

GENERAL STATUTES ³⁶
OF THE
STATE OF MINNESOTA

IN FORCE

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VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

VOL. 2.

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Wilkenson v. Estate of Winne, 15 Minn. 159, (Gil. 123.) The debts upon which actions are allowed by c. 53, Gen. St., are the same as those actions upon which are the subject of c. 77. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.) Where commissioners to audit claims against an estate are appointed, and a claim proper to be passed on by them is presented to and disallowed by them, and no appeal taken, such claim cannot be enforced by action against real estate descended to the heirs, whatever irregularities there may have been in the appointment of, and in the action of, the commissioners, and though the claimant was ignorant of the report till more than two years thereafter, and after the administrator was discharged. Id.

§ 53. (Sec. 50.) Other actions not maintainable—Exception.

No action will lie against the representative on a claim not presented to the commissioners. *Commercial Bank v. Slater*, 21 Minn. 172; *Same v. Same*, Id. 174.

As to the liability of the personal representative to costs, and how enforced, see *Lough v. Flaherty*, 29 Minn. 295, 13 N. W. Rep. 131.

CHAPTER 54.

RENDERING ACCOUNTS BY EXECUTORS AND ADMINISTRATORS.

§ 1. Executors, etc.—With what chargeable.

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§ 7. Accountable for income of realty.

Cited, *State v. Probate Court*, 25 Minn. 25.

§ 8. Losses from negligence—Liability.

Cited, *State v. Probate Court*, 25 Minn. 25; *Bryant v. Livermore*, 20 Minn. 337, (Gil. 271.)

*§ 8a. Unapproved claims—Payment—Allowance.

That in all cases where any executor or administrator has heretofore paid in good faith any debts or claims against the estate which he represents, without the same having been duly approved, as required by law, and whose final account has not yet been settled, such payments may be allowed by the judge of probate upon proof satisfactory to said judge of probate that said debts or claims were just and existing demands against said estate at the time of said payment. (1887, c. 184.)

§ 9. Rendering accounts.

Every executor or administrator shall render his account of his administration within one year from the time of his receiving letters testamentary or of

§ 28. (Sec. 24.) Judgment on appeal—Certifying to probate court.

See Berkey v. Judd, cited in note to c. 49, § 13, subd. 4, *supra*.

§ 31. (Sec. 27.) Appeal by persons interested.

To the proceedings before commissioners, upon claims submitted for their allowance, all persons interested in the estate are parties, and all are bound by the award of the commissioners, or of the appellate court on appeal. State v. Probate Court, 25 Minn. 22.

See Lake v. Albert, cited *supra*, § 24; Auerbach v. Gloyd, 34 Minn. 500, 27 N. W. Rep. 193.

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

§ 38. (Sec. 34.) Insolvent estate—Order of paying debts.

As to funeral expenses, see McNally v. Weld, 30 Minn. 209, 214, 14 N. W. Rep. 895.

See In re Jefferson, 35 Minn. 215, 28 N. W. Rep. 256.

[§ 38a. (Sec. 35.) For this section, see *post*, page 1054.]

§ 39. (Sec. 36.) Decree of payment and distribution.

Where a decree is made by a probate court, directing debts allowed by the commissioners to be paid, it will be presumed that the commissioners gave the proper notice, or that the administrator appeared before them; and, in an action on the administrator's bond to recover the amount directed to be paid, proof of notice by the commissioners need not be made otherwise than by the decree. Lanier v. Irvine, 24 Minn. 116. No notice is required to authorize the making of a decree for payment of debts and distribution of assets among creditors. The existence of unpaid funeral expenses does not effect the validity of such decree. *Id.*

See Huntsman v. Hooper, 32 Minn. 163, 20 N. W. Rep. 127.

CONTINGENT CLAIMS.

§ 46. (Sec. 43.) Presentment and payment.

Claims depending upon a contingency which may never happen. Harding v. Smith, 11 Pick. 478.

See Blackmer v. Blackmer, 5 Vt. 355; Lowry v. Stevens, 6 Vt. 113; Jones v. Cooper, 2 Aiken, 54; Sargent v. Kimball, 37 Vt. 321; Sherman v. Abell, 46 Vt. 547; Waterman v. Wright, 36 Vt. 164; Lytle v. Bond, 39 Vt. 388.

§ 49. (Sec. 46.) Presentation to probate court.

What is such a contingent claim as is contemplated in this section, see Palmer v. Pollock, 26 Minn. 433, 440, 4 N. W. Rep. 1113; O'Gorman v. Lindeke, 26 Minn. 93, 1 N. W. Rep. 841.

See Mann v. Everts, (Wis.) 25 N. W. Rep. 209; Auerbach v. Gloyd, 34 Minn. 500, 27 N. W. Rep. 193.

§ 50. (Sec. 47.) Recovery from heirs, etc.

