

Statutes  
1878

THE  
GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY  
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EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS  
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FOURTH EDITION.

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WITH SUPPLEMENTS,  
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF  
THE LEGISLATIVE SESSION OF 1883.

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1883.

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.

15 M. 159; 20 M. 313  
 § 53. (Sec. 50.) No action to be brought against executor, etc., except etc. In no other case, except such as are expressly provided for in this 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: *provided*, that nothing in this chapter contained shall be construed to prevent an action against an executor or administrator to foreclose a mortgage given by a mortgagor deceased. (*As amended 1878, c. 11, § 1.*)

21 M. 172, 174.

## CHAPTER LIV.

### RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

#### SECTION.

1. With what executor may be charged.
2. Shall account for personal estate.
3. Shall not make profit or suffer loss.
4. Sale of personal estate.
5. Account of sale to be rendered.
6. Not accountable for uncollected debts, when.
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#### SECTION.

9. Account to be rendered, when.
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11. Compensation of executors and administrators.
12. Liability for neglect to account.
13. Execution for costs against estate.
14. Notice of examination of account.

§ 1. **With what executor, etc., 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.

§ 2. **To account for personal estate.** 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.

§ 3. **Not to make profit or suffer loss.** 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.

§ 4. **Sale of personal estate.** 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.

19 M. 221.

§ 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.

§ 6. **Not liable for debts uncollected without fault.** No executor or administrator is accountable for any debts due to the deceased, if it appears that they remain uncollected without his fault.

§ 7. **To 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.

§ 8. **Accountable for loss or delay from 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 person 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.

§ 9. **Account to be 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.

§ 10. **Examination 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.

§ 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.

§ 12. **Liability for neglect to account.** 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.

§ 13. **No execution for costs against estate.** 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.

§ 14. **Notice of examination of account.** 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.

## CHAPTER LV.

## PROBATE BONDS AND THE PROSECUTION OF THEM.

## SECTION.

1. Probate bonds, how taken—evidence.
2. Additional bond may be required.
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4. Next of kin may bring action, when.
5. When court may authorize any person interested to bring action.
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## SECTION.

7. Permission to sue—certified copy of bond.
8. Judgment, for what amount rendered.
9. Execution, how awarded.
10. Moneys collected on execution, how disposed of.
11. Actions on bond by and against representatives.

§ 1. **Bonds to be taken—amount—sureties—obligee—record—action—evidence.** All bonds required by law to be taken in, or by order of, the probate court or judge of probate, shall be for such sums and with such sureties as the judge of probate directs; they shall run to the judge of probate, unless otherwise provided; and the same shall be recorded in the office of the judge of probate in a book to be provided by the county; and said bonds shall 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 benefit of any person interested therein, whenever the judge of probate directs. The record of such bond, or a copy thereof, duly certified by the judge of probate, shall be received and read in evidence in the same manner and like effect as the original bond. (*As amended 1871, c. 55, § 1.*)

\*§ 2. **Additional bonds may be required.** Whenever any judge of probate is satisfied that the bond of an executor, administrator or guardian is insufficient, he may, on his own motion, or on application 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 the same within a reasonable length of time shall be deemed a sufficient cause for the removal of such executor, administrator or guardian. (*1873, c. 60, § 1.*)

§ 3. (Sec. 2.) **Action on bond by creditor.** 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.

16 M. 494; 22 M. 261.

§ 4. (Sec. 3.) **Action on bond by next of kin.** 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.

§ 5. (Sec. 4.) **Other actions on bond by persons interested.** 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,