the decree for conveyance made by the probate court, and duly certified and recorded in the registry of deeds, in the county where the lands lie, shall give the person entitled to such conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree, and such right may be enforced, if necessary, by said court, according to the course of practice therein.

SEC. 251 (8). *In case of death of person entitled, his heirs, et al., may commence or conduct proceedings, etc.*—If the person to whom the conveyance was to be made dies before the commencement of proceedings, according to the provisions of this chapter, or before the conveyance is completed, any person who would have been entitled to the estate under him as heir, devisee, or otherwise, in case the conveyance had been made, according to the terms of the contract, or the executor or administrator of such deceased person, for the benefit of the person so entitled, may commence such proceedings, or prosecute the same, if already commenced, and the conveyance shall thereupon be so made as to vest the estate in the same persons who would have been so entitled to it, or in the executor or administrator for their benefit.

ARTICLE II.

PROSECUTION OF PROBATE BONDS.

(*This Article is Chapter LV. of the Statutes of* 1866.)

SEC. 252 (1). *Probate bonds, how taken.*—All bonds required by law to be taken in or by order of the probate court, shall be for such sums and with such sureties as the judge of probate directs; they shall run to the judge of probate, unless when otherwise provided, and be filed and preserved with the records of the probate court of the county, and in case of any breach of the conditions thereof, may be prosecuted in the name and for the use or benefit of any person interested therein, whenever the judge of probate directs.

SEC. 253 (2). *Creditor may bring action on bond, when.*—An action may be brought on the bond of any executor or administrator by any creditor, when the amount due to him has been ascertained and ordered by the decree of distribution to be paid, if the executor or administrator neglects to pay the same when demanded.

Wood *v.* Myrick, 16 Minn. 494.

SEC. 254 (3). *Next of kin may bring action, when.*—Such an action may be brought by any person as next of kin to recover his share of the personal estate,

after a decree of the probate court declaring the amount due to him, if the executor or administrator fails to pay the same when demanded.

18 Wis. 115.

SEC. 255 (4). *When court may authorize any person interested to bring action.*—When it appears, on the representation of any person interested in the estate, that the executor or administrator has failed to perform his duty in any other particular than those before specified, the judge of probate may authorize any creditor, next of kin, legatee, or other person aggrieved by such failure, to bring an action on the bond.

SEC. 256 (5). *Court may cause bond to be prosecuted, when.*—Whenever an executor, administrator, or guardian refuses or omits to perform any order or decree made by a judge of probate having jurisdiction, for rendering an account, or upon a final settlement, or for the payment of debts, legacies, or distributive shares, such judge of probate may cause the bond of such executor, administrator, or guardian to be prosecuted, and the moneys collected thereon applied in the same manner as such moneys ought to have been applied by such executor, administrator, or guardian.

SEC. 257 (6). *Shall give person authorized to bring action a certified copy of bond and certificate of permission.*—On the application of any person authorized by this chapter to commence an action on such bond, the judge of probate may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant, on his paying the legal fee, a certified copy of the bond, together with a certificate that permission has been granted to prosecute it, and the name and residence of the applicant.

SEC. 258 (7). *Judgment, for what amount rendered—successive actions may be brought.*—The judgment of the plaintiff in any action on such bond, brought for the benefit of any particular person, shall be for the amount of the damages which he shows himself entitled to, in consequence of the breach of the condition of said bond; and successive actions may be brought on said bond for the benefit of persons injured by any breach thereof.

SEC. 259 (8). *Execution, how awarded.*—If judgment is rendered for the plaintiff in any action upon such bond for any breach thereof in not performing any order or decree of the judge of probate, as mentioned in the two hundred and fifty-sixth (fifth) section of this chapter, execution shall be awarded for the full value of all the estate of the deceased or ward, that has come to the hands of such executor, administrator, or guardian, and for which he has not satisfactorily accounted, and for all such damages as have been occasioned by his neglect or mal-administration.

SEC. 260 (9). *Moneys collected on execution, how disposed of.*—All moneys received on any execution issued on a judgment in favor of the judge of probate, as mentioned in the preceding section, shall be paid over to the co-executor or co-administrator, if there is any, or to such person other than the defendant therein, as shall then be the rightful executor, administrator, or guardian, and such moneys shall be disposed of according to law.

SEC. 261 (10). *Claims for damages, how and by whom prosecuted.*—Claims for damages on account of the breach of the conditions of any bond, may be prosecuted by any executor, administrator, or guardian in behalf of those he represents, in the same manner as by persons living and of full age; and such claims may be prosecuted against the representatives of deceased persons, in the same manner as other claims against such deceased persons.