

21079  
65

# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE  
THE STATUTES OF THE STATE, BY ACT OF THE  
LEGISLATURE, PASSED FEBRUARY 17, 1863.

ONE HUNDRED COPIES ORDERED PRINTED.



SAINT PAUL:

FREDERICK DRISCOLL, STATE PRINTER.

(PRESS PRINTING COMPANY.)

1865.

27

D

## CHAPTER LIII.

## PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

1 SECTION 1. When letters testamentary or of adminis-  
 2 tration are granted by any probate court, the judge thereof  
 3 shall appoint two or more suitable persons commissioners C. S. p. 440, Sect. 1. Amended. c 44  
 4 to receive, 'examine' and adjust all claims and demands of  
 5 all persons against the deceased, except in the following  
 6 cases :

7 - *First.*—When it appears that there are no debts existing  
 8 against such deceased person.

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

1 SECT. 2. Whenever any male person dies leaving issue  
 2 but no widow; or whenever any female person dies leaving  
 3 issue but no surviving husband, the probate court of the New.  
 4 county where by law such person's estate is settled, may,  
 5 in its discretion, on the return of the inventory, if the same  
 6 does not exceed one hundred and fifty dollars, and the  
 7 estate is intestate, assign the whole of such estate to the  
 8 children of the deceased for their own use.

1 SECT. 3. When such commissioners are appointed they  
 2 shall appoint convenient times and places, when and where C. S. p. 440, Sect. 2.  
 3 they will meet for the purpose of examining and allowing  
 4 the claims; and, within sixty days after their appointment,  
 5 they shall give notice of the times and places of their meet-  
 6 ing, and of the time limited for creditors to present their  
 7 claims, by posting a notice thereof in four public places in  
 8 the same county, and by publishing the same at least four  
 9 weeks successively in some newspaper printed in said coun-  
 10 ty, or in any other manner which the court may direct.

1 SECT. 4. The judge of probate in the commission issued C. S. p. 440, Sect. 3.  
 2 to the commissioners, shall designate the paper in which  
 3 such notice shall be published, and the number of places in  
 4 the county in which it shall be posted, or any other mode of  
 5 notifying which he deems necessary and proper.

c 44

C. S. p. 440, Sect. 4. 1 SECT. 5. If any commissioner appointed by the probate  
2 court dies, removes out of the state, refuses, or becomes in  
3 any other way incapacitated to perform the duties of his  
4 appointment, the court may appoint another commissioner  
5 in his place; and no further notice of the meetings of the  
6 commissioners shall be required in consequence of such ap-  
7 pointment.

C. S. p. 440, Sect. 5. 1 SECT. 6. The probate court shall allow such time as the  
2 circumstances of the case require, for the creditors to pre-  
3 sent their claims to the commissioners for examination and  
4 allowance, which time shall not, in the first instance, exceed  
5 eighteen months, nor be less than six months; and the time  
6 allowed shall be stated in the commission.

C. S. p. 440, Sect. 6. 1 SECT. 7. The probate court may extend the time allow-  
2 ed to creditors to present their claims; but not so that the  
3 whole time shall exceed two years from the time of ap-  
4 pointing such commissioner.

C. S. p. 440, Sect. 7.  
Amended. 1 SECT. 8. On the application of a creditor who has failed  
2 to present his claim, if made within six months from the time  
3 previously limited, and before the settlement of the final  
4 account of administration of the estate, the court may,  
5 for good cause shown, renew the commission, and allow fur-  
6 ther time, not exceeding three months, for the commission-  
7 ers to examine such claim; in which case the commission-  
8 ers shall personally notify the parties of the time and place  
9 of hearing, and as soon as may be, make return of their do-  
10 ings to the probate court.

C. S. p. 441, Sect. 9. 1 SECT. 9. When a creditor against whom the deceased  
2 had claims, presents a claim to the commissioners, the exe-  
3 cutor or administrator shall exhibit the claims of the de-  
4 ceased, in offset to the claims of the creditor, and the com-  
5 missioners shall ascertain and allow the balance against or  
6 in favor of the estate, as they find the same to be; but no  
7 claim barred by the statute of limitations, shall be allowed  
8 by the commissioners, in favor of or against the estate, as a  
9 set-off or otherwise.

