

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
GEORGE B. YOUNG.

EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

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

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

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.

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§ 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 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. (*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.

18 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,

legatee, or other person aggrieved by such failure, to bring an action on the bond.

23 M. 295.
 § 6. (SEC. 5.) **Court may cause bond to be prosecuted, when.** 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.

§ 7. (SEC. 6.) **Permission to sue—certified copy of bond.** 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.

§ 8. (SEC. 7.) **Judgment, for what amount rendered—successive actions.** 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.

§ 9. (SEC. 8.) **Execution, how awarded.** 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 maladministration.

§ 10. (SEC. 9.) **Disposal of moneys collected on execution.** 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.

§ 11. (SEC. 10.) **Actions on bond by and against personal representatives.** 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.