See note to section 14, *supra*; also Cummings v. Halsted, cited in note to § 15, *supra*.

ACTIONS AGAINST EXECUTORS, ETC.

§ 51. (Sec. 48.) Defense of plene administravit.

See Peckham v. Hoag, (Mich.) 23 N. W. Rep. 818.

§ 52. (Sec. 49.) Omission to appoint commissioners—Action.

Where a creditor of an estate has, by reason of an omission to appoint commissioners, the right to bring an action against a personal representative, such remedy is not exclusive; but, if commissioners are subsequently appointed, such claim may be presented to and proved before them. Wilkenson v. Estate of Winne, 15 Minn. 159, (Gil. 123.)

A delay of seven years in the appointment of commissioners is an "omission to appoint," authorizing proceedings by a creditor against the personal representative.

administration; and the court shall extend said time beyond the period of one year, whenever the time for selling the estate or paying debts has been extended, or when, upon good cause shown for any other reason, it shall appear to be for the interest or advantage of said estate; and he shall render such further accounts of said administration from time to time as are required by the court until the estate is wholly settled. (*As amended 1885, c. 10, § 1.**)

Purpose of statute requiring an accounting. *Hall v. Grovier, 25 Mich. 428.*

Estoppel to deny representative character. *Damouth v. Klock, 29 Mich. 289.*

Credit for the payment of a claim which had been allowed by the commissioners, but which was not entered in their report. *Clark v. Clark, 21 Vt. 490.*

Credit for payment of a fictitious claim allowed by the commissioners with the assent of the administrator, no appeal having been taken. *Reynolds v. McGregor, 16 Vt. 191.*

Allowance of interest to administrator upon advances to the estate. *Rix v. Smith, 8 Vt. 365.*

An administrator who is also guardian of an heir may charge himself as guardian with the funds, to which the heir is entitled in distribution, and this will be a good accounting as administrator, though done without an order of the probate court. *Scott's Account, 36 Vt. 297.*

As to estoppel of heir to contest an account, see *Loomis v. Armstrong, (Mich.) 29 N. W. Rep. 867.*

§ 13. Execution.

A judgment, "and it is further determined and adjudged that the appellant above named do have and recover of said James W. Lough, administrator of the estate of William Pitman, deceased, respondent herein, the sum and amount of \$51.30 costs and disbursements in this cause in this court, and that said appellant have execution for enforcement thereof," is a judgment against the administrator personally, to be enforced by execution against his property. *Lough v. Flaherty, 29 Minn. 295, 13 N. W. Rep. 131.*

§ 14. Examination of account—Notice.

This provision requiring notice of the time and place of examining and allowing an executor's account to be given to all persons interested, manifestly contemplates a right in every such person to object to the allowance of any item in such account which he deems objectionable. *Bunnell v. Post, 25 Minn. 381.*

It is not necessary, before the administration account of an executor or administrator is allowed, to appoint guardians *ad litem* for minor heirs or legatees interested in the estate. *Balch v. Hooper, 32 Minn. 158, 20 N. W. Rep. 124.*

*§ 15. Resignation of trust.

An executor or administrator may at any time resign his trust, but such resignation shall not be effectual for any purpose unless the court shall enter its acceptance of the same in the form of an order in the record which the statute requires the court to keep of the appointment of executors and administrators, and shall have examined, allowed, and approved his final account. (*Added 1887, c. 75, § 1.†*)

*§ 16. Order of discharge—Effect—Subsequent action.

When the final account of any executor or administrator shall have been examined, allowed, and approved by the court, in the form and manner hereinbefore provided, for the examination of his administration account, the court shall make and enter an order forever discharging such executor or administrator from all the duties, powers, and liabilities of such trust; and such order shall have the effect of forever discharging such executor or administrator, together with his sureties, upon all bonds filed by him in the estate, from all liability and responsibility in respect to such trust, at the expiration of two years after the date of such order. And after the entry of such order, no

*The act of 1885 repeals all inconsistent acts and parts of acts. § 2.

†"An act to amend chapter 54, General Statutes of 1878, regarding executors and administrators." Approved March 7, 1887.

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action or proceeding shall lie against such executor, administrator, or sureties, by reason of anything which such executor or administrator may have done or not done while executing such trust, unless permission to bring such action or proceeding is first obtained from the probate court, upon notice to such executor or administrator, and upon proof, to the satisfaction of said court, of probable intentional fraud or malfeasance of such officer in executing such trust; and in case such action or proceeding is brought, the executor or administrator, and his sureties, shall still be liable, such release and discharge notwithstanding: *provided*, that the court or jury, upon the trial or hearing of the same, find such executor or administrator guilty of intentional fraud or malfeasance in executing such trust, but not otherwise: *provided, however*, that in case improper credits shall have been allowed, or proper charges against him have been omitted, upon settlement of his final account, by mistake, the liability of such executor or administrator shall remain in respect thereto as at present, anything in this chapter to the contrary notwithstanding. (*Added* 1887, c. 75, § 1.)