C. S. p. 441, Sect. 10. 1 SECT. 10. The commissioners shall be sworn, and any  
2 one of them may administer oaths to parties and witnesses,  
3 when the same are required or proper for the investigation  
4 and trial of questions before them.

C. S. p. 441, Sect. 11. 1 SECT. 11. At the expiration of the time limited, or as  
2 soon thereafter as the hearing of the claims presented is  
3 completed, the commissioners shall make a report of their  
4 doings to the probate court, embracing lists of the claims

5 presented or exhibited in offset, and stating how much was  
6 allowed and how much was disallowed, together with the  
7 final balance, whether in favor of the creditor or the estate;  
8 and shall state particularly the manner of giving notice to  
9 the claimants.

1 SECT. 12. The commissioners have power to try and de-  
2 cide upon all claims which by law survive against or in fa- c. s. p. 441, Sect. 12. c 4/2/  
3 vor of executors and administrators, except claims for the  
4 possession or title of real estate; and may examine and al-  
5 low all demands, at their then present value, which are  
6 payable at a future day, including claims payable in specific  
7 articles, and may offset such demands in the same manner  
8 in favor of the estate.

1 SECT. 13. Nothing in the preceding section shall be con-  
2 strued to prevent any executor or administrator from pay- c. s. p. 441, Sect. 13.  
3 ing any debt which is payable at a future day, according to  
4 the terms, and at the time specified in the contract.

1 SECT. 14. Every person having a claim against a de-  
2 ceased person proper to be allowed by the commissioners, c. s. p. 441, Sect. 14.  
3 who shall not, after the publication of notice as required  
4 herein, exhibit his claim to the commissioners within the  
5 time limited by the court for that purpose, shall be forever  
6 barred from recovering such demand, or from setting off the  
7 same in any action whatever.

1 SECT. 15. When commissioners are appointed, as pro-  
2 vided in this chapter, for examining and allowing claims c. s. p. 441, Sect. 15.  
3 against any estate, no action shall be commenced against the  
4 executor or administrator, except to recover the possession  
5 of real estate, or the possession of personal property; nor  
6 shall any attachment or execution be issued against the es-  
7 tate of the deceased, until the expiration of the time limited  
8 by the court for the payment of debts.

1 SECT. 16. All actions which are pending against a de-  
2 ceased person, at the time of his death, may, if the cause of c. s. p. 441, Sect. 16.  
3 action survives, be prosecuted to final judgment; and the  
4 executor or administrator may be admitted to defend the  
5 same; and if judgment is rendered against the executor or  
6 administrator, the court rendering it shall certify the same  
7 to the probate court, and the amount thereof shall be  
8 paid in the same manner as other claims duly allowed against  
9 the estate.

1 SECT. 17. Nothing in this chapter shall be construed to  
2 prevent an executor or administrator, when he thinks it ne- c. s. p. 442, Sect. 17.  
3 cessary, from commencing and prosecuting any action

## 446 PAYMENT OF DEBTS AND LEGACIES. [CHAP. LIII.

4 against any other person, or from prosecuting any action com-  
 5 menced by the deceased in his life time, for the recovery of  
 6 any debt or claim, to final judgment, or from having exe-  
 7 cution on any judgment.

C 4 1/2

C. S. p. 442, Sect. 18.

1 SECT. 18. In such case the defendant may set-off any  
 2 claim he has against the deceased, instead of presenting it  
 3 to the commissioners, and if final judgment is rendered in  
 4 favor of the defendant, the same shall be certified by the  
 5 court rendering it, to the probate court, and the judgment  
 6 shall be considered the true balance.

C. S. p. 442, Sect. 19.  
 Amended.

1 SECT. 19. When two or more persons are indebted on  
 2 any joint contract, or upon a judgment founded on a joint  
 3 contract, and either of them dies, his estate is liable there-  
 4 for, and the amount thereof may be allowed by the com-  
 5 missioners, as if the contract had been joint and several,  
 6 or as if the judgment had been against him alone.

