THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY

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of that value in the division and distribution of the estate; otherwise it shall be estimated according to its value when given, as nearly as the same can be ascertained.

§ 13. (SEC. 10.) **Advancement—death of child, etc., before the intestate.** If any child or other lineal descendant so advanced dies before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the heirs so advanced, in like manner as if the advancement had been made directly to them.

§ 14. (SEC. 11.) **Construction of this chapter.** Nothing in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower; nor shall the same affect any limitation of an estate, by deed or will. See *ante*, §§ *3 and 4*.

§ 15. (SEC. 12.) **Right of representation—posthumous children.** Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parent would have taken, if living. Posthumous children are considered as living at the death of their parents.

CHAPTER XLVII.

WILLS.

§ 1. **Who may devise lands—estate not disposed of—married women.** 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. (*As amended 1869, c. 61, § 1.*)

§ 2. **Devise passes all testator's estate, when.** 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.

§ 3. **Devise passes after-acquired lands, when.** Any estate, right or interest in lands, acquired by the testator after making his will, shall pass thereby in like man-

ner 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.

§ 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.

§ 5. **Wills, how to be 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.

20 M. 245.

§ 6. **Nuncupative wills.** 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.

§ 7. **Legacies to subscribing witnesses.** 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.

§ 8. **Share of estate saved to subscribing witnesses.** 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.

§ 9. **Revocation of wills.** No will, nor any part thereof, shall be revoked, unless by burning, tearing, cancelling 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.

20 M. 245.

§ 10. **Custodian of will to deliver it to probate court.** 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.

§ 11. **Executor to present will, and accept or renounce.** 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.

§ 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.

§ 13. **Refusal of custodian to deliver will—commitment.** If any person having the cus-

tody 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.

§ 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.

§ 15. **Probate granted on testimony of one witness, 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.

§ 16. **Other than subscribing witnesses 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.

§ 17. **Will not effectual unless proved—effect of probate,** 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.

§ 18. **Allowance, etc., of wills proved in other states.** 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.

§ 19. **Same—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.

§ 20. **Same—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.

§ 21. **Same—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 ad-

ministrator 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 proved: *provided*, that the judge of probate, before issuing such letters, may, in his discretion, require him to give bonds as in other cases. (*As amended 1870, c. 64, § 1.*)

§ 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.

14. M. 18.

§ 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.

3 M. 140 (209).

§ 24. **From what estate 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.

§ 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.

§ 26. **Estate of testator liable for debts, etc.—allowance to widow, 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.

§ 27. **Payment of debts, etc.—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.

§ 28. **Same—where such provision is insufficient.** 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.

§ 29. **Estate devised, how liable for the 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.

§ 30. **Estate liable for payment of debts, etc., 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.

§ 31. **Liability of legatee and devisee to contribution.** 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.

§ 32. **Same—where any persons liable are insolvent.** 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 and to 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.

§ 33. **Same—Probate court to fix and apportion liability.** 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.

§ 34. **Certificate of proof of will—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.

§ 35. **Record of attested copy of will of lands.** 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.

§ 36. **Term "executor" defined.** The word "executor," in this and subsequent chapters, shall be construed to include an administrator with the will annexed.