***§ 17. Same—Limitation.**

Nothing herein contained shall be construed to abridge or affect the authority or duty of an executor or administrator to perform, after the entry of such order of discharge, any duty necessary to the complete settlement of the affairs of his testator or intestate as to any matter previously omitted from administration; nor shall such discharge prevent an appeal being made and had from the order and judgment upon such accounting, as provided by statute. (*Id.*)

***§ 18. "Executor" defined.**

The word "executor" in this and in other chapters, relating to probate proceedings, shall be construed to include an administrator with the will annexed. (*Id.*)

***§ 19. Former resignations—Proceedings confirmed.**

That in all cases where any executor or administrator has heretofore resigned his trust, and the same has been accepted, and his final account of administration has been examined, allowed, and approved by the proper court, such resignation is hereby declared to be legal and binding, and to have forever discharged him from all his duties, powers, and liabilities as such executor or administrator, and he and his sureties upon any bond filed in such matter or estate are hereby forever released and acquitted. (1887, c. 190, § 1.*)

***§ 20. Same—Exception.**

That in all cases where any executor or administrator shall have heretofore made his final account of administration, and the same has been duly examined, allowed, and approved by the proper court, he is hereby declared to have forever terminated his duties and powers as such trustee, and he and the sureties upon any and all bonds which may have been filed in such estate are hereby forever released and acquitted from all liability in such matter at the expiration of two years after the date of such allowance: *provided, however*, that in case improper credits shall have been allowed or proper charges against him have been omitted upon settlement of his final account, by mistake, the liability of such executor or administrator shall remain in respect thereto as heretofore, anything in this act to the contrary notwithstanding. (*Id.* § 2.)

***§ 21. Limitation of act.**

Nothing in this act shall be construed to release an executor or administrator who has been guilty of intentional fraud or malfeasance in executing his

*"An act to discharge executors and administrators, and cancel their bonds." Approved March 7, 1887.

trust, and he and his sureties shall still be liable: *provided, however*, that no action or proceeding shall be against such executor, administrator, or sureties, save by permission of the probate court upon notice to him or them, and upon proof, to the satisfaction of such court, of the probability of intentional fraud or malfeasance in such estate; nor shall any judgments be rendered against him or them unless such intent is shown in the trial court. (*Id.* § 3.)

***§ 22. "Executor" defined.**

The word "executor," in this act, shall be construed to include an administrator with the will annexed. (*Id.* § 4.)

CHAPTER 55.

PROBATE BONDS, AND THE PROSECUTION OF THEM.

See *Litchfield v. McDonald*, 35 Minn. 167, 28 N. W. Rep. 191; *O'Gorman v. Lindeke*, 26 Minn. 93, 1 N. W. Rep. 841; *Balch v. Hooper*, 32 Minn. 158, 20 N. W. Rep. 124; *Forepaugh v. Hoffman*, 23 Minn. 295.

***§ 2. Requiring additional and new bonds.**

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 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. Upon application to the probate court having jurisdiction, made by a surety of an executor, administrator, or guardian, to be discharged from further liability as such surety, said court shall by order require such executor, administrator, or guardian to furnish a new bond, to the satisfaction of said court, within ten days after personal service of such order. Compliance with such order shall operate to discharge such surety from liability for any subsequent act or omission of such executor, administrator, or guardian, and an order shall be thereupon made to that effect; and in such case the surety so exonerated may enforce an accounting before the court by such executor, administrator, or guardian concerning all his prior acts and doings. If an executor, administrator, or guardian, upon being ordered to furnish a new bond as aforesaid, shall fail to comply therewith, he shall be removed, and be compelled to render and settle his account as soon as practicable. (1873, c. 60, § 1, *as amended* 1885, c. 123.)

§ 3. (Sec. 2.) Action by creditor.

As to suits by creditors, on administration bonds executed prior to the passage of the General Statutes, see *Lanier v. Irvine*, 24 Minn. 116, 121.

In an action brought by a creditor under this section, upon an administrator's bond, the plaintiff can only embrace in the complaint claims which have been ascertained and directed by the decree of distribution to be paid, and it is a good defense, *pro tanto*, in an action upon such bond, that one of several claims, in favor of a creditor plaintiff, was not presented to the proper probate court, and that such court never directed or ordered its payment. *Wood v. Myrick*, 16 Minn. 494, (Gil. 447.)

See *Forepaugh v. Hoffman*, 23 Minn. 295; *Berkey v. Judd*, 31 Minn. 275, 17 N. W. Rep. 619; *Huntsman v. Hooper*, 32 Minn. 163, 20 N. W. Rep. 127.