## OF APPEALS FROM THE DECISIONS OF COMMISSIONERS.

C. S. p. 442, Sects. 20  
 & 22, combined.

1 SECT. 20. Any executor, administrator, or creditor,  
 2 may appeal from the decision and report of the commission-  
 3 ers, to the district court for the same county, if application  
 4 for such appeal is made in writing, filed in the probate of-  
 5 fice within sixty days after the return of the report of the  
 6 commissioners, in the following cases :

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

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

C. S. p. 442, Sect. 21.

1 SECT. 21. If a claimant appeals, he shall, within the  
 2 time aforesaid, give a bond to the adverse party, with su-  
 3 reties to be approved by the judge of probate, and filed in  
 4 his office, with a condition that he shall prosecute his appeal  
 5 with effect, and pay all damages and costs, which may be  
 6 awarded against him on such appeal.

C. S. p. 442, Sect. 24.

1 SECT. 22. The party appealing shall procure, and file  
 2 in the district court, to which the appeal is taken, at or be-  
 3 fore the next term of such court, after the appeal is allowed,  
 4 a certified copy of the record of the allowance or disallow-  
 5 ance appealed from, and of the application for the appeal.

C. S. p. 443, Sect. 25.  
 Amended.

1 SECT. 23. When such certified copy is filed in the dis-  
 2 trict court the said court acquires jurisdiction as of actions  
 3 duly commenced therein. The party having the affirmative  
 4 shall file his complaint, setting forth the cause of action,

5 but no allegations shall be permitted except such as relate  
6 or are essential to the specific matter appealed from; issues  
7 may be joined by demurer answer and reply as in other  
8 cases, and the cause proceed in conformity to the rules es-  
9 tablished for the conduct of civil actions, except that no ex-  
10 ecution shall be awarded against an executor or administra-  
11 tor for a debt or demand found due to the claimant. Eith-  
12 er party may appeal to the supreme court as in other cases.

1 SECT. 24. The final decision and judgment, in cases so  
2 appealed, shall be certified by the district court, or supreme C. S. p. 443, Sect. 27.  
3 court, as the case may be, to the probate court; and the  
4 same proceedings shall be had thereon, as if such decision  
5 had been reported by the commissioners. C 4 3/4

1 SECT. 25. If any claimant, appealing on account of the C. S. p. 443, Sect. 27.  
2 disallowance of his claim by the commissioners, fails to Amended.  
3 prosecute his appeal in the district court, such claim shall  
4 be forever barred.

1 SECT. 26. If the person objecting to a claim, and ap-  
2 pealing on account of the allowance of such claim, neglects C. S. p. 443, Sect. 28.  
3 to prosecute his appeal, the district court, on motion of the Amended.  
4 adverse party, and on his producing an attested copy of the  
5 record of the probate court, showing such appeal, shall af-  
6 firm the allowance appealed from.

1 SECT. 27. When an executor or administrator declines C. S. p. 443, Sect. 29.  
2 to appeal from the decision of the commissioners, any per-  
3 son interested in the estate, as creditor, devisee, legatee,  
4 or heir, may appeal from such decision, in the same man-  
5 ner as the executor or administrator might have done; and  
6 the same proceedings shall be had, in the name of the ex-  
7 ecutor or administrator: *Provided*, That the person appeal-  
8 ing in such case, gives a bond, with sureties, to be ap-  
9 proved by the judge of probate, as well to secure the estate  
10 from damages and costs, as to secure the intervening dam-  
11 ages and costs to the adverse party.

1 SECT. 28. When an executor or administrator has a  
2 claim against the estate which he represents, which is dis-  
3 allowed by the commissioners, and he takes an appeal there- C. S. p. 443, Sect. 30.  
4 from to the district court, notice of such appeal shall be  
5 given to all concerned, by personal service thereof, or by  
6 publication, under an order of the probate court, in some  
7 newspaper which circulates in the county, three weeks suc-  
8 cessively, the last publication of which shall be four weeks  
9 before the hearing of the appeal.

