

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

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

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

ST. PAUL.
PUBLISHED BY DAVIDSON & HALL,
STATE PRINTERS, 170 THIRD STREET.
1872.

CHAPTER LV.

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Probate bonds, how taken.

1871-110

SECTION 1. 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.

Creditor may bring action on bond, when.

SEC. 2. 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.

Next of kin may bring action, when.

SEC. 3. 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.

When court may authorize any person interested to bring action.

SEC. 4. 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.

Court may cause bond to be prosecuted, when.

SEC. 5. 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.

Shall give person authorized to bring action, a certified copy of bond and certificate of permission.

SEC. 6. 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.

Judgment, for what amount rendered—successive actions may be brought.

SEC. 7. 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. 8. 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 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. Execution, how awarded.

SEC. 9. 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. Moneys collected on execution, how disposed of.

SEC. 10. 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. Claims for damages, how and by whom prosecuted.

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SECTION 1. 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. Children under seven years of age to have allowance.