## LIMITATION OF TIME FOR PAYING DEBTS.

c44  
 C. S. p. 443, Sect. 31.  
 1 SECT. 29. The probate court, at the time of granting  
 2 letters testamentary, or letters of administration, shall make  
 3 an order, allowing to the executor or administrator a period  
 4 of time for disposing of the estate, and paying the debts and  
 5 legacies of the deceased person, not exceeding in the first  
 6 instance, one year and six months.

C. S. p. 443, Sect. 32.  
 Amended.  
 1 SECT. 30. The probate court may on application of the  
 2 executor or administrator, extend the time for paying debts  
 3 and legacies, not exceeding six months at a time, nor so  
 4 that the whole time allowed to the original executor or ad-  
 5 ministrator shall exceed three years.

C. S. p. 444, Sect. 33.  
 1 SECT. 31. When an executor or administrator makes  
 2 application to have the time for paying debts and legacies  
 3 extended beyond one year and six months from the time of  
 4 granting letters testamentary, or of administration, the pro-  
 5 bate court shall appoint a time for hearing and deciding on  
 6 such application, and cause notice of such application, and  
 7 of the time and place of hearing to be given to all persons  
 8 interested, by publication three weeks successively, in some  
 9 newspaper designated by the court; and no such order, ex-  
 10 tending the time, shall be granted, unless such notice has  
 11 been previously given.

C. S. p. 444, Sect. 34.  
 1 SECT. 32. When an executor or administrator dies or  
 2 becomes incapable of discharging his trust, and a new ad-  
 3 ministrator is appointed, the probate court may extend the  
 4 time for the payment of the debts and legacies beyond the time  
 5 allowed to the original executor or administrator, not exceed-  
 6 ing one year at a time, and not exceeding six months beyond  
 7 the time which the court might by law allow to such original  
 8 executor or administrator, upon due notice given as required  
 9 in the preceding section.

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

C. S. p. 444, Sect. 35.  
 1 SECT. 33. If, after the report of the commissioners has  
 2 been made, and the claims against the estate ascertained, it  
 3 appears that the executor or administrator has in his pos-  
 4 session sufficient to pay all the debts, he shall pay the same  
 5 in full within the time limited or appointed for that pur-  
 6 pose.

C. S. p. 444, Sect. 36.  
 Amended.  
 1 SECT. 34. If the assets which the executor or adminis-  
 2 trator has received, and which can be appropriated to the  
 3 payment of debts, are not sufficient therefor, he shall, after

4 paying the necessary expenses of his funeral, last sickness and  
5 administration, pay the debts against the estate in the fol-  
6 lowing order :

7 *First.*—Debts having a preference by the laws of the  
8 United States.

9 *Second.*—Public rates and taxes.

10 *Third.*—Judgments docketed, according to the priority  
11 thereof.

12 *Fourth.*—Debts due to other creditors.

1 SECT. 35. No preference shall be given in the payment  
2 of any debt, over other debts of the same class, except those <sup>New.</sup>  
3 specified in the third class ; nor shall a debt due and pay-  
4 able be entitled to preference over debts not due ; nor shall  
5 the commencement of an action for the recovery of any debt,  
6 or the obtaining a judgment thereon against the executor or  
7 administrator entitle such debt to any preference over others  
8 of the same class.

1 SECT. 36. After the return of the report of commission- C. S. p. 444, Sect. 38. c 44  
2 ers, and at or before the expiration of the time limited for  
3 the payment of debts, the probate court shall make an or-  
4 der or decree for the payment of the debts and the distribu-  
5 tion of the assets which have been received by the executor  
6 or administrator, at the time for that purpose, among the  
7 creditors, according to the provisions of this chapter.

1 SECT. 37. If an appeal is taken from the decision of the  
2 commissioners, and remains undetermined, the probate C. S. p. 444, Sect. 39.  
3 court may suspend the decree for the payment of debts,  
4 mentioned in the preceding section, or may order a distri-  
5 bution among the creditors whose claims are allowed, leav-  
6 ing in the hands of the executor or administrator, sufficient  
7 assets to pay the claim which has been disputed and ap-  
8 pealed.

1 SECT. 38. When the disputed claim is finally settled,  
2 the probate court shall order the same to be paid out of the C. S. p. 444, Sect. 40.  
3 assets retained, to the same extent and in the same propor-  
4 tion, as the claims of the other creditors.

1 SECT. 39. If the whole of the debts were not paid by  
2 the first distribution, and if the whole assets have not been C. S. p. 445, Sect. 41.  
3 distributed, or if other assets afterwards come to the hands  
4 of the executor or administrator, the probate court may,  
5 from time to time, make further decree for the distribution  
6 of assets.

1 SECT. 40. Whenever a decree is made by the probate C. S. p. 445, Sect. 42.  
2 court, for the distribution of the assets among the creditors, Amended.



3 the executor or administrator, after the time of payment  
4 arrives, shall be personally liable to the creditors for their  
5 debts, or the dividend thereon, as for his own debt to the  
6 extent of the assets in his hands applicable thereto; or he  
7 shall be liable on his bond, and the same may be put in suit  
8 on the application of the creditor whose debt or dividend is  
9 not paid as above mentioned.

1 SECT. 41. When the time for paying the debts of a de-  
2 ceased person is finally limited, by order of the probate  
3 court, or by the expiration of the time allowed, for that pur-  
4 pose, whether the estate is insolvent or not, the probate  
5 court may, on the application of the executor or adminis-  
6 trator, by an order for that purpose, cause notice to be  
7 given to the creditors, of the time appointed or limited for  
8 the payment of such debts, by publishing the same at least  
9 three weeks successively, in some paper to be designated  
10 by the court, or in such other manner as the court may di-  
11 rect.

c 1/4  
C. S. p. 445, Sect. 43.

1 SECT. 42. If, after notice, as is provided in the preced-  
2 ing section, any creditor neglects to demand from the exec-  
3 utor or administrator, his debt, or the dividend thereon,  
4 within two years from the time so limited for the payment  
5 of the debts; or, if the notice is given after such time, with-  
6 in two years from the last publication, the claim of such  
7 creditor shall be forever barred.

C. S. p. 445, Sect. 44.

#### CONTINGENT CLAIMS.

1 SECT. 43. If any person is liable as security for the de-  
2 ceased, or has any other contingent claim against his estate,  
3 which cannot be proved as a debt before the commissioners,  
4 or allowed by them, the same may be presented with the  
5 proper proof to the commissioners, who shall set forth the  
6 claim and proof in their report; and said court may order  
7 the executor or administrator to retain in his hands, suffi-  
8 cient to pay such contingent claim when the same becomes  
9 absolute; or if the estate is insolvent, sufficient to pay a  
10 proportion equal to the dividends of the other creditors.

C. S. p. 445, Sects. 45  
& 46, combined.

1 SECT. 44. If such contingent claim becomes absolute and  
2 is presented to the executor or administrator, at any time  
3 within two years from the time limited for other creditors,  
4 to present their claims to the commissioners, it may be  
5 proved before the commissioners already appointed, or be-  
6 fore others to be appointed for that purpose, in the same  
7 manner as if presented for allowance before the commission-  
8 ers had made their report; and the persons interested, shall  
9 have the same right of appeal as in other cases.

C. S. p. 445, Sect. 47.

1 SECT. 45. When such contingent claim is allowed, as  
 2 mentioned in the preceding section, or established on appeal, C. S. p. 445, Sect. 48. c 44  
 3 the creditor is entitled to receive payment to the same ex-  
 4 tent as other creditors, if the estate retained by the execu-  
 5 tor or administrator, is sufficient for that purpose, but if  
 6 the claim is not finally established, or, if the assets retained  
 7 in the hands of the executor or administrator, are not whol-  
 8 ly exhausted in the payment of such claims, such assets, or  
 9 the residue, shall be disposed of by order of the probate  
 10 court, to the persons entitled to the same, according to law.

1 SECT. 46. If the claim of any person accrues or be-  
 2 comes absolute as any time after the time limited for cred-  
 3 itors to present their claims, the person having such claim C. S. p. 446, Sect. 49.  
 4 may present it to the probate court, and prove the same  
 5 at any time within one year after it accrues or becomes ab-  
 6 solute; and if established in the manner provided in this  
 7 chapter, the executor or administrator shall pay it if he has  
 8 sufficient assets for that purpose, or such part as he has as-  
 9 sets to pay; and if real or personal estate afterwards comes  
 10 to his possession, he shall pay such claim, or such part as  
 11 he has assets sufficient to pay, not exceeding the proportion  
 12 of the other creditors, in such time as the probate court  
 13 may prescribe.

1 SECT. 47. When a claim is presented within one year  
 2 from the time it accrues, and is established, as mentioned C. S. p. 446, Sect. 50.  
 3 in the preceding section, and the executor or administrator  
 4 has not sufficient assets to pay the whole of such claim, the  
 5 creditor may recover such part of his claim as the executor  
 6 or administrator has not assets to pay, against the heirs,  
 7 devisees, or legatees, who have received sufficient real or  
 8 personal property from the estate.

1 SECT. 48. If any action is commenced against an exe-  
 2 cutor or administrator on such claim, as is mentioned in the C. S. p. 446, Sects. 51  
 3 preceding forty-sixth section, and for the payment of which & 52, combined &  
 4 sufficient assets have not been retained, the executor or ad- amended.  
 5 ministrator may plead that he has fully administered the  
 6 estate which has come to his possession or knowledge,  
 7 and if it is found that the defendant had fully administered  
 8 at the time the claim was presented, and had no assets  
 9 which could be lawfully appropriated for that purpose,  
 10 judgment shall be rendered in his favor; but if it is found  
 11 that he had assets sufficient to pay only a part of such claim,  
 12 judgment shall be rendered against him for such sum only  
 13 as is equal to the amount of assets in his hands.

1 SECT. 49. If the appointment of commissioners to allow  
 2 claims in any case is omitted, no person having any con-

c44

C. S. p. 447, Sect. 59.

3 tingent or other lawful claim against a deceased person,  
4 shall thereby be prevented from prosecuting the same  
5 against the executor, administrator, heirs, devisees, or leg-  
6 atees, as provided by law, and in such case a claimant hav-  
7 ing a lien upon real or personal estate of the deceased, by  
8 attachment previous to his death, may on obtaining judg-  
9 ment have execution against such real or personal estate.

C. S. p. 447, Sect. 60.

1 SECT. 50. In no other case, except such as are express-  
2 ly provided for in this chapter, shall any action be com-  
3 menced or prosecuted against an executor or administrator;  
4 nor shall any writ of attachment or execution issue against  
5 such executor or administrator, or against the estate of the  
6 deceased in his hands, during the time allowed him for the  
7 payment of debts.

CHAPTER LIV.

RENDERING ACCOUNTS BY EXECUTORS AND AD-  
MINISTRATORS.

c45

C. S. p. 448, Sect. 1.

1 SECTION 1. Every executor and administrator is charge-  
2 able in his account, with the whole of the goods, chattels, rights  
3 and credits of the deceased, which come to his possession;  
4 also, with all the proceeds of the real estate, which is sold  
5 for the payment of debts and legacies, and with all the in-  
6 terest, profit, and income that in any way comes to his  
7 hands, from the estate of the deceased.

C. S. p. 448, Sect. 2.

1 SECT. 2. Every executor and administrator, shall ac-  
2 count for the personal estate of the deceased, as the same  
3 is appraised, except as provided in the following section.

C. S. p. 448, Sect. 3.

1 SECT. 3. An executor or administrator shall not make  
2 profit by the increase, nor suffer loss by the decrease or  
3 destruction, without his fault, of any part of the personal  
4 estate; and he shall account for the excess when he sells  
5 any part of the personal estate for more than the appraisal;  
6 and, if he sells any for less than the appraisal, he is not re-  
7 sponsible for the loss, if it appears to be beneficial to the  
8 estate to sell it.

C. S. p. 448, Sect. 4.

1 SECT. 4. The probate court, on the application of the  
2 executor or administrator may, at any time, order the per-  
3 sonal estate to be sold at private sale, or at public auction,  
4 when it appears to be necessary for the purpose of paying